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

Proceeding no.	92079771
Party	Defendant Dr. Mary Ann Markey
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Attachments	TTAB 92079771 - ASTROPHILIA Answer to Petition to Cancel.pdf(30514 bytes)

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

Space 11 Corp,)	
)	Proceeding No. 92079771
)	
v.)	Registration No. 6235382
)	
Dr. Mary Ann Markey)	Mark: ASTROPHILIA BEYOND EARTH'S BORDERS
)	
)	Registrant.
)	
)	
)	

REGISTRANT'S ANSWER TO PETITION TO CANCEL

Dr. Mary Ann Markey (“Dr. Markey” or “Registrant”), an individual, by and through her attorney, hereby answers each of the allegations of the Petition to Cancel filed by Space 11 Corp, (“Petitioner”). Petitioner’s allegations are reproduced below with Registrant’s response to each paragraph provided immediately thereafter.

1. Petitioner is and has been in the business of film and television production in the field of wrestling. In connection with this business, Petitioner offers and provides services related to the creations, development, production, and distribution of films and television programs in the field of wrestling.

Answer: Registrant is without knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 1 and therefore denies generally and specifically each and every allegation in Paragraph 1.

2. Petitioner plans to use the mark ENTERTAINMENT BEYOND EARTH'S BORDERS in U.S. commerce in connection with, inter alia, “creating and developing concepts for television programs; entertainment media production services for motion pictures, television and Internet; entertainment in the nature of competitions in the field of wrestling; entertainment

services, namely, conducting contests; entertainment services, namely, wrestling exhibits and performances by a professional wrestler and entertainer; film production; film and video film production; motion picture film production; production and distribution of television shows and movies; production of films; production of television programs; television show production; television, video and movie filming services; video production services; entertainment, namely, production of sport events; media production services, namely, video and film production; providing an Internet website portal in the field of entertainment, cultural and sporting events; providing information relating to the organizing of educational, cultural, sporting, or entertainment exhibitions; provision of non-downloadable films and television programmes via a video-on-demand service” in Class 041. Petitioner has taken substantial steps towards using its ENTERTAINMENT BEYOND EARTH’S BORDERS mark in connection with these services, including being interviewed by several large multimedia outlets detailing its plans to bring film and television production in the field of wrestling to the outer space as well as detailing the same on a website it launched, available at: <https://www.space11.agency>. In view of these steps, Petitioner is significantly invested and has a real interest in the ENTERTAINMENT BEYOND EARTH’S BORDERS mark.

Answer: Registrant is without knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 2 and therefore denies generally and specifically each and every allegation in Paragraph 2.

3. Petitioner has filed Application Serial No. 90/878,627 (the "Petitioner Application") for the ENTERTAINMENT BEYOND EARTH’S BORDERS mark in connection with, inter alia, “creating and developing concepts for television programs; entertainment media production services for motion pictures, television and Internet; entertainment in the nature of

competitions in the field of wrestling; entertainment services, namely, conducting contests; entertainment services, namely, wrestling exhibits and performances by a professional wrestler and entertainer; film production; film and video film production; motion picture film production; production and distribution of television shows and movies; production of films; production of television programs; television show production; television, video and movie filming services; video production services; entertainment, namely, production of sport events; media production services, namely, video and film production; providing an Internet website portal in the field of entertainment, cultural and sporting events; providing information relating to the organizing of educational, cultural, sporting, or entertainment exhibitions; provision of non-downloadable films and television programmes via a video-on-demand service” in Class 041. The Petitioner Application is pending. Attached hereto as Exhibit A is a true and correct printout from the United States Patent and Trademark Office ("USPTO") electronic database reflecting the pending Petitioner Application.

Answer: Registrant admits to the allegations set forth in Paragraph 3.

4. In an office action issued December 27, 2021 (the "Office Action"), the USPTO cited the Respondent Registration against the Petitioner Application, asserting its position that registration of the ENTERTAINMENT BEYOND EARTH'S BORDERS mark is likely to cause confusion with the ASTROPHILIA BEYOND EARTH'S BORDERS (& Design) mark, thereby interfering with the Petitioner Application and causing harm to Petitioner. Petitioner therefore has a real interest in seeking cancellation of the Respondent Registration and the entitlement to a statutory cause of action to bring this action. Attached hereto as Exhibit B is a true and correct copy of the Office Action.

Answer: Registrant admits to the existence of an Office Action issued December 27, 2021 against U.S. Trademark Application No. 90/878,627 citing Registrant's 6,235,382 registration as a Section 2(d) refusal to Petitioner's Application as set forth in Paragraph 4. Registrant denies all remaining allegations set forth in Paragraph 4.

