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

Proceeding no.	91290112
Party	Defendant Nirvana IP, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NIRVANA CENTER MANAGEMENT	)
GROUP, LLC,	)
	)
<i>Opposer,</i>	) Opposition No. 91290112
	)
v.	) Application No.: 97/432,439
	)
NIRVANA IP, Inc.,	) Mark: NIRVANA WHOLESALE
	)
<i>Applicant.</i>	)
<hr/>	
	)

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Nirvana IP, Inc. (“Applicant”), by and through its counsel, files this Answer to Notice of Opposition for the pending United States trademark application with Serial Number 97/432,439 (“the Application”) and states as follows:

As grounds for this Notice of Opposition, Opposer alleges the following:


1. Opposer has established its reputation in the retail and wholesale markets. Opposer is affiliated with a multi-state system of retail locations and sales services.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Opposer’s services are marketed in interstate commerce under and in connection with its NIRVANA brand.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 2 of the Notice of Opposition and, therefore, denies the same.

3. In addition to common law rights Opposer has obtained for its use of its NIRVANA marks, Opposer has applied for the following U.S. federal registrations for its NIRVANA-type marks in both literal and stylized form (collectively “Opposer’s Mark”):

Application No.	Mark	Goods and Services
98110420	NIRVANA	IC 025. Beanies; Hats; Jeans; Pants; Shirts; Shorts; Socks; Sweatshirts; Athletic tops and bottoms for running, yoga, lounging, informal events; Clothing jackets; Hooded sweatshirts; Knitted caps; Tee-shirts.
98110425		IC 025. Athletic tops and bottoms for running, yoga, lounging, informal events; Beanies; Clothing jackets; Hats; Hooded sweatshirts; Jeans; Knitted caps; Pants; Shirts; Socks; Sweatshirts; Tee-shirts
98110426	NIRVANA	IC. 035. On-line retail store services featuring hats and jerseys; Retail store services featuring decorated apparel, clothing, pictures, artwork, tobacco accessories, smoking pipes, jewelry, lighters, vaporizers, vaporizer accessories, rolling papers, tobacco pipes, glass tobacco pipes, rolling accessories, pipe storage bags and cases, tobacco grinders, tobacco accessories, tobacco pipe accessories, torch lighters, electric cigarettes and cigars and cigars cartridges comprised of flavorings in liquid, beverages, edibles, ash trays, containers, smoking products, rolling trays

**ANSWER:** Publicly available information indicates that Opposer is the owner of applications for the marks referenced in Paragraph 3 of the Notice of Opposition. Otherwise, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 3 and, therefore, denies the same.

4. Printouts from the electronic database records of the U.S. Patent & Trademark Office showing the current status of the applications listed above are attached hereto as **Exhibit A**.

**ANSWER:** Applicant admits that it appears there are copies of screenshots attached as stated in Paragraph 4 of the Notice of Opposition. Based on Applicant's review of the USPTO's TSDR database, it appears the documents attached as Exhibit A to Opposer's Notice of Opposition

are true and correct copies of the status and ownership information from the USPTO's TSDR for the applications listed above. Applicant has insufficient information as to any remaining allegations set forth in Paragraph 4 and, therefore, denies the same.

5. The use of Opposer's Mark has been valid and continuous since the dates of first use of as least as early as 2017, and Opposer has not abandoned Opposer's Mark.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 5 of the Notice of Opposition and, therefore, denies the same.

6. Opposer, through its use of Opposer's Mark, has common law rights for the NIRVANA mark based on its long and extensive nationwide use in connection with clothing and accessory goods and services.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. By virtue of the Opposer's lengthy and extensive use of its NIRVANA mark in advertising, its significant sales in connection with Opposer's Mark, the services provided in connection with Opposer's Mark, and the positive consumer reputation in connection with Opposer's Mark by Opposer's consumers, Opposer's Mark has become well known to the consuming public and has gained valuable goodwill through that recognition.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 7 of the Notice of Opposition and, therefore, denies the same.

