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

Proceeding no.	92074728
Party	Plaintiff Naked Whey, Inc.
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Signature	/Cynthia A Gierhart/
Date	04/12/2022
Attachments	TTAB Notice of Disposition of Civil Action.pdf(419302 bytes )

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

NAKED WHEY, INC.,

Petitioner,

v.

N8KED BRANDS, INC.

Respondent.

Cancellation No.: 92074728

**Mark: N8KED**

**PETITIONER NAKED WHEY INC.'S NOTICE OF  
FINAL DETERMINATION OF CIVIL ACTION**

On April 12, 2021, the Board suspended this proceeding pending final determination of *Naked Whey, Inc. v. N8ked Brands, Inc.*, Civil Action No. No. 1:21-cv-21366-DPG (S.D. Fla., filed Apr. 8, 2021) (the “Civil Action”) (13 TTABVUE). The Board instructed the interested party to notify the Board within 20 days after final determination of the Civil Action, noting that “final determination” occurs when a “ruling that ends litigation has been rendered, and no appeal has been filed.” (13 TTABVUE 2). In accordance with the Board’s Order, Petitioner Naked Whey, Inc. (“Naked Whey” or “Petitioner”) hereby informs the Board that the district court, on February 28, 2022, entered Final Judgment in favor of Naked Whey, ordering cancellation of Respondent N8ked Brands, Inc.’s (“N8ked Brands”) N8KED registration (Reg. No. 5624960) (“N8KED Registration”). No appeal ensued after 30 days, constituting a final determination of the Civil Action. A copy of the district court’s Final Default Judgment order is attached as **Exhibit A**.

Specifically, the Court held, in part: “[t]he United States Patent & Trademark Office is hereby directed to cancel United States trademark registration No. 5624960 (“N8KED Registration”) for the word mark N8KED.” Ex. A (“Order”), at 3. Because the Civil Action

provided the remedy that Naked Whey sought in this cancellation proceeding (i.e., cancellation of the N8KED Registration), the determination in the Civil Action also resolves this Board proceeding. Naked Whey therefore respectfully requests that the Board close this proceeding and cancel the subject N8KED Registration.<sup>1</sup>

Date: April 12, 2022

Respectfully submitted,

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*Counsel for Petitioner Naked Whey, Inc.*

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<sup>1</sup> Additionally, Respondent N8ked Brands has failed to maintain counsel in this TTAB proceeding, despite the Board's two orders to show cause ordering N8ked Brands to obtain counsel. (15 TTABVUE; 16 TTABVUE). N8ked Brand's failure to obtain counsel represents independent grounds to enter default judgment against N8ked Brands in this proceeding and order the cancellation of the N8KED Registration.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF FINAL DETERMINATION OF CIVIL ACTION has been served, via electronic mail on the 12th day of April, 2022, and via overnight mail, on the 13th day of April, 2022, upon the following:

N8ked Brands, Inc.  
c/o David Whalen, CEO  
30 Belhome Avenue  
Brantford, Ontario N3t1S1  
Canada  
David@N8KED.com

HOLLAND & KNIGHT, LLP

/s/ R. David Donoghue  
R. David Donoghue

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 1:21-cv-21366-GAYLES/TORRES**

**NAKED WHEY, INC.,  
doing business as Naked Nutrition,**

Plaintiff,

v.

**N8KED BRANDS, INC.,**

Defendant.

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**FINAL DEFAULT JUDGMENT**

**THIS CAUSE** comes before the Court on Plaintiff Naked Whey, Inc.’s Motion for Entry of Final Default Judgment Against Defendant N8ked Brands Inc. (the “Motion”) [ECF No. 46]. The Court has reviewed the Motion and the record and is otherwise fully advised.

1. On April 8, 2021, Plaintiff brought this action against Defendant for federal and common law trademark infringement and unfair competition, trademark registration cancellation based on abandonment, and lack of a bona fide intent. [ECF No. 1].

2. On April 9, 2021, summons issued as to Defendant. [ECF No. 4]. On June 2, 2021, Defendant waived service. [ECF No. 17].

3. On August 2, 2021, Defendant filed a Motion to Dismiss, [ECF No. 20], which the parties fully briefed, *see* [ECF No. 21 & 24].

