ESTTA Tracking number: **ESTTA1120305**

Filing date: **03/15/2021**

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

Proceeding	92076337
Party	Defendant Phat Panda LLC
Correspondence Address	PHAT PANDA LLC 10717 E PIERCE LN SPOKANE, WA 99206 UNITED STATES No email provided. No phone number provided.
Submission	Answer
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Date	03/15/2021
Attachments	Answer and Affirmative Defenses-ff.pdf(85013 bytes)

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

6898743 Manitoba Ltd.,
Opposer,

Opposition no. 92076337
Serial no. 5,084,617

vs.

Phat Panda LLC,
Respondent-Registrant.

Respondent-Registrant, Phat Panda LLC ("Defendant"), submits this Answer and Affirmative Defenses.

ANSWER

Defendant answers the Petition for Cancellation filed by Opposer, 6898743 Manitoba Ltd. ("Plaintiff"), as follows:

1. Defendant is without knowledge and therefore denies the allegations contained in paragraphs 1, 2 and 3 of Plaintiff's Petition for Cancellation.

2. Defendant admits the allegations in paragraph 4, 5 and 6 of Plaintiff's Petition for Cancellation.

3. Defendant denies that the goods associated with the Serial No. 5,084,617 (Reg. 617") fail to comply with the Controlled Substances Act ("CSA") as alleged in paragraph 7 of Plaintiff's Petition for Cancellation.

4. Defendant denies that the goods associated with Reg. 617 and Defendant's PHAT PANDA Mark fail to comply with the CSA as alleged in paragraph 8 of Plaintiff's Petition for Cancellation. Defendant is without specific knowledge of remaining allegations in paragraph 8 of

the Plaintiff's Petition for Cancelation and therefore denies those allegations and demands proof thereof.

5. Defendant denies that the goods associated with Reg. 617 fail to comply with the CSA as alleged in paragraph 9 of Plaintiff's Petition for Cancellation. Defendant denies that it continues to sell goods associated with Reg. 617 that fail to comply with the CSA. Defendant is without specific knowledge of remaining allegations in paragraph 9 of the Plaintiff's Petition for Cancellation and therefore denies those allegations and demands proof thereof.

6. Defendant denies that the goods associated with Reg. 617 fail to comply with the CSA as alleged in paragraph 10 of Plaintiff's Petition for Cancellation. Defendant is without specific knowledge of remaining allegations in paragraph 10 of the Plaintiff's Petition for Cancelation and therefore denies those allegations and demands proof thereof.

7. Defendant denies that the goods associated with Reg. 617 fail to comply with the CSA or that Defendant made any knowingly false statements as alleged in paragraph 11 of Plaintiff's Petition for Cancellation. Defendant admits that, when referring to the goods associated with Reg. 617, Defendant's counsel stated "Applicant's identified goods, cigarette papers, do not include or contain marijuana, marijuana-based preparations, marijuana extracts or derivatives, or any other illegal controlled substance."

8. Defendant denies Defendant procured its registration by knowingly and willfully making false and/or fraudulent representations throughout the application process as alleged in paragraph 12 of Plaintiff's Petition for Cancellation.

9. Defendant denies Defendant misled the Trademark Examiner at any point during the registration process as alleged in paragraph 13 of Plaintiff's Petition for Cancellation.

10. Defendant denies that the goods associated with Reg. 617 fail to comply with the CSA, that Defendant knowingly and willfully making false and/or fraudulent representations, and that Defendant submitted misleading evidence as alleged in allegations in paragraph 14 of Plaintiff's Petition for Cancellation.

11. Defendant denies that Plaintiff has prior lawful use in commerce of the FAT PANDA Mark before Defendant's use of PHAT PANDA associated with the goods identified in Reg. 617. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's Petition for Cancellation.

12. Defendant admits that Plaintiff's FAT PANDA Mark is likely to cause confusion with the goods associated with Reg. 617 and Defendant's PHAT PANDA Mark. Defendant denies the remaining allegations in paragraph 16 of Plaintiff's Petition for Cancellation.

13. Defendant denies the allegations in paragraph 17 of Plaintiff's Petition for Cancellation.

14. Defendant denies that the relief requested in paragraph 18 of Plaintiff's Petition for Cancellation should be granted.

15. Defendant denies all remaining paragraphs contained in Plaintiff's Petition for Cancellation.

AFFIRMATIVE DEFENSES

Defendant alleges the following affirmative defenses in response to all claims in Plaintiff's Petition for Cancellation, except as otherwise stated within the affirmative defenses that an affirmative defense is directed to particular claims within Plaintiff's Notice of Opposition:

1. First Affirmative Defense (prior use). Defendant has prior lawful use in commerce of the PHAT PANDA Mark that predates Plaintiff's use in commerce of use of the FAT PANDA Mark.

2. Second Affirmative Defense (no lawful use by Plaintiff). Upon information and belief, Plaintiff cannot show lawful use in commerce of the FAT PANDA Mark prior to the Defendant's use of Defendant's PHAT PANDA Mark because Plaintiff has failed to comply with United States laws, rules, regulations and procedures to lawfully sell its goods and services associated with Plaintiff's FAT PANDA Mark in commerce in the United States.

3. Third Affirmative Defense (no false representation). Defendant's representations to the USPTO during the prosecution of the PHAT PANDA Mark were not false.

4. Fourth Affirmative Defense (not material and no reasonable reliance). If any of Defendant's representations made to the USPTO during the prosecution of the PHAT PANDA Mark were not true, such untrue statements were immaterial and the USPTO did not rely on such immaterial statements.

5. Fifth Affirmative Defense (no damage because no lawful use by Plaintiff). Upon information and belief, Plaintiff is not lawfully using the FAT PANDA Mark because Plaintiff has failed to comply with United States laws, rules, regulations and procedures to lawfully sell its goods and services associated with Plaintiff's FAT PANDA Mark in commerce in the United States so Plaintiff cannot be damaged.

6. Seventh Affirmative Defense (no standing). Upon information and belief, Plaintiff has no standing because Plaintiff is not lawfully using the FAT PANDA Mark in commerce because Plaintiff's use fails to comply with United States laws, rules, regulations and procedures for selling the goods associated with Plaintiff's FAT PANDA Mark.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff; and an Order denying Plaintiff's Petition for Cancellation; and, any other relief the TTAB deem just and proper.

Dated: March 15, 2021

Respectfully submitted,

/s Derek Fahey
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of this Answer and Affirmative Defenses have been served, on March 15, 2021, on all counsel of record via email to Samantha M. Ferguson at samantha@legalservicesinternational.com and samantha@legalservicesinternational.ca.