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

Proceeding	92062336
Party	Defendant Gary Kompothecras
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Submission	Answer
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Date	11/09/2015
Attachments	Answer and Affirmative Defenses (filed).pdf(157380 bytes )

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

In the Matter of Registration No. 3971311  
Mark: 1-800-CALL-GARY FOR AUTO INSURANCE  
Issued: May 31, 2011

Gary's Insurance Agency, LLC,

Petitioner,

v.

Cancellation No. 92062336

Gary Kompothecras,

Respondent.

**ANSWER AND AFFIRMATIVE DEFENSES OF  
RESPONDENT GARY KOMPOTHECRAS**

Respondent, Gary Kompothecras (hereinafter "Respondent"), by its attorneys, hereby answers and responds to the allegations set forth in the Consolidated Petition dated September 28, 2015 for Cancellation (hereinafter "the Petition") of Respondent's 1-800-CALL-GARY FOR AUTO INSURANCE mark and Design (hereinafter the "Mark") filed by Petitioner Gary's Insurance Agency, LLC (hereinafter "Petitioner").

For the convenience of the Board, the language of each allegation in the Petition to Cancel is repeated below and is followed by Respondent's answer to the corresponding numbered paragraph.

1. Petitioner Gary's Insurance Agency, LLC ("Petitioner"), a limited liability company duly organized and existing under the laws of the State of New Jersey and having a principal place of business at 610-618 West St. Georges Avenue, Linden, New Jersey 07036, believes that it will

be damaged by Registration No. 3,971,311 for the mark 1-800-CALL-GARY and Design (the "1-800-CALL-GARY Registration") and hereby petitions, in accordance with 37 C.F.R. §2.111(b), to cancel said registration.

**ANSWER TO PARAGRAPH 1:** Respondent denies Registration No. 3,971,311 for the mark 1-800-CALL-GARY and Design will damage Petitioner. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of allegations contained in paragraph 1 of the Petition for Cancellation. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny.

2. To the best of Petitioner's knowledge, the name and address of the current Respondent of the 1-800-CALL-GARY Registration is Gary Kompothecras ("Respondent"), an individual with an address of P.O. Box 25368, Sarasota, Florida 34277.

**ANSWER TO PARAGRAPH 2:** Admitted.

3. On October 13, 2009, Respondent filed an intent-to-use application, Serial No. 77/847662 to register the mark 1-800-CALL-GARY FOR AUTO INSURANCE and Design ("1-800-CALL-GARY FOR AUTO INSURANCE Mark") for use in "[i]nsurance services, namely, underwriting vehicle insurance" in International Class 036 ("Respondent's Application").

**ANSWER TO PARAGRAPH 3:** Admitted.

4. On April 29, 2011, the United States Patent and Trademark Office ("USPTO") issued a notice of acceptance of Respondent's application.

**ANSWER TO PARAGRAPH 4:** Admitted.

5. The 1-800-CALL-GARY FOR AUTO INSURANCE Mark registered on May 31, 2011, under Registration No. 3,971,311.

**ANSWER TO PARAGRAPH 5:** Admitted.

6. Upon information and belief, Respondent did not use the 1-800-CALL-GARY FOR AUTO INSURANCE Mark in commerce prior to its 1-800-CALL-GARY Registration.

**ANSWER TO PARAGRAPH 6:** Denied.

7. Petitioner has applied for the following U.S. trademark registrations in the USPTO (the "GARY'S AUTO INSURANCE Marks"):

- a. GARY'S Serial No. 86478678
- b. GARY'S INSURANCE Serial No. 86478773
- c. GARY'S AUTO INSURANCE Serial No. 86478662

**ANSWER TO PARAGRAPH 7:** Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition for Cancellation. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny.

8. Since at least as early as April 1, 2002, Petitioner has been, and is now, using the GARY'S AUTO INSURANCE Marks in connection with the sale of automobile insurance.

**ANSWER TO PARAGRAPH 8:** Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Petition for Cancellation. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny.

9. Petitioner's use of the GARY'S AUTO INSURANCE Marks has been valid and continuous since its date of first use.

**ANSWER TO PARAGRAPH 9:** Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Petition for

Cancellation. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny.

10. Petitioner's use of its GARY'S AUTO INSURANCE Marks pre-date the Respondent's first use of, and application for registration of, the 1-800-CALL-GARY Mark, and establishes the priority of Petitioner's GARY'S AUTO INSURANCE Marks.

**ANSWER TO PARAGRAPH 10:** Denied.

11. Attached hereto as Exhibit "A" is a screen shot from the Internet Archive Wayback Machine, located at URL [www.archive.org](http://www.archive.org) showing the home page from Petitioner's Website at URL: [www.garysautoinsurance.com](http://www.garysautoinsurance.com), dating back to April 8, 2009, for use of the at least one of GARY'S AUTO INSURANCE Marks.

**ANSWER TO PARAGRAPH 11:** Denied. Not one of Petitioner's alleged marks appear on the webpage at Exhibit "A."

12. Petitioner has continued to use the GARY'S AUTO INSURANCE Marks to the present.

**ANSWER TO PARAGRAPH 12:** Denied.

13. This is evidence of use of the mark by Petitioner which pre-dates Respondent's alleged first use of April 13, 2010.

**ANSWER TO PARAGRAPH 13:** Denied.

14. Petitioner's GARY'S AUTO INSURANCE Marks are symbolic of extensive goodwill established by Petitioner, has acquired a high degree of recognition through continued use and expenditures of time, effort and money in advertising and promotion, and serves as a unique identifier of the services offered by Petitioner.

**ANSWER TO PARAGRAPH 14:** Denied.

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