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

Proceeding	91255793
Party	Defendant Red Bear Provisions LLC
Correspondence Address	D. JAMES NAHIKIAN, MSCS JD NAHIKIAN GLOBAL INTELLECTUAL PROPERTY & SUITE 415 1636 NORTH WELLS STREET CHICAGO, IL 60614-6009 UNITED STATES jnahikian@nahikianglobal.com no phone number provided
Submission	Answer
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Date	06/22/2020
Attachments	answer.pdf(168995 bytes )

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

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BLACK BEAR ENTERPRISES, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91255793
	)	Application No.: 87/959,574
	)	Mark: <b>RED BEAR</b>
	)	
RED BEAR PROVISIONS, LLC	)	
d/b/a RED BEAR,	)	
	)	
Applicant.	)	
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**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Red Bear Provisions, LLC d/b/a Red Bear ("Applicant") hereby answers the Notice of Opposition lodged by Black Bear Enterprises, Inc. ("Opposer") on May 12, 2020 in respect of Application Serial No. 87/959,574.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore it denies the same.
2. Applicant admits the allegations of Paragraph 2.
3. Applicant denies the allegations of Paragraph 3.
4. Applicant admits the allegations of Paragraph 4. Further answering, according to the Notice of Publication directed January 1, 2020, "[y]our mark appears to be entitled to register on the Principal Register upon the acceptance of a statement of use, subject to any claims of concurrent use." The following terms were searched by the Examining Attorney in connection with the subject trademark application:

\*\*\* User:jvo1 \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	36966	N/A	0	0	0:01	*red*[bi,ti] not dead[ld]
02	3684	N/A	0	0	0:02	*bear*[bi,ti] not dead[ld]
03	49	0	49	47	0:01	1 and 2
04	952	N/A	0	0	0:02	*bare*[bi,ti] not dead[ld]
05	12	0	12	12	0:01	1 and 4
06	79787	N/A	0	0	0:03	*b{v:2}r*[bi,ti] not dead[ld]
07	1406	N/A	0	0	0:01	1 and 6
08	811	N/A	0	0	0:02	7 and "029"[cc]
09	71	0	71	70	0:01	7 and "029"[ic]
10	117	0	117	114	0:01	7 and "030"[ic]
11	190	0	190	185	0:02	7 and ("035" a b 200)[ic]
12	1146	N/A	0	0	0:02	2 and "029"[cc]
13	74	0	74	67	0:01	2 and "029"[ic]
14	248	0	248	220	0:01	2 and ("030" a b 200)[ic]
15	301	0	301	290	0:01	2 and "035"[ic]
16	10642	N/A	0	0	0:02	red*[bi,ti] not dead[ld]
17	4812	N/A	0	0	0:02	16 and "029"[cc]
18	375	N/A	0	0	0:01	16 and "029"[ic]
19	648	N/A	0	0	0:01	16 and "030"[ic]
20	1141	N/A	0	0	0:01	16 and "035"[ic]
21	7498	N/A	0	0	0:02	red[bi,ti] not dead[ld]
22	3616	N/A	0	0	0:01	21 and "029"[cc]
23	289	0	289	269	0:01	21 and "029"[ic]
24	542	N/A	0	0	0:01	21 and "030"[ic]
25	753	N/A	0	0	0:01	21 and "035"[ic]
26	51	0	51	47	0:01	red[fm] not dead[ld]
27	9	0	9	9	0:01	26 and "035"[ic]
28	419	N/A	0	0	0:02	*p{"r":2}o{"v":2}{"iy"}{"sz"}*[bi,ti] not dead[ld]
29	23	0	23	23	0:01	(1 2 4 6) and 28

Session started 10/3/2018 2:19:46 PM

Session finished 10/3/2018 2:57:22 PM

Total search duration 0 minutes 40 seconds

Session duration 37 minutes 36 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 87959574

Based upon information and belief, Opposer's cited "black bear" marks were disclosed and expertly determined not to conflict with Applicant's applied-for mark. Applicant is entitled to register its mark.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore it denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and therefore it denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore it denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore it denies the same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore it denies the same.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore it denies the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore it denies the same.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore it denies the same.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore it denies the same.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore it denies the same.

