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

Proceeding	92075370
Party	Plaintiff NYFTA Inc.
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Date	01/18/2021
Attachments	2021-01-18 - Answer to Counterclaims - FINAL.pdf(90018 bytes)

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

In re Registration No. 6,155,556

For the Mark: NEW YORK CITY FOOD TRUCK ASSOCIATION

Registration Date: September 15, 2020

NYFTA Inc.,
Petitioner

v.

Gatewood, Josh
Registrant

Cancellation No. 92075370

PETITIONER'S ANSWER TO COUNTERCLAIMS

Petitioner, NYFTA Inc. ("Petitioner") hereby answers the counterclaims filed by respondent Josh Gatewood ("Respondent") and non-party NYCFTA, Inc. ("NYCFTA"), on December 11, 2020 (the "Counterclaims").

As to Respondent's so-called "Affirmative Defenses," and also as to any allegation appearing outside of the numbered paragraphs of the Counterclaims, to the extent any response is required: Denied.

JURISDICTION & PARTIES

1. Petitioner admits that Exhibit A to the Counterclaims purports to be an assignment of Reg. No. 6,155,556 to an entity identified as NYCFTA, Inc., and otherwise denies the allegations of paragraph 1.
2. Petitioner admits that Respondent is an individual and respondent in this proceeding and otherwise denies and the allegations of paragraph 2.
3. Petitioner admits the allegations in paragraph 3.

COUNT I - DESCRIPTIVE MARKS

4. Petitioner re-incorporates and re-alleges all other paragraphs in this Answer to Counterclaims.
5. Denied.
6. This paragraph sets forth legal conclusions and questions of law to which no response is required.
7. This paragraph sets forth legal conclusions and questions of law to which no response is required.
8. Petitioner admits that Reg. No. 5,926,547 was cited in its Petition for Cancellation and that the registration is owned by Petitioner. Petitioner otherwise denies the allegations in paragraph 8.
9. Petitioner admits that Reg. Nos. 6,040,639 and 6,040,640 were cited in its Petition for Cancellation, that the registrations are owned by Petitioner, and

that Reg. No. 6,040,640 contains the words “NEW YORK FOOD TRUCK ASSOCIATION.” Petitioner otherwise denies the allegations in paragraph 9.

10. Petitioner admits that it conducts business at least in part in the State of New York and otherwise denies the allegations of paragraph 10.

11. Denied.

12. Denied.

COUNT II - DECEPTIVELY MISDESCRIPTIVE MARKS

13. Petitioner re-incorporates and re-alleges all other paragraphs in this Answer to Counterclaims.

14. This paragraph sets forth legal conclusions and questions of law to which no response is required.

15. This paragraph sets forth legal conclusions and questions of law to which no response is required.

16. This paragraph sets forth legal conclusions and questions of law to which no response is required.

17. Petitioner admits that it is the owner of the registrations listed in Schedule B and otherwise denies the allegations of paragraph 17.

18. Petitioner admits that it uses its Marks in commerce in connection with the goods and/or services claimed on the face of those Marks. Petitioner denies the remaining allegations of paragraph 18.

19. Petitioner denies the allegations of paragraph 19.

20. Petitioner denies the allegations of paragraph 20.

COUNT III - PRIORITY

21. Petitioner re-incorporates and re-alleges all other paragraphs in this Answer to Counterclaims.
22. This paragraph sets forth legal conclusions and questions of law to which no response is required.
23. Denied.
24. Petitioner admits that it uses its Marks in commerce in connection with the goods and/or services claimed on the face of those Marks. Petitioner denies the remaining allegations of paragraph 24.
25. Petitioner admits that the identification of services for U.S. Registration No. 6,155,556 is “Business development consulting services; Business management consulting; Business marketing consulting services; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; Promoting the interests of food truck owners by means of public advocacy; Providing marketing and promotion of special events.”
26. Petitioner admits the allegations in paragraph 26.
27. Denied.
28. Petitioner denies the allegations of paragraph 28.
29. Petitioner denies the allegations of paragraph 29.

COUNT IV - FRAUD

30. Petitioner re-incorporates and re-alleges all other paragraphs in this Answer to Counterclaims.

31. This paragraph sets forth legal conclusions and questions of law to which no response is required.

32. Denied.

33. Denied.

34. Denied.

PRAYER FOR RELIEF

35. The remainder of the Counterclaims constitutes Respondent's request for relief to which no responsive pleading is necessary. To the extent a responsive pleading is required, Defendant denies that Plaintiff is entitled to the relief sought. All allegations that have not been specifically admitted are hereby denied.

AFFIRMATIVE DEFENSES

Petitioner alleges the following affirmative defenses. There may be additional affirmative defenses to the Counterclaims alleged by Respondent that are currently unknown to Petitioner. Therefore, Petitioner reserves the right to amend its Answer to allege any additional affirmative defenses currently unknown to Petitioner, in the event that discovery of additional information indicates that they are appropriate.

1. The Counterclaims fail to state a claim upon which relief can be granted.

2. The Counterclaims are barred by the doctrines of laches, acquiescence, estoppel, and unclean hands.
3. The continued registration of Petitioner's registrations will not cause and has not caused any damage and/or injury to Respondent and/or NYCFTA.
4. NYCFTA lacks standing.
5. NYCFTA has not been properly joined and/or substituted in this proceeding.
6. Respondent lacks standing.

WHEREFORE, Petitioner respectfully requests that the Counterclaims be denied.

Please charge any additional fees, or credit overpayment, to Deposit Account No. 50-6138.

Respectfully Submitted,
Zeller IP Group PLLC

Date: January 18, 2021

By: /s/ Serge Krimnus

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2021, I served the foregoing filing on Respondent via its email of record as follows:

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January 18, 2021

/s/ Serge Krimnus

Serge Krimnus