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

Proceeding	92070635
Party	Defendant nlyte Software Limited
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Date	04/29/2019
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The Weidt Group, Inc.,)	Cancellation No. 92070635
)	
Petitioner,)	Registration No. 5522010
)	
v.)	Mark: NEO (NLYTE ENERGY OPTIMIZER)
)	
nlyte Software Limited,)	Registered: July 24, 2018
)	
Respondent.)	

ANSWER

Respondent, nlyte Software Limited, answers the Petition for Cancellation filed by Petitioner, The Weidt Group, Inc., as follows:

Respondent denies that Petitioner is or will be damaged by Respondent’s registered mark shown in Registration No. 5,522, 010 (“Registered Mark”) and that Respondent’s Registered Mark should be cancelled. Respondent does not oppose Petitioner’s Motion for Consolidation.

1. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies the same.
2. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies the same.
3. Respondent admits USPTO records indicate that Petitioner is the record owner of U.S. Trademark Registration No. 4,429,793 for the mark NEO NET ENERGY OPTIMIZER for “providing on-line non-downloadable software for use in building and analyzing energy models” in International Class 42, with an alleged first-use-in-commerce date of at least as early as July 19, 2012.
4. Respondent admits the allegations in Paragraph 4.

5. Respondent admits USPTO records indicate that Petitioner's application filing date and constructive use date for its NEO NET ENERGY OPTIMIZER mark covered by Petitioner's registration of that mark is August 23, 2012. Respondent is without sufficient knowledge to form a belief as to the truth of the remaining allegations in Paragraph 5 and therefore denies them.

6. Respondent admits USPTO records indicate that Petitioner's registration of its NEO NET ENERGY OPTIMIZER mark issued on the Principal Register of the USPTO on November 5, 2013.

7. Respondent admits USPTO records indicate that Petitioner is also the record owner of Application Serial No. 88/074,385 for the standard-character NEO mark for "providing online non-downloadable software for use in building and analyzing energy models," claiming an alleged first-use-in-commerce date of at least as early as July 19, 2012.

8. Respondent admits the allegations in Paragraph 8.

9. Respondent admits the allegations in Paragraph 9.

10. Respondent admits the allegations in Paragraph 10.

11. Respondent admits the allegations in Paragraph 11 and further alleges that the filings associated with its Registered Mark speak for themselves.

12. Respondent admits the allegations in Paragraph 12.

13. Respondent admits the allegations in Paragraph 13.

14. Respondent restates and incorporates by reference its responses to Paragraphs 1 through 13 as if fully set forth herein.

15. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

16. Respondent admits that its registration is not based on §1(a) of the Trademark Act and does not identify a date of first use in U.S. commerce. Respondent denies all other allegations in Paragraph 16.

17. Respondent admits that Petitioner's constructive use date of August 23, 2012 for the NEO NET ENERGY OPTIMIZER mark identified in Respondent's registration and its November 5, 2013, registration date predate Petitioner's August 23, 2016 filing date by over two years.

Respondent is without sufficient knowledge to form a belief as to the truth of the remaining allegations in Paragraph 17 and therefore denies them.

18. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies the same.

19. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies the same.

20. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 20 and therefore denies the same.

21. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies the same.

22. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies the same.

23. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 23 and therefore denies the same.

24. Respondent admits the allegations in Paragraph 24.

25. Respondent denies the allegations in Paragraph 25.

26. Respondent denies the allegations in Paragraph 26.

27. Respondent denies the allegations in Paragraph 27.

28. Respondent denies the allegations in Paragraph 28.

29. Respondent denies the allegations in Paragraph 29.

30. Respondent denies the allegations in Paragraph 30.

31. Respondent denies the allegations in Paragraph 31.

32. Respondent denies the allegations in Paragraph 32.
33. Respondent denies the allegations in Paragraph 33.
34. Respondent is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies the same.
35. Respondent denies the allegations in Paragraph 35.
36. Respondent denies the allegations in Paragraph 36.
37. Respondent denies the allegations in Paragraph 37.
38. Respondent denies the allegations in Paragraph 38.
39. Respondent denies the allegations in Paragraph 39.
40. Respondent denies the allegations in Paragraph 40.
41. Respondent denies the allegations in Paragraph 41.
42. Respondent denies the allegations in Paragraph 42.
43. Respondent denies the allegations in Paragraph 43.
44. Respondent denies the allegations in Paragraph 44.
45. Respondent denies the allegations in Paragraph 45.

AFFIRMATIVE DEFENSES

Respondent asserts the following affirmative defenses:

1. Petitioner's Petition for Cancellation fails to state a claim upon which relief may be granted.
2. Petitioner will not be damaged by Respondent's use or registration of its Registered Mark.
3. There is no likelihood of confusion, mistake or deception between Respondent's Registered Mark and Petitioner's NEO and NEO NET ENERGY OPTIMIZER marks.

4. Respondent reserves the right to assert additional affirmative defenses if they become known.

Respectfully submitted,

NLYTE SOFTWARE LIMITED

By its Attorneys,

Date: April 29, 2019

/Albert Bianchi, Jr./

Laura M. Konkel

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CERTIFICATE OF SERVICE AND MAILING

I hereby certify that on April 29, 2019, a true and correct copy of the foregoing Answer is being served upon Opposer's Attorney of Record via email:

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and that a copy of the same was filed electronically on the same date via ESTTA with the Trademark Trial and Appeal Board.

/Albert Bianchi, Jr./
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