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

Proceeding	92073890
Party	Defendant La Quinta Worldwide, LLC
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Date	06/18/2020
Attachments	La Quinta Answer to Cancellation TRIUMPH.pdf(103710 bytes )

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

TRIUMPH HOSPITALITY, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Cancellation No. 92073890
LA QUINTA WORLDWIDE, LLC	)	
	)	
Registrant.	)	
	)	
	)	

**REGISTRANT'S ANSWER TO PETITION TO CANCEL**

Registrant, LA QUINTA WORLDWIDE, LLC (“La Quinta”), by and through its attorneys, Foley & Lardner LLP, hereby responds to the Petition to Cancel filed by TRIUMPH HOSPITALITY, LLC, (“Petitioner”) on March 31, 2020. The paragraph numbers herein correspond to the paragraph numbers of the Petition.

1. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 1 and, therefore, denies same.
2. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 2 and, therefore, denies same.
3. Registrant admits that Petitioner is identified in the United States Patent and Trademark Office records as the owner of Registration Nos. 4167632 and 4643950 for TRIUMPH HOTELS in connection with the services listed in the registrations, and that Exhibit 1 appears to include copies of printouts for these registrations from the USPTO TSDR database website. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in

Paragraph 3, and/or the allegations call for a legal conclusion, and Registrant denies the same.

4. Registrant admits that it filed an application to register TOMORROW YOU TRIUMPH on November 19, 2018, for use in connection with the services listed in the application, and that the application was assigned Serial No. 88/199288. Registrant further admits that on May 28, 2019, it filed a Statement of Use alleging a date of first use in commerce of April 8, 2019. Registrant further admits that the application subsequently was granted registration by the USPTO under United States Trademark Registration No. 5830346, without any opposition by Petitioner. Registrant denies the remaining allegations in Paragraph 4.

5. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in the first sentence of Paragraph 5 and, therefore, denies same. Registrant denies the remaining allegations in Paragraph 5.

6. Registrant denies the allegations in Paragraph 6 of the Petition to Cancel.

7. Registrant denies the allegations in Paragraph 7 of the Petition to Cancel.

8. Registrant denies the allegations in Paragraph 8 of the Petition to Cancel.

9. Registrant denies each allegation not specifically admitted.

### **AFFIRMATIVE DEFENSES**

Without prejudice to the denials set forth in its Answer and without admitting any of Petitioner's allegations not otherwise expressly admitted herein, Registrant asserts the following defenses to the Petition to Cancel.

### **FIRST AFFIRMATIVE DEFENSE**

The Petition to Cancel fails to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

Petitioner's claims are barred by the doctrine of fair use. Registrant is not using the term "TRIUMPH" as a trademark, and Petitioner cannot monopolize that term or otherwise prevent third parties such as Registrant from making lawful and legitimate use of a common English language term in its ordinary and descriptive sense.

## **THIRD AFFIRMATIVE DEFENSE**

Registrant's TOMORROW YOU TRIUMPH slogan is sufficiently distinctive and different from Petitioner's claimed mark TRIUMPH HOTEL as to avoid confusion, deception, or mistake as to the source, sponsorship, or association of Registrant's services with Petitioner's services.

Registrant reserves the right to amend its Answer to raise additional affirmative defenses, under Rule 8(c) of the Federal Rules of Civil Procedure, the trademark laws of the United States and any other defenses, at law or equity, that may now or in the future be available based on discovery or any other factual investigation concerning this case.

**WHEREFORE**, Registrant respectfully requests that the Board deny the request for relief and dismiss the Petition to Cancel in its entirety with prejudice.

Dated: June 18, 2020

Respectfully submitted,

FOLEY & LARDNER LLP

By: *s/Laura Ganoza* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of June, 2020, the foregoing **REGISTRANT'S ANSWER TO PETITION TO CANCEL** was properly served by e-mail upon Petitioner's correspondent of record as follows:

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*s/Laura Ganoza*  
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Attorney