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

Proceeding	92067873
Party	Defendant Lang Exterior, Inc.
Correspondence Address	LANG EXTERIOR INC 2323 WEST 59TH ST CHICAGO, IL 60636 UNITED STATES
Submission	Answer
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Date	03/20/2018
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Lange Windows & Siding, Inc.,
Petitioner,

v.

Lang Exterior, Inc.,
Registrant.

Cancellation No.: 92067873

**REGISTRANT LANG EXTERIOR, INC.’S ANSWER AND
AFFIRMATIVE DEFENSES TO PETITION TO CANCEL**

This Petition to Cancel (“Petition”) concerns the following trademarks registered to Registrant, Lang Exterior, Inc. (“Lang Exterior” or “Registrant”): U.S. Registration Nos. 4,373,059 (standard character mark of LANG WINDOW PRODUCTS for goods and services related to metal windows; metal doors; non-metal windows; vinyl siding; non-metal doors; and distributorship services in the field of windows); 4,340,727 (standard character mark of LANG WINDOWS INC. for goods and services related to metal windows; metal doors; non-metal windows; vinyl siding; non-metal doors; and distributorship services in the field of windows); and 4,340,726 (standard character mark of LANG WINDOWS for goods and services related to metal windows; metal doors; non-metal windows; vinyl siding; non-metal doors; and distributorship services in the field of windows, non-metal windows, and vinyl and wood siding) (collectively, the “Lang Marks”).

Lang Exterior is a corporation organized under the laws of the State of Illinois with places of business located at 2323 West 59th Street, Chicago, Illinois 60636 and 2529 North Pulaski Road, Chicago, Illinois 60639. Lang Exterior has been in the business of manufacturing and supplying windows and related products since 1953. Lang Exterior responds to the Petition as follows:

(Preamble – not numbered): COMES NOW the Petitioner, Lange Windows & Siding, Inc., an Indiana corporation located at 11003 Thiel Street, St. John, Indiana 46373 and petitions the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (the “TTAB”) to cancel the above referenced registrations. In support thereof the Petitioner states the following.

ANSWER:

Lang Exterior admits that Petitioner, Lange Windows & Siding, Inc. (“Petitioner”), is an Indiana corporation located at 11003 Thiel Street, St. John, Indiana 46373 and petitions the TTAB to cancel the Lang Marks, but denies that Petitioner is entitled to any such relief.

1. To the best of Petitioner’s knowledge, the name and address of the current owner of the registration is Lang Exterior, Inc., an Illinois corporation located at 2323 W 59th Street, Chicago, Illinois 60636.

ANSWER:

Lang Exterior admits that it is an Illinois corporation located at 2323 West 59th Street, Chicago, Illinois 60636 and 2529 North Pulaski Road, Chicago, Illinois 60639. Lang Exterior further admits that it is the owner of all right, title, and interest in and to the Lang Marks at issue in this proceeding.

2. Registrant’s marks Lang Window Products, Lang Windows Inc., and Lang Windows (the “Marks”) are registered on the principal register.

ANSWER:

Lang Exterior admits that the Lang Marks are registered on the principal register.

3. The Marks were registered less than five (5) years before the date of this petition and therefore remain contestable;

ANSWER:

Lang Exterior admits that the Lang Marks were registered less than five (5) years before the date of this Petition, but denies that the Lang Marks are invalid or subject to cancellation for any of the reasons enumerated in this Petition.

4. On January 26, 2018, Registrant demanded that Petitioner terminate its use of the name Lange Windows & Siding, Inc.

ANSWER:

Lang Exterior admits that on January 26, 2018, Lang Exterior notified Petitioner of its infringement of the Lang Marks in the United States. Specifically, Petitioner's unauthorized use of the Lang Marks in connection with the sale, offer for sale, distribution, marketing, and advertising of windows, siding, and related products has caused and is likely to cause confusion, mistake, or deception among the consuming public, and creates the false impression that Petitioner's products and services are authorized, sponsored, or approved by Lang Exterior. Lang Exterior further admits that it demanded Petitioner to discontinue its infringing use of the Lang Marks.