8. Opposer's Mark is symbolic of extensive goodwill and consumer recognition built up by Opposer during substantial amounts of time and effort in use, advertising, and promotion. Opposer's Mark identifies and distinguishes Opposer's goods from the goods and services of others and identifies the source and origin thereof to both the trade and the public.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 8 of the Notice of Opposition and, therefore, denies the same.

9. The application for Applicant's Mark was filed on May 27, 2022.

**ANSWER:** Applicant admits the allegations in Paragraph 9 of the Notice of Opposition.

10. The application for Applicant's Mark recites its listing of services as "Wholesale ordering services in the field of nutritional supplements, clothing, and smokers' articles; Wholesale distributorships featuring nutritional supplements, clothing, and smokers' articles;

Wholesale store services featuring, nutritional supplements, clothing and smokers' articles; On-line wholesale store services featuring, nutritional supplements, clothing and smokers' articles" in Class 035.

**ANSWER:** Applicant admits the allegations in Paragraph 10 of the Notice of Opposition.

11. The application for Applicant's Mark was filed under Section 1(b).

**ANSWER:** Applicant admits the allegations in Paragraph 11 of the Notice of Opposition.

12. Upon information and belief, Applicant's Mark has not and is not being used in commerce in connection with Applicant's services.

**ANSWER:** Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant's first use dates for Applicant's Mark are subsequent to Opposer's first use dates for Opposer's Mark.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 13 of the Notice of Opposition and, therefore, denies the same.

14. Opposer's Mark and Applicant's Mark are so closely similar to each consumers are likely to be confused between the marks. Comparison of Opposer's Mark with Applicant's Mark demonstrates they are nearly identical in appearance, sound, connotation and commercial impression.

**ANSWER:** The allegations in Paragraph 14 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 14 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 14 of the Notice of Opposition and, therefore, denies the same.

15. The goods and services used in connection with Opposer's Mark are identical and/or similar to the services recited in the application for Applicant's Mark.

**ANSWER:** The allegations in Paragraph 15 of the Notice of Opposition are legal

conclusions to which no responses are required. However, to the extent that Paragraph 15 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 15 and, therefore, denies the same.

16. Opposer's goods and services are related to Applicant's services because they are products that are often sold by the same source under the same marks.

**ANSWER:** The allegations in Paragraph 16 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 16 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 16 and, therefore, denies the same.

17. Applicant's trade channels and consumer audience are likely to be similar to and/or overlapping with the trade channels and consumer audience for Opposer's goods and services provided under Opposer's Marks.

**ANSWER:** The allegations in Paragraph 17 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 17 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 17 and, therefore, denies the same.

18. The goods and services associated with Opposer's Mark and the type of goods offered for sale through the services associated with Applicant's Mark are goods often sold together by the same company and encountered by the same classes of purchasers.

**ANSWER:** Applicant lacks sufficient information to form a belief about the allegations in Paragraph 18 of the Notice of Opposition and, therefore, denies the same.

19. Applicant's use or intended use of Applicant's Mark in the manner described therein creates a likelihood of confusion with Opposer's Mark. A likelihood of confusion in the marketplace exists or will exist between Opposer's Mark and Applicant's Mark when applied to the goods and services of the respective parties.

**ANSWER:** The allegations in Paragraph 19 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 19 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to

form a belief about the allegations in Paragraph 19 and, therefore, denies the same.

20. If Applicant is permitted to register its mark for its services as specified in the application herein opposed, such registration would result in confusion in the trade by reason of the similarity between Applicant's Mark and Opposer's Mark, thereby damaging and injuring Opposer. Any such confusion may result in the loss of business to Opposer. Furthermore, any defect, objection, or fault in the services offered by Applicant under Applicant's Mark may reflect upon and injure the reputation which Opposer has established for its own various goods and services offered or sold under or in association with Opposer's Mark.

**ANSWER:** The allegations in Paragraph 20 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 20 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 20 and, therefore, denies the same.

21. If Applicant is granted the registration for Applicant's Mark, Applicant would thereby obtain at least a *prima facie* right to the use of Applicant's Mark. Such registration would be a further source of damage to Opposer.

