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

Proceeding	92070872
Party	Defendant Flying Star LLC
Correspondence Address	FLYING STAR LLC 13200 ESTRELLA AVE UNIT A GARDENA, CA 90248 UNITED STATES no email provided no phone number provided
Submission	Answer
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Date	06/06/2019
Attachments	Answer to Petition to Cancel.pdf(35332 bytes)

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

**IN THE MATTER OF TRADEMARK REGISTRATION NO. 5,538,978
REGISTERED ON August 14, 2018**

Dillard’s, Inc.,)
)
 Petitioner,)
)
 v.) **Cancellation No.: 92070872**
)
 Flying Star LLC,)
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 Registrant.)
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ANSWER TO PETITION TO CANCEL

Flying Star LLC (“Flying Star”) by and through its counsel, hereby answers the Petition to Cancel of Dillard’s, Inc. dated March 20, 2019, as follows. Each of the following paragraphs in the answer correspond to the paragraph numbers in the Petition to Cancel.

1. Flying Star is without sufficient information to admit or deny the allegations of paragraph 1. On that basis, Flying Star denies each allegation contained in that paragraph.
2. Flying Star admits the allegations of paragraph 2.
3. In answering paragraph 3, Flying Star admits the information provided in the Trademark Office Registry, that is, Petitioner is the owner of Registration No. 3,994,614 for SOLARIS issued on July 12, 2011. Flying Star denies the remaining allegations of the paragraph.

4. In answering paragraph 4, Flying Star admits the information provided in the Trademark Office Registry, that is, Petitioner is the owner of Application Serial No. 88/006,226 filed on June 19, 2018 based upon an intent to use the mark SOLARIS with socks. Flying Star denies the remaining allegations of the paragraph.

5. In answering paragraph 5, Flying Star admits the information provided in the Trademark Office Registry, that is, Flying Star is the owner of Registration No. 5,538,978 for SOLARIS for use in connection with “outdoor apparel, namely, headwear and outdoor apparel, namely gloves in Class 25. Flying Star denies the remaining allegations of the paragraph.

6. Flying Star admits the allegations of paragraph 6.
7. Flying Star denies the allegations of paragraph 7.
8. Flying Star denies the allegations of paragraph 8.
9. Flying Star denies the allegations of paragraph 9.
10. Flying Star denies the allegations of paragraph 10.

With regard to the prayer for relief, Flying Star denies that Dillard’s is entitled to the relief requested; and therefore, denies each of the allegations in the prayer for relief.

AFFIRMATIVE DEFENSES

Flying Star asserts that the following defenses are at issue or will be at issue after an opportunity to conduct discovery:

First Affirmative Defense – Laches

1. Dillard’s claim is barred by laches in that Dillard’s delay in asserting its rights has caused injury or prejudice to Flying Star.

Second Affirmative Defense – Estoppel

2. Dillard’s claim is barred by the doctrine of estoppel. Dillard’s, Inc. is estopped through acts of Dillard’s upon which Flying Star relied to its detriment.

Third Affirmative Defense – Abandonment

3. Dillard’s abandoned its rights in its asserted trademark through non-use or by acts that caused the mark to lose its significance as an indication of origin.

Fourth Affirmative Defense – Unclean Hands

4. Dillard’s claim is barred by the doctrine of unclean hands due to inequitable acts that directly relate to the subject matter of this action.

Fifth Affirmative Defense – Acquiescence

5. Dillard’s claim is barred since acts or omissions by Dillard’s implied Dillard’s acquiescence in Flying Star’s activities.

Sixth Affirmative Defense – No Likelihood of Confusion

6. Dillard’s claim is barred since there is no likelihood of confusion as the parties’ respective uses are not confusingly similar.

Eleventh Affirmative Defense – Priority

7. Dillard’s claim is barred since Flying Star has priority of use of the mark over Dillard’s as to the market at issue.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: June 6, 2019

/Kristin B. Kosinski/
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to Petition to Cancel was served upon the attorney for Dillard's, Inc., by first class mail, postage prepaid, to Simor Moskowitz, Esq. at WESTERMAN HATTORI DANIELS & ADRIAN LLP, 1250 Connecticut Avenue NW, Suite 850, Washington, DC 20036, with a copy by electronic mail to smoskowitz@whda.com, trademarkmail@whda.com, on the date given below.

Dated: June 6, 2019

/Kristin B. Kosinski/
Daniel M. Cislo, Esq.
Kristin B. Kosinski, Esq.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below.

Dated: June 6, 2019

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