5. The above-identified Petitioner believes that it will be damaged by the above-identified registrations, and hereby petitions to cancel the same.

ANSWER:

Denied.

6. The grounds for cancellation are as follows: (a) The Marks are used merely in a descriptive sense by the registrant; (b) The Marks are merely functional; (c) Each of the Marks is merely a surname of Registrant's owner; (d) The Registrant fails to properly use the registration mark; (e) The Petitioner should be protected against an adverse commercial impact caused by the use of the Marks by registrant which are not proper trademarks; and (f) Petitioner's principal member, Roger Lange, and his family have used the name Lange with windows and siding for many decades before the Marks were registered, effectively predating Registrant's first use of the Marks.

ANSWER:

Denied.

7. Petitioner reserves the right to set forth any further grounds for cancellation as these cancellation proceedings proceed and any such grounds are discovered.

ANSWER:

Denied.

8. Service of this petition has been timely made upon the registrant or the registrant's attorney of record.

ANSWER:

Admitted.

9. Petitioner has submitted the proper fee for filing this petition.

ANSWER:

Lang Exterior lacks knowledge or information sufficient to form a belief as to the truth of the allegation of this paragraph and consequently denies this allegation.

10. Petitioner has and continues to be damaged by registrant's use of the Marks in the marketplace.

ANSWER:

Denied.

(Conclusion – not numbered): **WHEREFORE**, Petitioner requests cancellation of registration numbers 4373059, 4340727 and 4340726, and for all other just and appropriate relief.

ANSWER:

Lang Exterior admits that Petitioner requests cancellation of the Lang Marks, but denies that Petitioner is entitled to any such relief.

AFFIRMATIVE DEFENSES

Lang Exterior asserts the following Affirmative Defenses against Petitioner's Petition to Cancel and reserves the right to further amend its Answer and Affirmative Defenses as additional information becomes available.

1. Lang Exterior is the owner of all right, title, and interest in and to U.S. Trademark Registration Nos. 4,373,059 (standard character mark of LANG WINDOW PRODUCTS for goods and services related to metal windows; metal doors; non-metal windows; vinyl siding; non-metal doors; and distributorship services in the field of windows); 4,340,727 (standard character mark of LANG WINDOWS INC. for goods and services related to metal windows; metal doors; non-metal

windows; vinyl siding; non-metal doors; and distributorship services in the field of windows); and 4,340,726 (standard character mark of LANG WINDOWS for goods and services related to metal windows; metal doors; non-metal windows; vinyl siding; non-metal doors; and distributorship services in the field of windows, non-metal windows, and vinyl and wood siding) (collectively, the “Lang Marks”). The Lang Marks are valid, protectable, and in full force and effect.

First Affirmative Defense

Petitioner’s Petition to Cancel fails to state a valid claim upon which relief may be granted.

Second Affirmative Defense

Petitioner’s claims are barred by the doctrine of laches.

Third Affirmative Defense

Petitioner’s claims are barred by the doctrine of estoppel.

Fourth Affirmative Defense

Petitioner’s claims are barred by the doctrine of waiver.

Fifth Affirmative Defense

Petitioner’s claims are barred by the doctrine of acquiescence.

Sixth Affirmative Defense

Petitioner’s claims are barred by Lang Exterior’s prior use and registration of the Lang Marks (the *Morehouse* defense).

Seventh Affirmative Defense

Petitioner’s claims are barred by the doctrine of unclean hands, including the fact that Petitioner has willfully infringed upon the Lang Marks and misrepresented its dates of first use.

Dated: March 20, 2018

Respectfully Submitted,

By: /s/ Raymond P. Niro, Jr.

Raymond P. Niro, Jr.

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Attorneys for Registrant,

Lang Exterior, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing REGISTRANT LANG EXTERIOR, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PETITION TO CANCEL has been filed electronically with the TTAB and mailed, via U.S. first class mail, this 20th day of March, 2018, to the following:

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/s/ Raymond P. Niro, Jr.
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