

ESTTA Tracking number: **ESTTA1064382**

Filing date: **06/25/2020**

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

|                        |  |
|------------------------|--|
| Proceeding             | 92074011   |
| Party                  | Defendant<br>Franklin Square Holdings, L.P.  |
| Correspondence Address | FRANKLIN SQUARE HOLDINGS LP<br>201 ROUSE BOULEVARD<br>PHILADELPHIA, PA 19112<br>UNITED STATES<br>no email provided<br>no phone number provided |
| Submission             | Answer   |
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| Signature              | /Camille M. Miller/  |
| Date                   | 06/25/2020   |
| Attachments            | FS INVESTMENTS Answer to Petition to Cancel.pdf(386702 bytes )   |

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

In the matter of trademark Registration No. 4,723,056  
For the mark: **FS INVESTMENTS**  
Date registered: April 21, 2015

|                                 |   |                            |
|---------------------------------|---|----------------------------|
| GROWMARK, Inc.,                 | ) |                            |
|                                 | ) |                            |
| Petitioner,                     | ) | Cancellation No.: 92074011 |
|                                 | ) |                            |
| v.                              | ) |                            |
|                                 | ) |                            |
| Franklin Square Holdings, L.P., | ) |                            |
| Registrant.                     | ) |                            |
|                                 | ) |                            |

**ANSWER AND AFFIRMATIVE DEFENSES TO PETITIONER  
GROWMARK, INC.’S PETITION FOR CANCELLATION**

Registrant, Franklin Square Holdings, L.P. (“Franklin Square” or “Registrant”) is the owner of U.S. Trademark Registrant No. 4,723,056 for the mark FS INVESTMENTS, and hereby answers the Petition for Cancellation filed by Petitioner, Growmark, Inc. (“Growmark” or “Petitioner”) in accordance with the numbered paragraphs thereof, as follows:

1. Admitted.
2. Admitted in part and Denied in part. Franklin Square admits that Growmark, Inc. is the listed owner for the following trademark registration and applications filed with the United States Patent and Trademark Office: Reg. Nos. 5,121,266, 5,360,625, and 2,371,319 and Serial Nos. 88/241,512, 88/241,514, 88/688,731, and 88/691,069. Franklin Square denies the remaining allegations and inferences of paragraph 2.
3. Denied. Franklin Square lacks sufficient information concerning certain

allegations in paragraph 3 and therefore denies same and demands strict proof thereof.

4. Admitted.

5. Denied. Franklin Square lacks sufficient information concerning certain allegations in paragraph 5 and therefore denies same and demands strict proof thereof.

6. Admitted in part and Denied in part. By way of further response, Petitioner contacted Franklin Square in December 2018 claiming Franklin Square's use of the mark FS was unauthorized and Franklin Square responded a few days later why its use was legitimate and Franklin Square never heard a response from Petitioner until June 22, 2020 when it became aware of this Petition to Cancel.

7. Denied. Paragraph 7 contains a legal conclusion for which no response is required, and to the extent a response is required, denied.

8. Denied. Paragraph 8 contains a legal conclusion for which no response is required, and to the extent a response is required, denied.

9. Denied. Paragraph 9 contains a legal conclusion for which no response is required, and to the extent a response is required, denied.

10. Denied. Franklin Square lacks sufficient information concerning the allegations in paragraph 10 and therefore denies same and demands strict proof thereof.

#### **AFFIRMATIVE DEFENSES**

By way of further Answer, Franklin Square asserts the following affirmative defenses:

1. Barred by Acquiescence. Growmark Inc.'s Petition for Cancellation is barred by the doctrine of acquiescence.

2. Barred by Laches. Growmark Inc.'s Petition for Cancellation is barred by the doctrine of laches.

3. Barred by Estoppel. Growmark Inc.'s Petition for Cancellation is barred by the doctrine of estoppel.

WHEREFORE, Franklin Square requests that the petition be dismissed in its entirety for the reasons set forth above.

Respectfully submitted,



Date: June 25, 2020

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*Attorneys for Franklin Square Holdings L.P.*

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and complete copy of the foregoing Answer and Affirmative Defenses to Petitioner Growmark, Inc.'s Petition for Cancellation has been served on Jamie Nafziger by forwarding said copy on June 25, 2020, via email and first class mail to: Jamie Nafziger, Dorsey & Whitney LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, counsel for Petitioner, at nafziger.jamie@dorsey.com and ip.docket@dorsey.com.

Signature: /s/ Camille M. Miller

Date: June 25, 2020