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

Proceeding no.	91308823
Party	Defendant Chen, Shiwen
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Submission	Pleadings and Related Motions Answer
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Date	09/13/2026
Attachments	Answer_Opposition_91308823_LAST_NERVE.pdf(79664 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WU TING, Opposer, v. SHIWEN CHEN, Applicant.	Opposition No. 91308823 Application Serial No. 98441025 Mark: LAST NERVE International Class 4

ANSWER TO NOTICE OF OPPOSITION

Applicant Shiwen Chen ("Applicant"), by and through undersigned counsel, answers the Notice of Opposition filed by Wu Ting ("Opposer") as follows. Any allegation not expressly admitted is denied.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies them.

2. Applicant admits that the records of the United States Patent and Trademark Office identify Applicant as an individual and citizen of the People's Republic of China and list the address alleged in paragraph 2. Applicant denies any remaining allegations in paragraph 2.

3. Applicant admits that Application Serial No. 98441025 seeks registration of LAST NERVE for "Candles; Tapers; Candles for night lights; Aromatherapy fragrance candles; Perfumed candles; Scented candles" in International Class 4. Applicant denies any characterization of LAST NERVE as an "alleged mark" and denies any remaining allegations in paragraph 3.

4. Applicant admits that Application Serial No. 98441025 was filed on March 8, 2024, under Section 1(b) of the Trademark Act based on Applicant's bona fide intention to use LAST NERVE in commerce in connection with the identified goods. Applicant denies any remaining allegations in paragraph 4.

5. Applicant admits only that the phrase "last nerve" may be used as part of an idiomatic expression in some contexts. Applicant denies the remaining allegations in paragraph 5, including any implication that the wording is incapable of identifying the source of candles when used as a trademark.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the identity, extent, continuity, sales, promotion, or consumer exposure of the alleged third-party uses referenced in paragraph 6 and Exhibit A, and therefore denies those allegations. Applicant further denies that the cited material establishes that relevant consumers would perceive Applicant's mark merely as informational or decorative when used by Applicant as a source identifier.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the identity, extent, continuity, sales, promotion, or consumer exposure of the alleged third-party uses referenced in paragraph 7 and Exhibit B, and therefore denies those allegations. Applicant further denies that alleged uses on products other than Applicant's goods establish that LAST NERVE fails to function as a trademark for Applicant's goods.

8. Denied.

9. Denied.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and therefore denies them.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Opposer's activities and uses in paragraph 11 and therefore denies them.

12. Applicant admits only that, if a registration issues, it will be entitled to the legal presumptions and benefits provided by the Trademark Act, subject to all limitations and defenses provided by law. Applicant denies the remaining allegations and characterizations in paragraph 12.

13. Denied.

14. Denied.

15. Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations.

16. Applicant incorporates its responses to paragraphs 1 through 15 as though fully set forth herein. Applicant denies any allegation inconsistent with those responses.

17. Applicant admits only that "last nerve" may appear in an idiomatic expression in some contexts. Applicant denies the remaining allegations in paragraph 17 and specifically denies that LAST NERVE, as used by Applicant in connection with the identified goods, merely conveys an informational message or sentiment rather than identifying source.

18. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the alleged third-party uses in paragraph 18 and therefore denies them. Applicant further denies that isolated or marketplace uses by others establish that LAST NERVE is a common message incapable of functioning as Applicant's trademark.

19. Denied.

20. Denied.

21. Denied.

DEFENSES

1. Failure to Prove Failure to Function. Opposer bears the burden of proving that relevant consumers would perceive LAST NERVE, as used by Applicant in connection with the identified goods, merely as an ordinary informational message or ornamentation and not as a source identifier. The allegations and materials identified in the Notice of Opposition do not establish that proposition. The wording LAST NERVE is at most suggestive when applied to candles and is capable of distinguishing Applicant's goods.

2. Third Party Material Does Not Establish Consumer Perception of Applicant's Use. The existence of third-party listings or decorative uses does not, without competent evidence concerning the nature, extent, duration, commercial impact, and relevant consumer exposure of those uses, establish that Applicant's use of LAST NERVE cannot function as a trademark. Consumer perception must be evaluated in the context of Applicant's own use of the mark on or in connection with the identified goods.

3. No Entitlement to the Requested Relief. Because LAST NERVE is capable of functioning and will function as a source identifier for Applicant's goods, Opposer is not entitled to sustainment of the opposition or refusal of Application Serial No. 98441025.

PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice, that judgment be entered in Applicant's favor, and that Application Serial No. 98441025 be permitted to proceed toward registration.

Date: September 13, 2026

Respectfully submitted,

SHIWEN CHEN

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Answer to Notice of Opposition was served by email on September 13, 2026, upon counsel for Opposer at the following addresses:

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