ESTTA Tracking number: **ESTTA618706**
Filing date: **07/31/2014**

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

Proceeding	92059235
Party	Defendant Zhangwei Mo
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Submission	Answer
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Date	07/31/2014
Attachments	2014-07-31 Answer.pdf(314474 bytes)

TRADEMARK

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

In the Matter of trademark Registration No. 4179235
Mark: NITEYE

Nite Ize, Inc.	)	
	)	
Petitioner	)	
	)	Cancellation No.: 92059235
	)	
Zhangwei Mo	)	
Respondent	)	
	)	

ANSWER TO PETITION FOR CANCELLATION

Respondent, Zhangwei Mo, hereby answers the Petition for Cancellation filed by Nite Ize, Inc. ("Petitioner") against Registration No. 4179235 for the mark NITEYE ("Respondent's Mark").

Respondent responds as follows:

1. Respondent denies that Petitioner will be damaged by Respondent's Registration No. 4179235. Respondent lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 1 of the Petition for Cancellation, and therefore denies them.

2. Respondent denies that it is a corporation but admits the remaining allegations of Paragraph 2.

3. Denied.

4. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 4 of the Petition for Cancellation, and therefore denies them.

5. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 5 of the Petition for Cancellation, and therefore denies them.

6. Admitted.

7. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 7 of the Petition for Cancellation, and therefore denies them.

8. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 8 of the Petition for Cancellation, and therefore denies them.

9. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 9 of the Petition for Cancellation, and therefore denies them.

10. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 10 of the Petition for Cancellation, and therefore denies them.

11. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 11 of the Petition for Cancellation, and therefore denies them.

12. Respondent admits that the respective marks are comprised in part of the term "nite" but otherwise denies the allegations of Paragraph 12 of the Petition for Cancellation.

13. Admitted.

14. Respondent lacks sufficient information at this time to form a belief as to the truth or falsity of the allegations in Paragraph 14 of the Petition for Cancellation, and therefore denies them. Respondent reserves the right to submit an amended Answer once sufficient information is obtained.

15. Admitted. Applicant's mark is registered in multiple countries.

16. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 16 of the Petition for Cancellation, and therefore denies them.

17. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 17 of the Petition for Cancellation, and therefore denies them.

18. No pleading required.

19. Respondent admits that Petitioner's claimed dates of first use are prior to the other dates identified in Paragraph 19 of the Petition for Cancellation.

20. Respondent admits that the records of the US Patent and Trademark Office support the allegations of Paragraph 20 of the Petition for Cancellation.

21. Denied.

22. Denied.

23. No pleading required.

24. Respondent admits that the records of the US Patent and Trademark Office support the allegations of the first sentence of Paragraph 24 of the Petition for Cancellation. Respondent lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 24 of the Petition for Cancellation, and therefore denies them.

25. Denied.

26. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 26 of the Petition for Cancellation, and therefore denies them.

27. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 27 of the Petition for Cancellation, and therefore denies them.

28. Denied.

29. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations of the first sentence in Paragraph 29 of the Petition for Cancellation, and therefore denies them. The remaining allegations of Paragraph 29 of the Petition for Cancellation are denied.

30. Denied.

31. No pleading required.

32. Denied.

33. Respondent lacks sufficient information at this time to form a belief as to the truth or falsity of the allegations in the first sentence of Paragraph 33 of the Petition for Cancellation, and therefore denies them. Respondent reserves the right to submit an amended Answer once sufficient information is obtained. Respondent denies the allegations in the second sentence of Paragraph 33.

34. Denied.

35. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations of the first sentence in Paragraph 35 of the Petition for Cancellation, and therefore denies them. The remaining allegations of Paragraph 35 of the Petition for Cancellation are denied.

36. Denied.

37. No pleading required.

38. Admitted.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

AFFIRMATIVE DEFENSES

1. Respondent's mark and Petitioner's mark are not confusingly similar in sound, appearance or meaning.

2. Respondent's mark and Petitioner's mark coexist in a crowded marketplace of "nite" marks in International Class 11 such that minor differences are sufficient to avoid confusion, deception or mistake on the part of the consuming public.

3. Petitioner and Respondent have coexisted in the marketplace for several years without any known instances of actual confusion.

4. Petitioner's mark is not famous under the Lanham Act.

WHEREFORE, Petitioner is not entitled to any of the relief it seeks and Respondent respectfully requests that this cancellation be dismissed with prejudice.

Respectfully submitted,

P. Jay Hines

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO THE PETITION FOR CANCELLATION is being served on Petitioner's counsel via email, as agreed, to Robert.ziemian@squirepb.com; Theresa.cope@squirepb.com and IPdocketing @pattonboggs.com, and via first class mail this 31st day of July, 2014, to:

Robert P. Ziemian

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Akiyo Yoshida