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

Proceeding	91191021
Party	Defendant Malt-O-Meal Company
Correspondence Address	JOHN A. CLIFFORD MERCHANT & GOULD P.C. PO BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES
Submission	Answer
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Date	08/24/2009
Attachments	NOTICE OF OPPOSITION_20090824145541.pdf ( 4 pages )(109594 bytes )

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

Bear Naked, Inc.	)	
Opposer,	)	Opposition No. 91191021
	)	
v.	)	Serial No. 77/567,860
	)	
Malt-O-Meal Company	)	Mark: NAKED WHEAT
Applicant.	)	
	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION**

To The Assistant Commissioner for:  
Trademarks  
ATTN: BOX TTAC  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sirs:

COMES NOW, the Applicant, Malt-O-Meal Company to Answer the Notice of Opposition. Each and every allegation in the Notice of Opposition that is not specifically admitted below is denied. Applicant specifically denies any damage to Opposer from the registration of the mark shown in application Serial No. 77/567,860. The numbered allegations will be answered below:

1. Denied.
2. Denied.
3. It is denied that the registrations listed in the Notice of Opposition are conclusive evidence as two of the three registrations mentioned are less than 5 years old, it is admitted that the three registrations exist and the owner of record appears to Bear Naked, Inc.
4. No response is required as there is no allegation made. To the extent the statement of Opposer's intention is considered an allegation, it is denied.

5. Denied.
6. It is admitted that Applicant filed its application for registration of the mark NAKED WHEAT on September 11, 2008 and it is admitted that Serial No. 77/567,860 was assigned to that application. It is admitted that the word WHEAT is disclaimed apart from the mark. The balance of the allegation is denied.
7. Denied.
8. Denied.
9. Denied.

### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted.
2. The subject trademarks are not confusingly similar.
3. The term NAKED is diluted and there are approximately 993 records in the United States Patent and Trademark Office trademark database including the word NAKED, alone or in combination with other words or symbols.
4. Opposer is engaged in tortious overreaching and intentionally commencing trademark opposition proceedings with the intent to harass, unnecessarily cause applicant expense and inconvenience, such that the Notice of Opposition should be dismissed.
5. Opposer's trademark rights, if any, are limited to the distinctive lettering style for the word BEAR including claw marks to make the letters E in Opposer's trademark and package design.
6. Opposer has no trademark rights in the word NAKED apart from its composite mark as used.

WHEREFOR APPLICANT PRAYS, that the Notice of Opposition be dismissed, Opposer taking nothing and that application Seial No. 77/567,860 advance and receive a Notice of Allowance.

If fees are required, please charge them to the deposit account maintained by Applicant's counsel, Account No.13-2725.

Applicant hereby appoints hereby appoints Charles E. Golla, Reg. No. 26,896; Brian H. Batzli, Reg. No. 32,960; John A. Clifford, Reg. No. 30,247; Gregory C. Golla; John D. Gould, Reg. No. 18,223; Scott W. Johnston, Reg. No. 39,721; D. Randall King; Christopher Schulte, Andrew Ehard; and Danielle I. Mattessich as its attorneys with the full power to represent the Opposer in connection with this proceeding.

Please direct all correspondence to the attention of:


John A. Clifford  
Merchant & Gould P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-0910  
612-336-4616  
Fax: 612-332-9081

Respectfully submitted,

Malt-O-Meal Company

By its Attorneys,

Date: 24 Aug 2009

  
John A. Clifford  
MERCHANT & GOULD P.C.  
80 South Eighth Street, Suite 3200  
Minneapolis, Minnesota 55402-2215  
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITON was served on David Herdman by first class mail, postage prepaid on this 24<sup>th</sup> day of August, 2009 addressed to:

David Herdman  
Bear Naked, Inc.  
1 Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016-3599

Date: 24 Aug. 2009

  
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John A. Clifford