4. On November 3, 2021, Defendant’s counsel moved to withdraw from representation. [ECF No. 33]. On November 11, 2021, the Court granted the request and directed

Defendant to obtain counsel on or before December 13, 2021, noting that failure to do so would result in a default being entered against Defendant. [ECF No. 35].

5. On December 13, 2021, David Whalen, Defendant's Chief Executive Officer, requested an extension of time to obtain counsel, [ECF No. 37], which the Court granted on December 14, 2021, providing Mr. Whalen until January 14, 2022 to obtain new counsel, [ECF No. 38].

6. Defendant failed to timely obtain new counsel and no appearances were timely made. As a result, Plaintiff moved for an entry of default against Defendant on January 17, 2022. [ECF No. 40]. On January 18, 2022, Chief Magistrate Judge Edwin G. Torres<sup>1</sup> denied the request due to Plaintiff's failure to include a certificate of conferral or a certificate of service. [ECF No. 41]. On January 20, 2022, Plaintiff filed a Renewed Motion for Entry of Default Against Defendant (the "Renewed Motion") requesting the Court to enter a default against Defendant. [ECF No. 42]. On February 2, 2022, the Court granted the Renewed Motion and entered a default against Defendant. [ECF No. 45].

7. On February 15, 2022, Plaintiff filed the instant Motion at the Court's direction. *See id.* Plaintiff seeks an entry of default judgment, pursuant to Federal Rule of Civil Procedure 55(b), against Defendant for federal and common law trademark infringement and unfair competition, trademark registration cancellation based on abandonment, and lack of a bona fide intent, as well as attorney's fees and costs. [ECF No. 46].

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<sup>1</sup> On December 6, 2021, the Court referred this matter to Judge Torres, pursuant to 28 U.S.C. § 636(b)(1)(B), for a ruling on all pre-trial, non-dispositive matters and a report and recommendation on all dispositive matters. [ECF No. 36].

8. Based on the default, the Court accepts as true Plaintiff's claims for federal and common law trademark infringement and unfair competition, trademark registration cancellation based on abandonment, and lack of a bona fide intent.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff Naked Whey, Inc.'s Motion for Entry of Final Default Judgment Against Defendant N8ked Brands Inc., [ECF No. 46], is **GRANTED in part** and **DENIED in part**.
2. Pursuant to Federal Rule of Civil procedure 58(a), a final default judgment is entered in favor of Plaintiff Naked Whey, Inc. and against Defendant N8ked Brands Inc.
3. **Cancellation of the N8ked Registration:** The United States Patent & Trademark Office is hereby directed to cancel United States trademark registration No. 5624960 ("N8KED Registration") for the word mark N8KED.
4. **Permanent Injunctive Relief:** Defendant N8ked Brands Inc. and, where applicable, any related organizations, companies, including parents, officers, directors, managers, agents, owners, employees, representatives and attorneys, and all others acting under, or in concert with them, or with any of them, are hereby permanently restrained and enjoined from:
  - a. using "N8ked," "N8ked Brands," and/or any other N8KED-formative mark (collectively, "Defendant's Marks") in the United States in connection with the sale of dietary or nutritional supplements and related products, including, but not limited to, in advertising and promotional materials



directed to the United States or made available for shipping to the United States;


- b. falsely representing itself as being in any way associated with Plaintiff, including through sponsorship, authorization, or endorsement;
- c. engaging in any act that is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of Defendant are in any way endorsed by, approved by, and/or associated with Plaintiff;
- d. using any NAKED or NAKED-formative mark, or any confusingly similar trademarks;
- e. otherwise unfairly competing with Plaintiff; and
- f. effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth above.

5. **Compliance with permanent injunction pursuant to 15 U.S.C § 1116:** Within thirty (30) days after the service on Defendant of the permanent injunction, Defendant shall file with the Court and serve on Plaintiff's counsel a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

6. Upon consideration of the factual allegations and procedural history, the Court does not find this matter to be an exceptional case warranting the imposition of attorneys' fees. Therefore, Plaintiff's Motion is **DENIED** as to the request for attorneys' fees.

7. Taxable costs shall be awarded to Plaintiff pursuant to Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920 in an amount that shall be determined by the Court following Plaintiff's filing of a Bill of Costs.
8. The Court shall retain jurisdiction over this matter to enforce this Final Default Judgment and the permanent injunction.
9. This case is **CLOSED**.

**DONE AND ORDERED** in Chambers in Miami, Florida, this 28th day of February, 2022.



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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE