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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92067785
Party	Defendant Homeme, Inc.
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Date	09/19/2018
Attachments	Registrants Answer to Amended Petition to Cancel L18504.pdf(32820 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,762,332
Mark: HOMEY

HOMIE, INC.,
Petitioner,
v.
HOMEME, INC.,
Registrant.

Cancellation No. 92067785

**ANSWER TO AMENDED PETITION
FOR CANCELLATION**

**REGISTRANTS ANSWER TO
AMENDED PETITION FOR CANCELLATION**

Registrant, HOMEME, INC., (“Registrant”), hereby responds to the Amended Petition for Cancellation filed by HOMIE, INC., (“Petitioner”) in this proceeding. This response constitutes an Answer to the Amended Petition for Cancellation. Unless expressly admitted herein, each allegation is denied.

In response to the numbered paragraphs in the Amended Petition for Cancellation, Registrants answer as follows:

Paragraph 1:

As to paragraph 1, Registrant admits only the existence, full force, and validity of U.S. Trademark Registration No. 3,762,332 filed in IC 036 "providing real estate listings and real estate information via the Internet; providing an interactive online website that permits users to submit

bids, schedule showings and request information for selected real estate properties" and in IC 042 for "computer services, namely, providing an online search engine that enables users to access real estate listings and real estate information from a database according to user selected criteria" (hereafter "the '332 Registration).

Paragraph 2:

As to paragraph 2, Registrant admits only that: regarding the '332 Registration, (1) the declaration of use or excusable nonuse filed for the '332 registration met the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058 and the Section 8 declaration was accepted and noticed by the USPTO, and (2) that the declaration of incontestability filed for the '332 Registration met the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065 and the Section 15 declaration was acknowledged and noticed by the USPTO.

Paragraph 3:

As to paragraph 3, Registrant admits only that Jericho Road, LLC, on April 14, 2016, fully assigned the entire right, title, interest and goodwill in and to the '332 Registration to the Registrant (hereafter the "Assignment"), and that, on information and belief, the USPTO recorded the Assignment on or around April 18, 2016 at Reel: 005773 and Frame: 0122.

Paragraph 4:

Admitted.

Paragraph 5:

Registrant lacks information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore, denies those allegations.

Paragraph 6:

Registrant lacks information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore, denies those allegations.

Paragraph 7:

As to paragraph 7, Registrant admits only that it owns the domain name "homey.com".

Paragraph 8:

Paragraph 8 is Denied.

Paragraph 9:

Paragraph 9 is Denied.

Paragraph 10:

Registrant lacks information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore, denies those allegations.

Paragraph 11:

Paragraph 11 is Denied.

Paragraph 12:

Registrant lacks information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore, denies those allegations

Paragraph 13:

As to paragraph 13, Registrant admits only that Jericho Road, LLC, on April 14, 2016, fully assigned the entire right, title, interest and authority in and to the "homey.com" domain name to Registrant.

Paragraph 14:

As to paragraph 14, Registrant admits only that it owns the domain name "homey.com".

Paragraph 15:

Paragraph 15 is Denied.

Paragraph 16:

Paragraph 16 is Denied.

Paragraph 17:

Paragraph 17 is Denied.

Paragraph 18:

Paragraph 18 is Denied.

Paragraph 19:

Paragraph 19 is Denied.

Paragraph 20:

No response is required for Paragraph 20.

Paragraph 21:

As to paragraph 21, Registrant admits only that the declaration of incontestability filed for the '332 Registration met the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065 and the Section 15 declaration was acknowledged and noticed by the USPTO.

Paragraph 22:

Paragraph 22 is Denied.

Paragraph 23:

Paragraph 23 is Denied.

Paragraph 24:

Paragraph 24 is Denied.

Paragraph 25:

No response is required for Paragraph 25.

Paragraph 26:

Paragraph 26 is Denied.

Paragraph 27:

Paragraph 27 is Denied.

To the extent that there are any other allegations in the Amended Petition for Cancellation that require an answer, all such allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Registrant has not abandoned the '332 Registration.

Second Affirmative Defense

The '332 Registration is valid, incontestable, and remains in full force for all classes listed therein.

Third Affirmative Defense

Petitioner fails to allege facts sufficient to state a claim on which relief may be granted; specifically, the Petition avers fraud and Petitioner failed to plead fraudulent conduct as required under FED. R. CIV. P. 9(b).

Fourth Affirmative Defense

Petitioner lacks standing to bring the Petition, because the Petitioner has not been damaged.

Fifth Affirmative Defense

Petitioner's claims are barred by the equitable doctrines and affirmative defenses of waiver, acquiescence, and estoppel, because the '332 Registration is valid, incontestable, and remains in full force for all classes listed therein since as early as 2009 until present day.

Sixth Affirmative Defense

Petitioner's claims are barred by the equitable doctrine and affirmative defense of laches because the '332 Registration is valid, incontestable, and remains in full force for all classes listed therein since as early as 2009 until present day.

Seventh Affirmative Defense

Petitioner's claims are barred by its failure to mitigate because the '332 Registration is valid, incontestable, and remains in full force for all classes listed therein since as early as 2009 until present day.

Eighth Affirmative Defense

Petitioner's claims are barred by the applicable statute of limitations because the '332 Registration is valid, incontestable, and remains in full force for all classes listed therein since as early as 2009 until present day.

Ninth Affirmative Defense

Petitioner's claims are barred by the doctrine of unclean hands and its own fraudulent conduct, because it brings this Petition without evidence to support its burden of proof and solely to avoid personal prosecution for trademark infringement.

Additional Defenses

Registrant reserves the right to assert additional defenses based on information learned or obtained through discovery or further investigation.

WHEREFORE, Registrant respectfully requests that the cancellation be dismissed with prejudice and for other and further relief as the Trademark Trial and Appeal Board may deem just and proper, including but not limited to recovery of Applicant's fees and costs.

Registrant has appointed the law firm of SOCAL IP LAW GROUP LLP to defend the captioned cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Marina L. Lang
SOCAL IP LAW GROUP LLP
310 N. Westlake Blvd., Suite 120
Westlake Village, CA 91362

September 19, 2018

Respectfully submitted,
SoCal IP Law Group LLP
Counsel for Registrant

/s/ Marina L. Lang
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Attorney for Registrant
HOMEME, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served on Counsel for Petitioner as identified by the records of the U.S. Patent and Trademark Office, this 19th day of September 2018, by sending same via First Class mail, postage prepaid, to:

HOPE HAMILTON
HOLLAND & HART LLP
P O BOX 8749, ATTN TRADEMARK DOCKETING
DENVER, CO 80201

September 19, 2018

/s/ Nicole M. Abeloe

Nicole M. Abeloe