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

Proceeding	91269182
Party	Defendant NG IP HOLDCO, LLC
Correspondence Address	MARK I. REICHENTHAL BRANFMAN MAYFIELD BUSTARDE REICHENTHAL L 462 STEVENS AVE. #303 SOLANA BEACH, CA 92075 UNITED STATES Primary Email: mark@bibr.com 858-793-8090
Submission	Other Motions/Submissions
Filer's Name	Mark I. Reichenthal
Filer's email	mark@bibr.com, darwin@bibr.com
Signature	/Mark I. Reichenthal/
Date	08/02/2021
Attachments	Applicant Response to OSC.2021.08.02.pdf(550040 bytes ) Answer to Ntc of Oppo.2021.08.02.pdf(341873 bytes )

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

In the matter of Trademark Application Ser. Nos. 88435589  
Filed on May 17, 2019  
Mark: NAMELESS GENETICS

Kevin Metz, an individual,

Opposer,

vs.

NG IP HOLDCO, a Delaware limited  
liability company

Applicant.

Opposition No. 91269182

**APPLICANT’S RESPONSE TO ORDER TO SHOW CAUSE**

NG IP HOLDCO LLC (“Applicant”, sued herein as “NG IP HOLDCO”) hereby files its response to the Trademark Trial and Appeal Board’s (“TTAB”) June 27, 2021 Order to Show Cause “why judgment by default should not be entered against Applicant in accordance with Fed. R. Civ. P. 55(b)(2)”, due to the non-filing of an Answer. Applicant respectfully states as follows:

1. The Applicant’s failure to timely submit an Answer as required in this Proceeding was not the result of inexcusable delay or a failure to prosecute by the Applicant, the Opposer will not be prejudiced by granting relief from default, and Applicant has a meritorious defense to the claims. Therefore, the failure to timely submit an answer should not result in the dismissal of this Proceeding.

2. An Answer to the Notice of Opposition was due June 16, 2021. As indicated in the opposition papers, the opposition regards a trademark dispute between two parties who were previously in business together. The parties had entered into a settlement agreement regarding

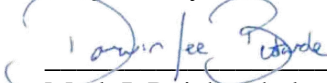
the mark at issue. While Opposer indicates in the Opposition that Applicant is in breach of the subject settlement agreement, justifying Opposer's opposition, the true facts are that the terms of the settlement agreement control and correspondingly that Opposer no longer has a claim of right to the mark. The settlement agreement at issue regards two court lawsuits. After a dispute arose regarding the settlement agreement Applicant continued discussions to try to resolve the dispute and also required time to analyze its options, consult with separate trademark and civil litigation counsel, and analyze the availability of potential relief through one or both civil court actions. Applicant's goal is to seek as efficient a resolution as possible and unfortunately in analyzing the state of the entire dispute and how that might be achieved the deadline to file an answer to the subject Opposition was missed.

3. Applicant assures the TTAB that it will timely and meaningfully participate in these proceedings. To that end, concurrently with the filing of this response, Applicant respectfully submits its Answer to the Notice of Opposition.

WHEREFORE, Applicant respectfully requests that the TTAB refrain from dismissing this Proceeding and reset the deadlines in this Proceeding in order to allow the Opposition and Applicant's defenses to the Opposition to be determined on their merits.

DATED: July 27, 2021

Respectfully submitted,



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Mark I. Reichenthal  
Darwin L. Bustarde  
BRANFMAN MAYFIELD BUSTARDE  
REICHENTHAL LLP  
Tel: 858-793-8090  
Fax: 858-793-8099  
mark@bibr.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response to Order to Show Cause has been served on the attorneys for Opposer by forwarding said copy on the date indicated below, via email to:

Katherine Koyanagi, Esq.  
[kkoyanagilaw@gmail.com](mailto:kkoyanagilaw@gmail.com)

August 2, 2021

A handwritten signature in blue ink that reads "Darwin L. Bustarde". The signature is written in a cursive style with a vertical line separating the first and last names.

