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

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|---------------------------|--|
| Proceeding | 92067982 |
| Party | Defendant Adam Summers |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PARADISE INTERNATIONAL INC.,

Petitioner,

v.

ADAM SUMMERS

Registrant.

Reg. No.: 4423790
Reg Date: October 29, 2013
Mark: TRUERATINGS

Cancellation No. 92067982

ANSWER AND DEFENSES TO FIRST AMENDED PETITION TO CANCEL

Registrant Adam Summers, by and through his counsel Fitch Even Tabin & Flannery LLP, files and provides his Answer and Defenses to the Petition for Cancellation as follows:

1. PARADISE INTERNATIONAL INC. (“Paradise Int’l.” or “Petitioner”) (application for registration originally filed on behalf of True Rating Inc; applicant change form filed Feb. 22, 2018), a company organized and existing under the laws of the State of New York with its principal place of business at 159-19 Hillside Ave., Jamaica, NY 11432, believes that it has been and will be damaged by the continued presence on the Principal Register of Registration No. 4,423,790 (“Respondent’s Registration”), dated October 29, 2013, for the trademark “TrueRatings” (SCM) (“Respondent’s Mark”) in Class 35 for:

[a]n interactive web site for users to review and rate internet content, people, companies, products and/or services utilizing a software application to award points whereby web site users are eligible to exchange points earned for promotional items consisting of coupons, rebates, discounts or special offerings on goods and/or service provided by web site sponsors; Attorney referrals; Audit support services, namely, review and analysis of a company's sales, as well as the preparation, organization and presentation of the documents and data requested by a government body, and advice on government audit processes, policies and strategy; Business consulting services, namely, providing a turnkey business solution for reviewing products and services, planning documentation and workflow, hiring technical writers, managing projects for business purposes,

tracking user satisfaction, and running usability studies for business purposes; Business consulting services, namely, providing a turnkey solution for reviewing product and service documentation and workflow, managing projects for business purposes, tracking user satisfaction, and running usability studies for business purposes; Health care cost review; Health care utilization and review services; Promoting the goods and services of others by providing a website featuring coupons, rebates, price-comparison information, product reviews, links to the retail websites of others, and discount information; Providing a web site featuring statistical data on physicians' performance for the purpose of assisting prospective patients in making physician selection decisions; Providing business research services, namely, researching dental patient insurance information for dental offices; Providing independent ratings and reviews of other businesses for commercial purposes. Providing independent review of clinical trials for business purposes; Providing information on the topic of promoting patient, physician and employee satisfaction via a global computer network and

in Class 42 for

[p]roviding a website featuring temporary use of non-downloadable software allowing website users to post ratings, reviews and recommendations on employers and employees and places of employment for use by employees, employers, business owners, and consumers; providing a website featuring temporary use of non-downloadable software allowing website users to post ratings, reviews and recommendations on products and services for commercial purposes.

ANSWER: The Registrant's Registration No. 4423790 speaks for itself. Registrant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 1 and therefore denies them.

2. Petitioner Paradise Int'l has used and continues to use "TrueRating.com" and "TrueRating" on the web as mark(s)¹ for their services, at www.truerating.com, and specifically in connection with "[e]lectronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes."

ANSWER: Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 2 and therefore denies them.

3. On May 31, 2017 Petitioner filed a U.S. trademark application for registration of the mark "TureRating.com" for services in Class 35 in the U.S. Patent & Trademark Office ("PTO"). The application was assigned Serial No. 87470035 (the "TrueRating.com Application"). On August 29, 2017 the PTO Examining Attorney refused to register the TureRating.com Application based on a likelihood of confusion with Respondent's Mark under

Section 2(d) of the Lanham Act.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 3 and therefore denies them.

4. Dr. Summers is a successful practicing plastic surgeon.

ANSWER: Registrant admits the allegations of paragraph 4.

5. Dr. Summers is listed, in his personal capacity, as the owner of the mark in the trademark application for the Respondent's Mark ("Respondent's Application").

ANSWER: Registrant admits the allegations of paragraph 5.

6. Dr. Summers is listed, in his personal capacity, in the "Correspondence Information" section of Respondent's Application.

ANSWER: Registrant admits the allegations of paragraph 6.

7. Every statement and claim regarding use set forth in Respondent's Application was based solely on Dr. Summers's alleged activities and uses of the Respondent's Mark. There is not a single statement or claim regarding use that purports to refer to the activities of any other person. Dr. Summers was not relying on information from any other person when filling out Respondent's Application – all of the statements and claims come from Dr. Summers's firsthand knowledge.

