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

Proceeding	91269608
Party	Defendant Fedak, Nikolai
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Date	07/06/2021
Attachments	Answer.pdf(189092 bytes)

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

In the Matter of Application Serial No.: 88805531
Mark: YIMBY

YIMBY ACTION,

Opposer,

v.

Opposition no.: 91269608

NIKOLAI FEDAK,

Applicant.

_____ /

**APPLICANT’S ANSWER AND DEFENSES TO
THE NOTICE OF OPPOSITION**

In response to the Notice of Opposition filed by YIMBY Action (“Opposer”), with the Trademark Trial and Appeal Board on May 29, 2021, Nikolai Fedak, (“Applicant”) hereby responds to the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the first paragraph of the Notice of Opposition, and therefore denies same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the second paragraph of the Notice of Opposition, and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the third paragraph of the Notice of Opposition, and therefore denies same.

4. Admitted.

5. Admitted.

6. Admitted.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the seventh paragraph of the Notice of Opposition, and therefore denies same, except that Applicant admits that it uses the term YIMBY to designate its services.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the eighth paragraph of the Notice of Opposition, and therefore denies same, except that Applicant admits that YIMBY Action appears as the owner of application serial number 90155193 and that the application speaks for itself.

9. Denied, except that Applicant admits the term YIMBY is an acronym meaning ‘yes in my backyard’ and that NIMBY is an acronym for ‘not in my backyard.’

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the tenth paragraph of the Notice of Opposition, and therefore denies same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the eleventh paragraph of the Notice of Opposition, and therefore denies same.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the twelfth paragraph of the Notice of Opposition, and therefore denies same.

13. Denied.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the fourteenth paragraph of the Notice of Opposition, and therefore denies same.

15. Denied.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the sixteenth paragraph of the Notice of Opposition, and therefore denies same.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the seventeenth paragraph of the Notice of Opposition, and therefore denies same.

18. Denied.

19. Denied.

20. Applicant repeats and realleges his responses to Paragraphs 1- 19 as if fully set forth here and denies the remaining allegations contained in Paragraph 20 of the Notice of Opposition.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Applicant repeats and realleges his responses to Paragraphs 1- 24 as if fully set forth here.

26. Denied.

27. Denied.

28. Denied.

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the Notice of Opposition especially as the marks are not similar and the goods and services of the parties are unrelated.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrines of laches, estoppel, unclean hands and/or waiver.

THIRD AFFIRMATIVE DEFENSE

Opposer's is estopped from asserting claims against Applicant as Opposer has acquiesced to use of the mark by Applicant.

FOURTH AFFIRMATIVE DEFENSE

Applicant's use of the term predates Opposer's first use and therefore has priority over Opposer's mark.

FIFTH AFFIRMATIVE DEFENSE

Opposer cannot claim exclusive rights in Opposer's marks and/or has abandoned or

lost its rights in those marks, because Opposer has misused its mark, and/or has failed to use its mark in a manner consistent with its applications, and/or has failed to use its mark consistently in connection with particular goods and/or services, and/or has failed to use its mark in a manner consistent with the requirements of law and proper procedure necessary to acquire such rights.

SIXTH AFFIRMATIVE DEFENSE

Opposer cannot claim exclusive rights in Opposer's marks as use of the term by third parties is extensive and wide-ranging, not only in the United States but globally.

RELIEF REQUESTED

WHEREFORE, Applicant respectfully requests that Opposer's requests contained in its Notice of Opposition be denied in all respects and that this action be dismissed with prejudice.

Dated: July 6, 2021

Respectfully submitted,



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Certificate of Service:

I hereby certify that a true and complete copy of the foregoing ANSWER and DEFENSES has been served by email to the attorney of record for the Opposer.

Date: July 6, 2021



By: William E. O'Brien, Esq.