

ESTTA Tracking number: **ESTTA1383532**Filing date: **09/13/2024**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92085366
Party	Defendant Breeze Smoke LLC
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Date	09/13/2024
Attachments	Breeze - Answer to Amended Petition for Cancellation.pdf(366177 bytes)

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

NEW WAVE ENTERPRISE LLC,

Cancellation No.: 92085366

Petitioner,

Mark: BREEZE PLUS

Mark: BREEZE SMOKE

v.

Mark: BREEZE PRO

BREEZE SMOKE LLC

Reg. No.: 6976563

Reg. No.: 6770534

Respondent.

Reg. No.: 6992438

ANSWER TO AMENDED PETITION FOR CANCELLATION

Respondent Breeze Smoke LLC (“Respondent”), by and through its attorneys, Honigman LLP, for its Answer to the Amended Petition for Cancellation (the “Petition for Cancellation”) filed by Petitioner New Wave Enterprise LLC (“Petitioner”) states as follows:

Respondent denies each and every allegation, matter, or thing contained in Petitioner’s Petition for Cancellation unless expressly admitted, qualified, or answered herein.

1. Respondent admits the allegations of paragraph 1 of the Petition for Cancellation.
2. Respondent admits the allegations of paragraph 2 of the Petition for Cancellation.
3. Respondent admits the allegations of paragraph 3 of the Petition for Cancellation.
4. Respondent admits that Exhibit 4 appears to be a registration for the term “C-BREEZE”. Respondent lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 4 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

5. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 5 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

6. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 6 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

7. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 7 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

8. Denied.

9. Denied.

10. Respondent admits that the C-BREEZE mark and Respondent's prior registered and used marks contain the term "BREEZE." Respondent lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 10 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

11. Respondent admits that the C-BREEZE mark and Respondent's prior registered and used marks contain the term "BREEZE." As to the remaining of paragraph 11 of the Petition for Cancellation, Respondent denies the same.

12. Respondent admits that the C-BREEZE mark when used for e-cigarettes is confusingly similar to and an infringement of Respondent's prior registered and used marks. Except as admitted, Respondent denies the remaining allegations of paragraph 12 of the Petition for Cancellation.

13. Respondent admits that the C-BREEZE mark when used for e-cigarettes is confusingly similar to and an infringement of Respondent's prior registered and used marks. Except as admitted, Respondent denies the remaining allegations of paragraph 13 of the Petition for Cancellation.

14. Denied.

15. Denied.

16. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 16 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

17. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 17 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

18. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 18 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

19. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 19 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

20. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 20 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

21. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 21 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

22. Denied.

23. Respondent admits that its BREEZE PLUS and BREEZE SMOKE marks assert a date of first use in U.S. commerce and anywhere of at least as early as March 1, 2020 and otherwise denies the remaining allegations of paragraph 23 of the Petition for Cancellation.

24. Denied.

25. Denied.

26. Denied.

27. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 27 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

28. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 28 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

29. Denied.

30. Respondent admits that the C-BREEZE mark when used for e-cigarettes is confusingly similar to and an infringement of Respondent's prior registered and used marks. Except as admitted, Respondent denies the allegations of paragraph 30 of the Petition for Cancellation.

31. Respondent admits that the C-BREEZE mark and Respondent's prior registered and used marks contain the term "BREEZE." Respondent lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 31 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

32. Respondent admits that the C-BREEZE mark and Respondent's prior registered and used marks contain the term "BREEZE." As to the remaining allegations of paragraph 32 of the Petition for Cancellation, Respondent denies the same.

33. Denied.

34. Denied.

35. Denied.

36. Respondent lacks sufficient information to form a belief as to the truth of the allegations of paragraph 36 of the Petition for Cancellation and therefore denies the same, and puts Petitioner to its proof.

37. Denied.

AFFIRMATIVE DEFENSES

1. The Petition for Cancellation must be dismissed because Petitioner does not have priority over Respondent with Petitioner's alleged marks.
2. The Petition for Cancellation must be dismissed because it fails to state a claim upon which relief can be granted.
3. The Petition for Cancellation must be dismissed because Petitioner has committed fraud on the USPTO in the Petition for Cancellation.
4. The Petition for Cancellation must be dismissed because Petitioner has not used the asserted C-BREEZE mark in U.S. commerce.
5. Petitioner's claims are barred by estoppel.
6. Petitioner's claims are barred by waiver.
7. Petitioner's claims are barred by acquiescence.
8. Petitioner has unclean hands and thus should be denied recovery.
9. Respondent reserves all affirmative defenses under the Lanham Act, Federal Rule of Civil Procedure 8(c), and any other affirmative defenses or counterclaims in law or equity that may now exist or that may in the future exist based on factual investigations or discovery.

Wherefore, Respondent respectfully requests that the Trademark Trial and Appeal Board dismiss this Petition for Cancellation and allow Respondent's registrations to remain registered.

Respectfully submitted,

Date: September 13, 2024

By: /s/ Rachel M. Hofstatter

Rachel M. Hofstatter

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Breeze Smoke LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ANSWER TO AMENDED PETITION FOR CANCELLATION was served on September 13, 2024, by electronic mail to the Petitioner as follows:

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*Attorney for Petitioner
New Wave Enterprise LLC*

/s/ Rachel M. Hofstatter

Rachel M. Hofstatter
*One of the Attorneys for Respondent
Breeze Smoke LLC*