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Darwin L. Bustarde

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

In the matter of Trademark Application Ser. Nos. 88435589  
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**ANSWER**

The Applicant, NG IP HOLDCO LLC (“Applicant”, sued herein as “NG IP HOLDCO”) hereby answers the Opposition filed herein by Kevin Metz (“Opposer”) as follows:

In regards to the unnumbered introductory paragraph under the title “NOTICE OF OPPOSITION” Applicant is without sufficient knowledge or information to confirm whether the address provided is Opposer’s current address and therefore denies the same. Applicant denies that Opposer would be damaged by registration of the mark.

1. Applicant admits the allegation set forth in Paragraph 1 of the Notice of Opposition.
2. Applicant admits that Opposer and Applicant were previously in business together.

However, Applicant is without sufficient knowledge or information to form a belief as to the truth of the balance of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Regarding Paragraph 3 of the Notice of Opposition, Applicant denies any implication coming from the clause “Without including Opposer.” Applicant admits that it applied for the registrations referenced in Paragraph 3, but denies the Paragraph to the extent that it does not accurately describe the contents of the referenced registrations (i.e. Registration 5214497 also included “Tops”; however, Paragraph 3(a) is missing that word). The records of the USPTO speak for themselves.

4. Regarding Paragraph 4 of the Notice of Opposition, Applicant admits that Opposer entered into a settlement agreement on or about September 11, 2020. The settlement agreement speaks for itself. Applicant is without sufficient knowledge or information to form a belief as to the truth of the balance of the allegations set forth in Paragraph 4.

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

6. Applicant admits the allegations set forth in Paragraph 6 of the Notice of Opposition.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same. Applicant further denies the allegations of Paragraph 7 on the basis that it is vague and ambiguous whether this paragraph is referring to the application and opposition of TTAB Proceeding 91266918, which is referenced in Paragraph 6.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies the same. Applicant further denies the allegations of Paragraph 8 on the basis that it is vague and

ambiguous whether this paragraph is referring to the application and opposition of TTAB Proceeding 91266918, which is referenced in Paragraph 6.

9. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition and therefore denies the same. Applicant further denies the allegations of Paragraph 9 on the basis that it is vague and ambiguous whether this paragraph is referring to the application and opposition of TTAB Proceeding 91266918, which is referenced in Paragraph 6.

**AFFIRMATIVE DEFENSES**

In further answer to the Notice of Opposition, the Applicant asserts that:

1. **FAILURE TO STATE CLAIM:** The Notice of Opposition fails to state a claim upon which relief may be granted.

2. **WAIVER, ACQUIESCENCE AND ESTOPPEL:** The claims set forth in the Notice of Opposition are barred in whole or in part by the doctrines of waiver, acquiescence, and estoppel.

The matters at issue may be the subject to a prior binding agreement entered into by the Applicant.

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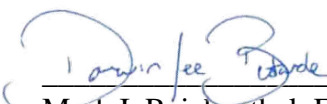
**RELIEF REQUESTED**

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board dismiss Opposer's Notice of Opposition, and that it grant all other appropriate relief to the Applicant that it deems just.

July 26, 2021

Respectfully Submitted,

**BRANFMAN MAYIELD BUSTARDE  
REICHENTHAL LLP**

By:  \_\_\_\_\_  
Mark I. Reichenthal, Esq  
Darwin L. Bustarde, Esq  
462 Stevens Avenue, Suite 303  
Solana Beach, California 92075  
Tel: (858) 793-8090  
Fax: (858) 793-8099  
Attorneys for Applicant



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I hereby certify that a true and complete copy of the foregoing Response to Order to Show Cause has been served on the attorneys for Opposer by forwarding said copy on the date indicated below, via email to:

Katherine Koyanagi, Esq.  
[kkoyanagilaw@gmail.com](mailto:kkoyanagilaw@gmail.com)

August 2, 2021

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Darwin L. Bustarde