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

Proceeding no.	92078349
Party	Plaintiff Judith Gurley Plastic Surgery, LLC
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Submission	Motion to Dismiss - Rule 12(b)
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Date	12/27/2021
Attachments	Mot to Dismiss - Response.pdf(95625 bytes)

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

Judith Gurley Plastic Surgery, LLC)	
Petitioner,)	
)	
v.)	Cancellation No. 92078349
)	Registration No. 5845907
David J. Witchell Salon & Spa, Inc.)	
Registrant.)	
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**PETITIONER’S RESPONSE TO APPLICANT’S
MOTION TO DISMISS**

Registrant’s motion to dismiss is based on the claim that Petitioner’s “sole claim for cancellation on the basis of likelihood of confusion [is] based on prior use common law rights” and as a result Petitioner’s claim is fatally defective because Petitioner has not stated a claim for which relief may be granted. Registrant does not cite any case law to support its conclusion nor does any of its arguments such as Petitioner has not stated a claim of “exclusive use”¹ or the citation of numerous exhibits showing use of a mark by others support its claim that Petitioner’s petition is fatally defective.


Petitioner’s petition alleges priority and likelihood of confusion under Trademark Act Sections 14(1) and 2(d). In support of Section 14(1), Petitioner has set out its first use date along with exhibits to support its first use showing priority of use to Registrant’s filing date of its application and its date of first use claimed in the application. As to likelihood of confusion under 2(d), Petitioner states that an Office Action by the Trademark Examining Attorney for

¹Registrant also does not cite any cases or authority that prior use must be exclusive use in a cancellation action based on priority.

Petitioner's pending application Serial No. 88304473 for Petitioner's Mark, NO ONE WILL KNOW... EVERYONE WILL NOTICE, for "medical, cosmetic and plastic surgery services," in International Class 44 wherein Registrant's registration is cited as a basis for rejection of Petitioner's application under Section 2(d) of the Trademark Act. Since the Trademark Examining Attorney has found the marks to be confusingly similar, Petitioner is prevented from obtaining a registration for Petitioner's Mark, NO ONE WILL KNOW ... EVERYONE WILL NOTICE and therefore is damaged. Therefore, Petitioner has clearly set out the claims necessary to support it's petition to cancel Registrant's registration

Wherefore, since Petitioner's petition does state the grounds for the cancellation for which a claim of relief can be granted and is in compliance with TBMP Section 309.03(c)(1), Petitioner prays that this Motion to Dismiss be denied.

Respectfully submitted,
Judith Gurley Plastic Surgery, LLC

By: 
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Dated: 12/27/2021

Attorney for Petitioner

CERTIFICATE OF FILING

I certify that this Response to the Registrant's Motion to Dismiss is being filed electronically with the TTAB via ESTTA on December 27, 2021 and served on Registrant via email fbonini@boninilaw.com.

 /aph76/
Annette P. Heller, Attorney for Petitioner