15. Applicant denies the allegations of Paragraph 15.

16. Applicant denies the allegations of Paragraph 16.

17. Applicant denies the allegations of Paragraph 17.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Opposer sells BLACK BEAR meats to ShopRite. Further answering, Applicant denies all the other allegations of Paragraph 18.

19. Applicant denies the allegations of Paragraph 19, the preamble, and the non-enumerated final Paragraph.

### **AFFIRMATIVE DEFENSES**

Applicant hereby reserves the right to plead additional affirmative and other defenses should any such defenses be revealed by discovery in this action or upon further investigation. Applicant undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, irrespective of how such defenses are denominated below.

#### **First Affirmative Defense**

Applicant affirmatively alleges there is no likelihood of confusion between Opposer's alleged marks and Applicant's mark due to the differences between the marks and the goods and services covered by each mark. Applicant's RED BEAR mark does not look, sound or have the same meaning as Opposer's asserted marks some of which are narrow and specific, for example, BLACK BEAR OF THE BLACK FOREST or comprise graphic depictions of unique black bears but not any red bears.

#### **Second Affirmative Defense**

Applicant's goods, namely, "meat; all natural meats; prepared meats; preserved meats; dried meats; ground meats; cured meats; salted meats; smoked meats; packaged meats; encased

meats; processed meats; salamis; and sausages" in Class 29 are materially and readily distinguishable from Opposer's goods such as cheese, spicy pickels, horseradish, poultry products, lunch meats, liverwurst, mustard, cole slaw, potato salad, macaroni salad and the like in various classes.

#### **Third Affirmative Defense**

On information and belief, Opposer has not suffered and it unlikely to suffer any injury or damage as a result of the registration of Applicant's RED BEAR mark. Applicant is unaware of any instances of actual confusion between the parties' respective marks, and Opposer has not provided any notice that it has experienced actual confusion with Applicant.

#### **Fourth Affirmative Defense**

Opposer's goods and Applicant's goods are marketed to different buyers and are not provided through the same channels of trade. Based upon information and belief, Opposer's customers are not sophisticated, high-income consumers and Applicant's consumers are demonstrably seeking high-end products having specific qualities such as organic ingredients and humanely-raised, pasture-grazed animals.

#### **Fifth Affirmative Defense**

Opposer's cited marks are weak, and thus there is no potential for conflict if the subject Application proceeds to register, because numerous unrelated third parties have successfully registered and are using "black bear" text marks and logos for meats, foods, beverages and related goods or services and, therefore, Opposer's cited marks are only entitled to a restricted, narrow scope of protection. It can be shown that consumers will have learned to readily discern among the field of "black bear" marks registered for foods and related services.

**Sixth Affirmative Defense**

Opposition Proceeding No. 91255793 is barred by the doctrine of estoppel.

**Seventh Affirmative Defense**

As a result of its own acts and omissions, Opposer has waived any right to pursue its opposition.

**GENERAL DENIAL**

Unless specifically admitted above, Applicant denies each and every allegation set forth in Opposer's Notice of Opposition. Further, Applicant denies Opposer is entitled to relief in this action either as requested or otherwise.

**PRAAYER FOR RELIEF**

WHEREFORE, Applicant respectfully requests the Board deny the Opposition and dismiss this proceeding and award such relief to Applicant as the Board may deem just and proper. Applicant denies that Opposer is entitled to any relief whatsoever.

**DATED:** June 22, 2020

Respectfully submitted,



/s/djamesnahikian/

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ATTORNEY OF RECORD  
FOR APPLICANT

**CERTIFICATE OF SERVICE**

I, Dickran James Nahikian, attorney for Applicant, hereby certify that on this 22<sup>nd</sup> day of June, 2020 the foregoing **ANSWER TO NOTICE OF OPPOSITION** was filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) and a true and correct copy thereof was served upon the following by electronic mail:

John S. Child, Jr., Esq. (info@paulandpaul.com; johnchild@paulandpaul.com).



/s/djamesnahikian/

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Dickran James Nahikian