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

Proceeding	92073992
Party	Defendant J-1 Trading Wholesale, Inc.
Correspondence Address	J 1 TRADING WHOLESALE INC 537 EL SUR ST DUARTE, CA 91010-3156 UNITED STATES no email provided 626-589-1029
Submission	Answer
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Date	05/29/2020
Attachments	2020-05-29 - Answer of Respondent - Nubee.pdf(196192 bytes)

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

ADMAR INTERNATIONAL, INC.

Petitioner,

v.

J-1 TRADING WHOLESALE, INC.,

Respondent.

Cancellation No. 92073992

Registration No. 4514183

ANSWER OF RESPONDENT

Respondent J-1 Trading Wholesale, Inc. (“Respondent”), by and through its attorney, hereby answers the numbered paragraphs of the Petition for Cancellation filed by Admar International, Inc. (“Petitioner”) as follows:

1. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 1 is denied.

2. Admitted.

3. Admitted.

4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 4 is denied.

5. Denied.

6. Denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 7 is denied.

8. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 8 is denied.

9. Admitted.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

**GROUND FOR CANCELLATION –
ABANDONMENT AND FRAUD**

14. Denied.

AFFIRMATIVE DEFENSES

Respondent further defends by asserting the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE
Failure to State a Claim**

The Petition for Cancellation fails to state a claim upon which relief may be granted as Respondent never abandoned the NUBEE mark and has continuously used the NUBEE mark on the designated goods in commerce. In fact, Respondent recently filed a combined Sections 8 and 15 declaration on April 29, 2020. In addition, the NUBEE and NUBY marks are visually different when viewed in their entirety, and confusion among consumers is unlikely.

**SECOND AFFIRMATIVE DEFENSE
Lack of Similarity of the Goods**

The TMEP states that "... if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then even if the marks are identical, confusion is not likely." § 1207.01(a)(i). The fundamental inquiry in the likelihood of confusion analysis goes to "the cumulative effect or differences in the essential characteristics of the goods and the differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 U.S.P.Q. 24, 29 (C.C.P.A. 1976). In *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151 (C.C.P.A. 1978), the court held that RED ZINGER for herbal tea was not confusingly similar to ZINGERS for snack cakes, because an analysis of the actual relationship of the goods based on their individual characteristics is always required.

Here, the goods at issue are Respondent's goods and services listed in U.S. Registration No. 4,514,183 for non-medical "thermometers," and Petitioner's goods and services listed in U.S. Registration No. 2,335,700 for "infant pacifiers" and Petitioner's goods and services listed in U.S. Application No. 88634605 for "Babies' bottles; Baby bottle nipples; Baby bottle that plays sounds using wireless technology; Baby bottles; Baby feeding dummies; Baby feeding pacifiers; Baby nursers; Breast milk storage bottles; Breast pumps; Breast shields; Breast warmer pads for medical purposes; Dropper bottles for administering medication, sold empty; Droppers for administering medication, sold empty; Feeding bottle teats; Feeding bottles; Gum massaging instruments; Nasal aspirators; Nursing bottles; Pacifier clips; Pacifier cloth for attachment to infant pacifiers; Spoons for administering medicine; Teething rings; Thermometers for medical purposes; Thermometers for medical use; Bottle holders for holding babies' bottles, namely, holders for holding babies' bottles during feeding in the nature of flexible braces for wearing around the neck of the person holding a feeding baby; Bottle holders for holding babies' bottles, namely, holders for holding

babies' bottles in the nature of rigid braces for clamping to babies' seats during feeding; Clinical thermometers; Clips for pacifiers; Cups adapted for feeding babies and children; Dishes adapted for feeding babies and children; Disposable baby bottle liners; Disposable feeding bottle teats; Disposable teats being pacifiers for babies; Dummies for babies; Ear thermometers; Fever thermometers; Gum massagers for babies; Infrared thermometers for medical purposes; Nipples for baby bottles; Pacifiers for babies; Pouches specially adapted for holding pacifiers; Teats being pacifiers for babies; and Teething rings incorporating baby rattles.”

These goods differ substantially from each other. First, Respondent’s goods are wholly unrelated to the goods being offered by Petitioner, in the sense that Petitioner’s goods are intended for purchase and use for baby care and infant development. Petitioner’s goods are highly specialized in the baby care industry, as they offer goods primarily for aid in infant feeding and nursing, such as baby bottles, baby bottle nipples, nursing bottles, breast pumps, teething rings, infant pacifiers, and baby feeding pacifiers. As such, consumers will not confuse them with Respondent’s non-medical thermometers. Further, Petitioner’s goods are intended for purchase and use by a wholly different class of consumers than consumers who purchase Respondent’s goods. Petitioner’s goods are targeting those who are looking specifically for goods pertaining to baby care and infant development, while Respondent’s goods are targeting those looking to purchase thermometers. Thus, likelihood of confusion amongst consumers is low and Petitioner is not being damaged by Respondent’s registration of the NUBEE mark.

Also, the goods do not travel in the same channels of trade. There is no evidence that Respondent offers any goods that are intended for purchase and use for baby care and infant development. Because the goods differ so greatly and require different purchasing rituals, the goods are highly unlikely to travel in the same channels of trade.

PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully prays that the Board:

1. Dismiss the Petition for Cancellation in its entirety with prejudice;
2. Refuse registration of the Petitioner's Application Serial No. 88634605;
3. Grant Respondent such other and further relief as the Board deems just and proper.

DATED May 29, 2020.

Respectfully submitted,

By: /s/ Timothy T. Wang
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**ATTORNEY FOR RESPONDENT
J-1 TRADING WHOLESALE, INC.**

CERTIFICATE OF TRANSMISSION

I hereby certify that on the 29th day of May 2020, that the foregoing **ANSWER OF RESPONDENT** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/>.

By: /s/ Timothy T. Wang
Timothy T. Wang

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER OF RESPONDENT** has been served upon Robert M. Chiaviello, Jr. and colleagues by forwarding said copy on the 29th day of May 2020 via email to the email addresses on file for Petitioner:
bobc@nuby.com

By: /s/ Timothy T. Wang
Timothy T. Wang