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

Proceeding	92076315
Party	Defendant Champion Container Corporation
Correspondence Address	JORDAN D WEINREICH SHERMAN WELLS SYLVESTER & STAMELMAN LLP 210 PARK AVE 2ND FL FLORHAM PARK, NJ 07932 UNITED STATES Primary Email: jweinreich@shermanwells.com Secondary Email(s): camara@shermanwells.com 973-302-9700
Submission	Answer
Filer's Name	JORDAN WEINREICH
Filer's email	jweinreich@shermanatlas.com, camara@shermanatlas.com
Signature	/JORDAN WEINREICH/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CANPACK S.A.,

Petitioner,

v.

CHAMPION CONTAINER CORPORATION,

Registrant.

Cancellation No. 92076315

Registration No. 5,034,312

Mark: **CANPAK**

**ANSWER AND AFFIRMATIVE DEFENSES OF  
REGISTRANT CHAMPION CONTAINER CORPORATION**

Registrant Champion Container Corporation (“Registrant”), by and through its attorneys, hereby answers the Petition for Cancellation (the “Petition”) filed by Canpack, S.A. (“Petitioner”) as follows. To the extent not explicitly admitted, all allegations in the Petition are denied.

1. Registrant admits the allegations set forth in Paragraph 1 of the Petition.
2. Registrant admits the allegations set forth in Paragraph 2 of the Petition.

**AS TO COUNT I  
(Fraud)**

3. Registrant admits the allegations set forth in Paragraph 3 of the Petition.
4. Registrant denies the allegations set forth in Paragraph 4 of the Petition.
5. Registrant admits the allegations set forth in Paragraph 5 of the Petition.
6. Registrant denies the allegations set forth in Paragraph 6 of the Petition.
7. Registrant denies the allegations set forth in Paragraph 7 of the Petition.
8. Registrant denies the allegations set forth in Paragraph 8 of the Petition.
9. Registrant denies the allegations set forth in Paragraph 9 of the Petition.

10. Registrant denies the allegations set forth in Paragraph 10 of the Petition.

11. Registrant denies the allegations set forth in Paragraph 11 of the Petition.

**AS TO COUNT II  
(Non-Use)**

12. Registrant admits the allegations set forth in Paragraph 12 of the Petition.

13. Registrant denies the allegations set forth in Paragraph 13 of the Petition.

14. Registrant denies the allegations set forth in Paragraph 14 of the Petition.

**AS TO COUNT III  
(Abandonment)**

15. Registrant denies the allegations set forth in Paragraph 15 of the Petition.

16. Registrant denies the allegations set forth in Paragraph 16 of the Petition.

17. Registrant denies the allegations set forth in Paragraph 17 of the Petition.

18. Registrant denies the allegations set forth in Paragraph 18 of the Petition.

**AS TO COUNT IV  
(Priority and Likelihood of Confusion)**

19. Registrant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Petition, and thus denies the allegations set forth in Paragraph 19 of the Petition.

20. Registrant denies the allegations set forth in Paragraph 20 of the Petition.

21. Registrant denies the allegations set forth in Paragraph 21 of the Petition.

22. Registrant admits only that the name “Canpack”, which is allegedly being used by Petitioner, is virtually identical to the Registrant’s mark in U.S. Reg. No. 5,034,312 (the “Canpak Mark”).<sup>1</sup> Registrant denies the remaining allegations set forth in Paragraph 22 of the Petition.

23. Registrant admits the allegations set forth in Paragraph 23 of the Petition.

24. Registrant admits only that the name “Canpack”, allegedly being used by Petitioner, is likely to cause confusion or mistake or to deceive, by creating the erroneous impression that Petitioner’s infringing products and/or services originate with and/or are associated with Registrant, or that Petitioner’s infringing products and/or services are authorized, sponsored and/or licensed by Registrant. Registrant denies the remaining allegations set forth in Paragraph 24 of the Petition.

25. Registrant denies the allegations set forth in Paragraph 25 of the Petition.

26. Upon information and belief, Registrant admits only that Petitioner filed trademark applications for the registration of the Canpack name. Registrant denies the remaining allegations set forth in Paragraph 26 of the Petition.

27. Registrant admits only that the U.S. Patent and Trademark Office properly refused registration of Petitioner’s trademark application with Serial No. 90/054,021, and is likely to deny Petitioner’s trademark application with Serial No. 79/297,613, based upon a likelihood of confusion with Registrant’s Canpak Mark. Registrant denies the remaining allegations set forth in Paragraph 27 of the Petition.

28. Registrant denies the allegations set forth in Paragraph 28 of the Petition.

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<sup>1</sup> It is also virtually identical to another mark owned by Registrant for Canpak, 6,129,543, which is the subject of separate petition for cancellation concurrently filed by Petitioner (Cancellation No. 92076336).

**AFFIRMATIVE DEFENSES**

Registrant asserts the following affirmative defenses to the claims set forth in the Petition. Registrant reserves the right to assert additional affirmative defenses based on additional facts as may be revealed during discovery in this action.

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

The Petition is barred, in whole or in part, by the doctrine of unclean hands.

**THIRD AFFIRMATIVE DEFENSE**

The Petition is barred, in whole or in part, by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

The Petition is barred, in whole or in part, by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

The Petition is barred, in whole or in part, by the doctrine of collateral estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

Petitioner's claims are barred, in whole or in part, by the doctrine of ratification.

**SEVENTH AFFIRMATIVE DEFENSE**

Petitioner's claims are barred due to the acquiescence of Registrant's use of the Canpak Mark in commerce.

**EIGHTH AFFIRMATIVE DEFENSE**

Petitioner's claims are barred to the extent that they were not filed within the applicable statute(s) of limitation.

**NINTH AFFIRMATIVE DEFENSE**

Petitioner's applications to the USPTO, designated with Application Serial Nos. 79/297,613 and 90/054,021, were filed in bad faith, as Petitioner lacked a *bona fide* intent to use the proposed marks in connection with the identified goods and/or services as of the respective filing dates of the application.

**TENTH AFFIRMATIVE DEFENSE**

Petitioner's applications to the USPTO, designated with Application Serial Nos. 79/297,613 and 90/054,021, contained material misrepresentations and/or omissions.

Registrant reserves the right to assert additional affirmative defenses that become known through additional investigation and/or discovery during the course of this litigation.

**PRAAYER FOR RELIEF**

**WHEREFORE**, Registrant demands judgment in its favor and against Petitioner as follows:

- (a) Dismissing the Petition with prejudice; and
- (b) Granting Registrant such other and further relief as the Board deems just and equitable.

Dated: August 16, 2021

SHERMAN ATLAS SYLVESTER &  
STAMELMAN LLP

By: /s/Jordan D. Weinreich

Jordan D. Weinreich, Esq.  
210 Park Ave., 2<sup>nd</sup> Fl.  
Florham Park, NJ 07932  
973-302-9695  
jweinreich@shermanatlas.com

*Attorneys for Registrant  
Champion Container Corporation*

**CERTIFICATION OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer and Affirmative Defenses has been served on Bassam N. Ibrahim, Esq., counsel for Petitioner Canpack, S.A., by forwarding said copy on August 16, 2021 by email to [bassam.ibrahim@bipc.com](mailto:bassam.ibrahim@bipc.com).

Dated: August 16, 2021

/s/Jordan D. Weinreich  
JORDAN D. WEINREICH