

ESTTA Tracking number: **ESTTA1012228**

Filing date: **10/30/2019**

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

Proceeding	92071386
Party	Defendant Calavera Tequila Company LLC
Correspondence Address	JEFFREY L VAN HOOSEAR KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614 UNITED STATES efiling@knobbe.com 949-760-0404
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Jeffrey L. Van Hoosear
Filer's email	efiling@knobbe.com
Signature	/JVH/
Date	10/30/2019
Attachments	Answer to First Amended Petition to Cancel CLVTQ.001N.pdf(16122 bytes)

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

Globefill Incorporated,

Petitioner,

v.

Calavera Tequila Company LLC,

Registrant.

Cancellation No.: 92071386

Registration No.: 4580425

ANSWER TO FIRST AMENDED PETITION TO CANCEL AND AFFIRMATIVE DEFENSES

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Calavera Tequila Company LLC (“Registrant”), hereby answers the First Amended Petition to Cancel (“Amended Petition”) filed by Globefill Incorporated (“Petitioner”), against Registrant’s U.S. Registration No. 4580425 for the mark SKULL in connection with “Distilled Spirits” in International Class 33. Answering the unnumbered second paragraph of the Petition, Registrant denies the allegation that it has not used its SKULL mark during the three-year period preceding the date of this petition. Registrant also denies the allegation that it has no intent to use the mark or to resume use of the mark. The mark has been used and such use is intended to continue. Registrant is also the owner of incontestable U.S. Registration No. 4080332 for the mark CALAVERA for alcoholic beverages, namely tequila and prepared alcoholic cocktails in Int. Class 33. The English translation of CALAVERA is “skull.” Finally, Registrant denies that it submitted fraudulent Statements of Use and specimen of use to the USPTO.

The numbered paragraphs of this Answer correspond to the numbered paragraphs of the Amended Petition.

1. Answering Paragraph 1 of the Amended Petition, Registrant denies the allegations contained therein.

2. Answering Paragraph 2 of the Amended Petition, Registrant denies the allegations contained therein.

COUNT II – FRAUD ON THE USPTO

3. Answering Paragraph 3 of the Amended Petition, Registrant admits the allegations contained therein.

4. Answering Paragraph 4 of the Amended Petition, Registrant admits the allegations contained therein.

5. Answering Paragraph 5 of the Amended Petition, Registrant admits the allegations contained therein.

6. Answering Paragraph 6 of the Amended Petition, Registrant admits the allegations contained therein.

7. Answering Paragraph 7 of the Amended Petition, Registrant admits the allegations contained therein.

8. Answering Paragraph 8 of the Amended Petition, Registrant admits the allegations contained therein.

9. Answering Paragraph 9 of the Amended Petition, Registrant denies the allegations contained therein.

10. Answering Paragraph 10 of the Amended Petition, Registrant admits that it had not sold an alcoholic beverage under Registrant's SKULL mark on or before August 30, 2013, Registrant denies the remaining allegations contained therein.

11. Answering Paragraph 11 of the Amended Petition, Registrant denies the allegations contained therein.

12. Answering Paragraph 12 of the Amended Petition, Registrant denies the allegations contained therein.

13. Answering Paragraph 13 of the Amended Petition, Registrant admits the allegations contained therein.

14. Answering Paragraph 14 of the Amended Petition, Registrant does not have sufficient information to admit or deny the allegations in this paragraph and therefore denies the allegations contained therein.

15. Answering Paragraph 15 of the Amended Petition, Registrant denies the allegations contained therein.

16. Answering Paragraph 16 of the Amended Petition, Registrant denies the allegations contained therein.

17. Answering Paragraph 17 of the Amended Petition, Registrant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

Registrant asserts the following affirmative defense. There may be additional affirmative defenses to the Petition that are currently unknown to Registrant. Therefore, Registrant reserves the right to amend its Answer to allege any additional affirmative defenses, in the event that discovery of additional information indicates that they are appropriate. Registrant also reserves the right to file counterclaims if grounds for counterclaims are learned by Registrant during the course of this cancellation action.

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim upon which relief can be granted as Petitioner has no valid basis to seek to cancel Registrant's SKULL Mark.

WHEREFORE, Registrant requests that Petitioner's cancellation action be dismissed with prejudice, that U.S. Trademark Registration No. 4580425 continue to be registered, and

that the Board grant any further relief as it shall deem appropriate.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 30, 2019

By: /JVH/

Jeffrey L. Van Hoosear
Brian M.Z. Reece
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
efiling@knobbe.com
Attorneys for Registrant,
Calavera Tequila Company LLC

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **ANSWER TO FIRST AMENDED PETITION TO CANCEL AND AFFIRMATIVE DEFENSES** upon Petitioner’s counsel at the email addresses below on October 30, 2019:

John H. Weber
BAKER HOSTETLER LLP
bhipdocket@bakerlaw.com; jweber@bakerlaw.com; lgehman@bakerlaw.com;
skim@bakerlaw.com

/Sarah Couvillion/
Sarah Beno Couvillion