**ANSWER:** Applicant admits that if Applicant's Mark is granted registration, it would obtain a *prima facie* right to use the Applicant's Mark. Applicant denies the remaining allegations in Paragraph 21 of the Notice of Opposition.

22. In view of the foregoing, Applicant is not entitled to federal registration of its claimed mark because Applicant's Mark, as may be used upon its identified services, is not entitled to protection. Further, Applicant does not have a right to the exclusive use of said mark in commerce on Applicant's goods and services. Applicant's claimed mark does not and cannot function to identify such services and to distinguish them from goods and services offered by Opposer.

**ANSWER:** Applicant denies the allegations in Paragraph 22 of the Notice of Opposition.

## COUNT ONE

### **Likelihood of Confusion, 15 U.S.C. § 1052(d)**

23. Opposer re-alleges the allegations in Paragraphs 1 through 22.

**ANSWER:** Applicant incorporates by reference and re-alleges each and every answer

to Opposer's allegations contained in numerical Paragraphs 1 through 22 as though fully set forth herein.

24. Opposer's Mark and Applicant's Mark are so closely similar to each other that consumers are likely to be confused between the marks.

**ANSWER:** The allegations in Paragraph 24 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 24 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 24 and, therefore, denies the same.

25. The registration of Applicant's Mark and use by it for the applied-for services in the U.S. is likely to cause confusion, mistake and deception among consumers as to the source or origin of Applicant's goods, or as to whether Applicant or its services are affiliated with or sponsored or endorsed by Opposer. The registration and use of the Applicant's Mark is also likely to damage the goodwill and consumer recognition that Opposer has built up in Opposer's Mark.

**ANSWER:** The allegations in Paragraph 25 of the Notice of Opposition are legal conclusions to which no responses are required. However, to the extent that Paragraph 25 contains any factual allegations to which Applicant must respond, Applicant lacks sufficient information to form a belief about the allegations in Paragraph 25 and, therefore, denies the same.

## **COUNT TWO**

### **No Bone Fide Intent to Use Prior to Filing, 15 U.S.C. § 1051**

26. Applicant re-alleges the allegations in Paragraphs 1 through 25.

**ANSWER:** Applicant incorporates by reference and re-alleges each and every answer to Opposer's allegations contained in numerical Paragraphs 1 through 25 as though fully set forth herein.

27. Applicant filed its application for Applicant's Mark under Trademark Act Section 1(b), requiring a *bona fide* intent to use the mark in commerce with the identified services at the time of filing.

**ANSWER:** Applicant admits the allegations in Paragraph 27 of the Notice of



Opposition.

28. Applicant was not using its mark in connection with its services at the time of filing the application for the Applicant's Mark.

**ANSWER:** Applicant denies the allegations in Paragraph 28 of the Notice of Opposition.

29. Applicant did not have a *bona fide* use of Applicant's Mark in connection with the identified services at the time of filing.

**ANSWER:** Applicant denies the allegations in Paragraph 29 of the Notice of Opposition.

30. Applicant did not have a *bona fide* intent to use Applicant's Mark in connection with the identified services at the time of filing.

**ANSWER:** Applicant denies the allegations in Paragraph 30 of the Notice of Opposition.

31. Applicant does not now have a *bona fide* intent to use Applicant's Mark in connection with the identified services.

**ANSWER:** Applicant denies the allegations in Paragraph 29 of the Notice of Opposition.

WHEREFORE, Opposer prays that this Notice of Opposition to Application No. 97/432,439 be sustained and that Opposer be granted such further relief as the circumstances of the case may warrant and require.

**ANSWER:** Applicant denies that Opposer is entitled to the relief requested above.

Applicant reserves the right to assert additional defenses that it learns of through discovery in this action.

Respectfully submitted,

Dated April 15, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION has been filed with the Trademark Trial and Appeal Board with the required fees on April 15, 2024. Service of the Answer to Notice of Opposition is deemed completed by the Trademark Trial and Appeal Board's Notice of Institution pursuant to Trademark Trial and Appeal Board Manual of Procedure § 309.02 (c).

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