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Filing date: **09/09/2014**

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

Proceeding	92059235
Party	Defendant Zhangwei Mo
Correspondence Address	P JAY HINES MUNCY GEISSLER OLDS & LOWE PC 4000 LEGATO ROAD, SUITE 310 FAIRFAX, VA 22033 UNITED STATES mailroom@mg-ip.com, jh@mg-ip.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	P. Jay Hines
Filer's e-mail	mailroom@mg-ip.com
Signature	/pjh/
Date	09/09/2014
Attachments	2014-09-09 Motion for Leave to Amend Answer.pdf(385913 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	)	
	)	

MOTION TO AMEND ANSWER TO PETITION FOR CANCELLATION

Respondent, Zhangwei Mo, through counsel, hereby moves the Board for leave to amend its Answer to the Petition for Cancellation pursuant to Trademark Rule 2.107 and Rule 15(a) of the Federal Rules of Civil Procedure. The Amended Answer is attached.

Respondent's counsel did not have full information with respect to paragraphs 14 and 33 of the Petition for Cancellation at the mutually agreed extended time of filing its initial Answer and reserved the right to submit an amended pleading once instructions were received through its foreign associate. The Board "liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." TBMP § 507.02; *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1505 (TTAB 1993).

In light of the foregoing, Respondent requests that the Board grant Respondent leave to amend its Answer to the Petition for Cancellation.

Respectfully submitted,

P. Jay Hines

Muncy, Geissler, Olds & Lowe P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033
Tel.: 703-621-7140
Fax: 703-621-7155
Email: jh@mg-ip.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR LEAVE and AMENDED ANSWER TO THE PETITION FOR CANCELLATION are 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

Patton Boggs LLP

1801 California Street, Suite 4900

Denver, CO 80202

Akiyo Yoshida

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	)	
	)	

AMENDED 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. Admitted.

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. Denied.

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

Muncy, Geissler, Olds & Lowe P.C.
4000 Legato Road, Suite 310
Fairfax, Virginia 22033
Tel.: 703-621-7140
Fax: 703-621-7155
Email: jh@mg-ip.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that the foregoing AMENDED 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 9th day of September, 2014, to:

Robert P. Ziemian

Patton Boggs LLP

1801 California Street, Suite 4900

Denver, CO 80202

Akiyo Yoshida