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

Proceeding no.	92079337
Party	Defendant Mija, LLC
Correspondence address	MIJA, LLC 2979 23RD ST. SAN FRANCISCO, CA 94110 UNITED STATES Primary email: sarah@skoszyk.com No phone number provided
Submission	Answer
Filer's name	Jamie Shelden
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Signature	/Jamie Shelden/
Date	04/05/2022
Attachments	220402 Answer to Petition to Cancel MIJA.pdf(98800 bytes )

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

Mija Clean, LLC,	)	
	)	Cancellation no.: 92079337
Petitioner,	)	
	)	Mark: MIJA
v.	)	
	)	Registration no.: 6532271
	)	
Mija, LLC,	)	
	)	
Registrant.	)	

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**ANSWER TO PETITION TO CANCEL**

Registrant, Mija, LLC by and through its attorneys, hereby answers Petitioner’s cancellation petition in the above-entitled matter as follows:

Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Petitioner’s unnumbered paragraphs at the beginning and end of the cancellation petition and therefore denies them. Registrant further specifically denies any alleged damages to the Petitioner.

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Petition, which are therefore denied.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Petition, which are therefore denied.

3. Registrant admits filing its application for the MIJA trademark on October 19, 2020. Registration admits that on June 15, 2021 the United States Patent & Trademark Office issued a Notice of Allowance of that application for the following goods: “Face oils; perfumery; essential oils; hair care products, namely, shampoos, conditioners, hair cleaning preparations, hair styling spray, hair styling gels and sprays, hair coloring and dyeing preparations; beauty care preparations, namely, non-medicated balms for use on skin, lips, hair, body lotions; face toner; non-medicated skin care preparations and serums, namely, face gels, face creams, face mist, skin oils, skin lotions; non-medicated anti-wrinkle skin care preparations and serums; Topical skin care preparation, namely, non-medicated preparation for the treatment of fine lines and wrinkles and skin surface irregularities; skin moisturizers used as cosmetics; beauty care products, namely, make-up, skin moisturizers, lip balms, lip sticks, body washes, body scrubs, skin toners, beauty creams; body creams ” in International Class 03. Registrant admits that the application was granted registration on the Principal Register on October 19, 2021. Registrant admits that the records of the Patent & Trademark Office report the owner of Registration No. 6532271 as being Mija LLC, a Delaware Limited Liability Company with an address 2979 23<sup>rd</sup> Street, San Francisco, California 94110. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 of the Petition, which are therefore denied.

4. Registrant admits the allegations of Paragraph 4 of the Petition.

5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Petition, which are therefore denied.

6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Petition, which are therefore denied.

7. Registrant denies the allegations of Paragraph 7 of the Petition.

8. Registrant denies the allegations of Paragraph 8 of the Petition.

9. Registrant denies the allegations of Paragraph 9 of the Petition.

10. Registrant denies the allegations of Paragraph 10 of the Petition.

All allegations in the cancellation petition, whether explicit or implicit and including averments, which require an answer are denied to the extent that those allegations are not expressly and specifically admitted herein. Moreover, pursuant to Rule 8(b)(6) of the Federal Rules of Civil Procedure, allegations in the cancellation petition, to which no responsive pleading is required shall be deemed as denied.

## AFFIRMATIVE DEFENSES

### FIRST AFFIRMATIVE DEFENSE

Petitioner's claims are barred, in whole or in part, by the doctrine of acquiescence. Specifically, on information and belief, Petitioner's prior actions establish its assent to the continued registration of United States Trademark Registration No. 4516622. On information and belief said actions include Petitioner's consent to the parties' substantial

co-existence without any confusion and Petitioner's decision not to oppose Registration No. 4516622, which furthered Registrant's activities in connection with Registration No. 4516622.

#### SECOND AFFIRMATIVE DEFENSE

Petitioner's claims are barred, in whole or in part, by the doctrine of laches. Specifically, on information and belief, Petitioner has unreasonably delayed in asserting any claimed rights against Registrant causing material prejudice due to that delay. On information and belief, this unreasonable delay includes the parties' substantial co-existence without any confusion or challenge by Petitioner as well as Petitioner's decision not to oppose Registration No. 4516622 or otherwise challenge Registrant's use of the TOSTI LOCO CHIPS mark. Moreover, Registrant was materially prejudiced by Petitioner's unreasonable delay as Registrant continued its activities in connection with Registration No. 4516622 during Petitioner's period of unreasonable delay.

#### THIRD AFFIRMATIVE DEFENSE

Petitioner's claims are barred, in whole or in part, by the doctrine of equitable estoppel. Equitable estoppel "is not limited to a particular factual situation nor subject to resolution by simple or hard and fast rules" *A.C. Aukerman v. R.L. Chaides Construction Co.*, 960 F.2d 1020 (Fed. Cir. 1992). Nevertheless, Registrant has relied upon Petitioner's misleading conduct including its delay in asserting any claimed rights and on information and belief Petitioner's consent to the parties' substantial co-existence without any confusion and the decision not to oppose Registration No. 4516622, which furthered Registrant's activities in connection with Registration No. 4516622, and thereby materially prejudiced Registrant.

These answers and affirmative defenses are based on the knowledge and information currently available to Registrant, and Registrant reserves the right to seek amendment of these answers or affirmative defenses pursuant to Federal Rule of Civil Procedure 15 and any other application rule, statute or case law, based on facts later discovered, pled, or offered.

WHEREFORE, Registrant requests that Petitioner's Petition to Cancel be dismissed in its entirety and judgment be entered in favor of Registrant, Mija, LLC.

Respectfully submitted,

Date: April 4, 2022

By: Jamie Shelden

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

REGISTRANT'S ANSWER TO PETITION TO CANCEL

is being served on Joseph Nabor by forwarding said copy via email per TBMP §113.04 to:

Joseph Nabor  
Fitch, Even, Tabin & Flannery LLP  
120 South LaSalle, Suite 2100  
Chicago, IL 60603

this 4th day of April 2022

Jamie Shelden  
Jamie R. Shelden