ANSWER: Registrant admits that every statement and claim regarding use set forth in his application that resulted in Registration No. 4423790 was based solely on Dr. Summers' activities and uses of his TRUERATINGS mark and those who he licensed and authorized to use his mark. Registrant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 7, which allegations are unclear, and therefore denies them.

8. Dr. Summer signed, in his personal capacity, Respondent's Application, and thereby personally attested under oath to the truthfulness of all the statements and claims set forth therein.

ANSWER: Registrant admits the allegations of paragraph 8.

9. Dr. Summers has not established any business entity to engage in any of the goods and services listed in Respondent's Application.

ANSWER: Registrant denies the allegations of paragraph 9.

10. Respondent had not used the Respondent's Mark in commerce on any of the goods or services identified in Respondent's Application on or prior to the first-use date of February 1, 2008 set forth therein.

ANSWER: Registrant admits the allegations of paragraph 10.

11. Respondent has never used the Respondent's Mark as a trademark in commerce on the services recited in the Respondent's Application, and has certainly never used the Respondent's Mark on *all* of the services recited in the Respondent's Application.

ANSWER: Registrant denies the allegations of paragraph 11 that he has never used his TRUERATINGS mark as a trademark in commerce on the services recited in Registration No. 4423790. Registrant denies the allegations of paragraph 11 that he has never used his TRUERATINGS trademark on all of the services recited in Registration No. 4423790.

12. Respondent had full knowledge that his original application to the USPTO, which resulted in the Respondent's Registration, was riddled with falsehoods and grossly overstated his use of the Respondent's Mark.

ANSWER: Registrant denies the allegations of paragraph 12.

13. Respondent knowingly submitted and attested to these falsehoods with the intent of acquiring a registration to which he knew he was not entitled, and with the intent of deceiving the USPTO.

ANSWER: Registrant denies the allegations of paragraph 13.

14. Respondent's Registration was therefore improperly acquired through fraud on the USPTO.

ANSWER: Registrant denies the allegations of paragraph 14.

15. Respondent's Registration is also therefore void *ab initio* based on non-use of the Respondent's Mark.

ANSWER: Registrant denies the allegations of paragraph 15.

16. Because the Respondent has never used the Registrant's Mark in commerce, and because Petition [*sic*] has continuously used its mark and continues to do so, Petition [*sic*] must be deemed the senior user and must be granted priority over the Respondent's Mark.

ANSWER: Registrant denies the allegations of paragraph 16 that he has never used his TRUERATINGS trademark in commerce. Registrant denies the allegations of paragraph 16 that the Petitioner has continuously used its mark and continues to do so. Registrant denies the allegations of paragraph 16 that Petitioner must be deemed the senior user. Registrant denies the allegations of paragraph 16 that Petitioner must be granted priority over his TRUERATINGS trademark in Registration No. 4423790.

17. Petitioner has been and continues to be harmed by the Respondent's Registration because, among other things, the TrueRating.com Application has been refused and the Petitioner's efforts to develop its mark and related business have been and will continue to be hampered by the Respondent's threats and interference.

ANSWER: Registrant denies the allegations of paragraph 17.

AFFIRMATIVE DEFENSES

For its defenses, Registrant states:

1. Petitioner's Petition for Cancellation fails to state a claim upon which relief may be granted. Petitioner has never owned a trademark consisting of "TrueRating.com" or "TrueRating."
2. Petitioner's claims are barred by the doctrines of acquiescence and consent.
3. Petitioner's claims are barred by the doctrine of laches.

4. Petitioner has unclean hands, trying to claim trademark rights in “TrueRating.com” and “TrueRating” despite prior knowledge of Registrant’s TRUERATINGS trademark, registration and common law trademark rights.

Registrant reserves its right to amend its answer to assert any defense or counterclaim that is later discovered in this proceeding.

WHEREFORE, Registrant Adam Summers, by and through counsel, respectfully requests that the Board enter judgment in Registrant’s favor, dismiss the Petition for Cancellation with prejudice, and grant all other and further relief to which Registrant is entitled.

Respectfully submitted,
ADAM SUMMERS

September 26, 2018

s/Alisa C. Simmons/
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CERTIFICATE OF SERVICE

I, Alisa C. Simmons, one of the attorneys for the Registrant, hereby certify that a copy of the foregoing ANSWER AND DEFENSES TO FIRST AMENDED PETITION TO CANCEL was served by email upon Petitioner at its address of record set forth below:

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on this 26th day of September, 2018.

s/Alisa C. Simmons/
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