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

Proceeding	92077492
Party	Defendant E.P. Henry Inc. Corporation
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Date	09/08/2021
Attachments	Answer to Amended Cancellation Petition- Better Concrete Better World .pdf(117704 bytes)

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

REGISTRANT: E.P. Henry Corporation
REG NO.: 6397853
REG. DATE: June 22, 2021
MARK: BETTER CONCRETE. BETTER WORLD.

LATICRETE INTERNATIONAL, INC.

Petitioner,

v.

E. P. HENRY CORPORATION

Registrant.

Cancellation No. 92077492
Parent Case: Opposition No.
91270427

ANSWER TO AMENDED PETITION TO CANCEL

E. P. Henry Corporation, the Registrant, through its duly authorized attorneys answers the Petition to Cancel as follows:

1. Answering paragraph 1: Admitted as to all averments related to E.P. Henry Corporation and that the entire interest and goodwill of the mark was conveyed to Registrant at Reel/Frame 7318/0521. Registrant is without information sufficient to form a belief as to the truth of the remaining averments in paragraph 1 of the Petition for Cancellation.

2. Answering paragraph 2: Admitted that Registrant owns U.S. Registration No. 6397853 for the mark BETTER CONCRETE. BETTER WORLD. in International Class 37 covering "Construction of civil engineering structures by laying,

pouring and using concrete” having a first use date of March 2, 2020 and a filing date of May 5, 2020.

3. Answering paragraph 3: Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 3 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

4. Answering paragraph 4: Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 4 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

5. Answering paragraph 5: Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 5 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

6. Answering paragraph 6: Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 6 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

7. Answering paragraph 7: Registrant admits that David Schwietz is the progeny of Greg Schwietz. Registrant is without information sufficient to form a belief as to the truth of the remaining averments in paragraph 7 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

8. Answering paragraph 8: Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 8 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof

9. Answering paragraph 9: Registrant is without information sufficient to

form a belief as to the truth of the averments in paragraph 9 of the Petition for Cancellation, and therefore denies same and puts Petitioner to its proof thereof.

10. Answering paragraph 10: Denied.

11. Answering paragraph 11: Registrant acknowledges that a Statement of Use of the mark BETTER CONCRETE. BETTER WORLD. was submitted on April 27, 2021 but is without information sufficient to form a belief as to the truth of the remaining averments in paragraph 11 of the Petition for Cancellation and therefore denies same and puts Petitioner to its proof.

12. Answering paragraph 12: Denied.

13. Answering paragraph 13: Denied.

14. Answering paragraph 14. Denied.

15. Answering paragraph 15. Denied.

16. Answering paragraph 16. Denied.

17. Answering paragraph 17. Denied.

18. Answering paragraph 18. Registrant admits that the Applicant represented under notice of penalty of perjury that Applicant had exclusive rights to use the mark BETTER CONCRETE. BETTER WORLD. in connection with the services listed in the application for registration and that there were no other marks in such near resemblance thereto as to be likely to cause confusion and also admits that Exhibit 8 is a copy of the Applicant's signed application. Registrant is without information sufficient to form a belief as to the truth of the remaining averments in paragraph 18 of the Petition for Cancellation and therefore denies same and puts Petitioner to its proof.

19. Answering paragraph 19. Registrant admits that as an assignee, it “stepped into the shoes” of Applicant but denies that there were any defects in the application from which the Registration issued.

20. Answering paragraph 20. Denied.

21. Answering paragraph 21. Registrant repeats and incorporates by reference the answers set forth in paragraph 1-20 above.

22. Answering paragraph 22. Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 22 of the Petition for Cancellation and therefore denies same and puts Petitioner to its proof.

23. Answering paragraph 23. Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 23 of the Petition for Cancellation and therefore denies same and puts Petitioner to its proof.

24. Answering paragraph 24. Registrant is without information sufficient to form a belief as to the truth of the averments in paragraph 24 of the Petition for Cancellation and therefore denies same and puts Petitioner to its proof.

25. Answering paragraph 25. Admitted that a registration creates a legal presumption that Registrant has valid and exclusive rights to the mark BETTER CONCRETE. BETTER WORLD. for services identified in the Registration.

26. Answering paragraph 26. Denied.

27. Answering paragraph 27. Denied.

28. Answering paragraph 28. Registrant repeats and incorporates by reference the answers set forth in paragraph 1-27 above.

29. Answering paragraph 29. Denied.

30. Answering paragraph 30. Admitted that a registration creates a legal presumption that Registrant has valid and exclusive rights in the mark BETTER CONCRETE. BETTER WORLD. for services identified in the registration.

31. Answering paragraph 31. Denied.

32. Answering paragraph 32. Denied.

33. Answering paragraph 33. Registrant repeats and incorporates by reference the answers set forth in paragraph 1-32 above.

34. Answering paragraph 34. Denied.

35. Answering paragraph 35. Denied.

36. Answering paragraph 36. Admitted that a registration creates a legal presumption that Registrant has valid and exclusive rights in the ark for services identified in the registration.

37. Answering paragraph 37. Denied.

38. Answering paragraph 38. Denied.

FIRST AFFIRMATIVE DEFENSE

39. The notice fails to state a claim against Registrant on which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

40. Petitioner's claims are barred because there was no fraud committed on the U.S. Patent and Trademark Office.

THIRD AFFIRMATIVE DEFENSE

41. Petitioner's claims are barred because it did not have prior ownership and use of the mark.

FOURTH AFFIRMATIVE DEFENSE

42. Petitioner's claims are barred by abandonment.

FIFTH AFFIRMATIVE DEFENSE

43. Petitioner's claims are barred because the trademark application was not void ab initio.

SIXTH AFFIRMATIVE DEFENSE

44. Petitioner's claims are barred because the assignment was not void ab initio.

SEVENTH AFFIRMATIVE DEFENSE

45. Registrant gives notice that it intends to rely upon any other affirmative defense that may arise or be identified during the discovery proceedings in this Cancellation Proceedings and hereby reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed and that its Registration remain.

Respectfully submitted,
E. P. Henry Corporation



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Attorneys for Registrant,
E. P. Henry Corporation

Dated: September 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served via email upon Peter Petersen at delpet@delpet.com this 8th day of September 2021.