5. Respondent, with an address of 22548 Bolanos Court, Port Charlotte, Florida 33952, and an email address of Ladysabrefencer@yahoo.com and TMAApp@legalzoom.com, is the current listed owner of the Registration.

Answer: The email address TMAApp@legalzoom.com is no longer accurate. Registrant admits to the remaining allegations set forth in Paragraph 5.

6. On March 18, 2020, Respondent filed Application Serial No. 88/838,685 (the "Respondent Application") to register the ASTROPHILIA BEYOND EARTH'S BORDERS (& Design) mark in, inter alia, International Class 041 in connection with "educational services, namely, providing conferences, workshops, seminars, and special events in the fields of astrophilia, biophilia, psychology, spirituality, crisis management, and conflict analysis and resolution," which was the basis for the Respondent Registration at issue in this proceeding. Respondent filed the Respondent Application based on an intent to use the ASTROPHILIA BEYOND EARTH'S BORDERS (& Design) mark in U.S. commerce under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b).

Answer: Registrant admits to the allegations set forth in Paragraph 6.

7. In Respondent's Allegation of Use filed on October 28, 2020 in connection with the Respondent Application, a true and correct copy of which is attached hereto as Exhibit C, Respondent represented to the USPTO that Respondent was actively using the ASTROPHILIA BEYOND EARTH'S BORDERS (& Design) mark in U.S. commerce in connection with

“educational services, namely, providing conferences, workshops, seminars and special events in the fields of astrophilia, biophilia, psychology, spirituality, crisis management, and conflict analysis and resolution” in Class 041 (the "Representation").

Answer: Registrant admits to the allegations set forth in Paragraph 7.

8. The Representation was false at the time Respondent made it. As depicted in the specimens submitted in connection with the Representation, the literal elements of the ASTROPHILIA BEYOND EARTH’S BORDERS (& Design) mark contain the words “ASTROPHILIA BEYOND EARTH’S BIOSPHERE,” not the claimed words “ASTROPHILIA BEYOND EARTH’S BORDERS” (emphasis added). Attached hereto as Exhibit C is a true and correct copy of Respondent’s Allegation of Use and corresponding specimens of use submitted therewith.

Answer: Respondent admits the attachment of Exhibit C is a copy of Respondent’s Allegation of Use and corresponding specimens of use submitted therewith. The allegations in the second sentence of paragraph 9 are nonsensical, and as respondent is unable to admit or deny, on that basis, respondent denies the allegations. Respondent denies the remaining allegations in Paragraph 8.

9. Petitioner has been and will continue to be harmed by the issuance of the Respondent Registration because it is preventing Petitioner from obtaining a registration for its ENTERTAINMENT BEYOND EARTH’S BORDERS mark and Respondent could rely on the Respondent Registration to assert its alleged rights against Petitioner.

Answer: Paragraph 9 sets forth legal conclusions to which no response is required, but to the extent a response is required, Registrant denies each and every allegation contained in Paragraph 9.

10. Because Respondent was not using the ASTROPHILIA BEYOND EARTH'S BORDERS (& Design) mark in connection with "educational services, namely, providing conferences, workshops, seminars, and special events in the fields of astrophilia, biophilia, psychology, spirituality, crisis management, and conflict analysis and resolution" in Class 041 as of March 15, 2020, the last day Respondent could have alleged use in connection with the Respondent Application based on an intent to use, the Respondent Registration should be amended to delete Class 041 in its entirety.

Answer: Registrant denies each and every allegation contained in Paragraph 10.

AFFIRMATIVE DEFENSES

1. Petitioner fails to state a claim upon which relief can be granted.
2. Registrant has not ceased use or in any way abandoned the ASTROPHILIA BEYOND EARTH'S BORDERS mark.
3. Registrant reserves the right to develop further defenses during the Discovery Phase of the proceeding.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed in its entirety with prejudice, that the Board agrees the registration issued to Registrant, Registration No. 6,235,382 for ASTROPHILIA BEYOND EARTH'S BORDERS be confirmed, and that the Board grant such other relief as it deems just and proper.

Respectfully submitted,

Date: August 29, 2022

/s/Susan B. Meyer

Susan B. Meyer
Attorney for Registrant

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S ANSWER TO PETITION TO CANCEL has been served on the below by forwarding said copy on August 29, 2022 via email to:

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Date: August 29, 2022

/s/Kelsey Law

Kelsey Law