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

Proceeding	92074728
Party	Defendant N8ked Brands Inc.
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Date	08/26/2020
Attachments	N8KED Answer to Petition for Cancellation.pdf(145957 bytes)

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

In the Matter of Registration No. 5,624,960
For the mark: N8KED
Registration Date: December 11, 2018

NAKED WHEY, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92074728
)	
N8KED BRANDS INC.,)	
)	
Registrant.)	
)	

REGISTRANT’S ANSWER

N8ked Brands Inc. (“Registrant”), through its attorneys, hereby answers the Petition for Cancellation filed by Naked Whey, Inc. (“Petitioner”), in like-numbered paragraphs.

The material prior to the numbered paragraphs in the Petition for Cancellation consists of prefatory content to which no response is required.

1. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner’s allegations in Paragraph 1 of the Petition for Cancellation and therefore denies same.
2. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner’s allegations in Paragraph 2 of the Petition for Cancellation and therefore denies same.
3. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner’s allegations in Paragraph 3 of the Petition for Cancellation.
4. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner’s allegations in Paragraph 4 of the Petition for Cancellation and therefore denies same.

5. Petitioner's allegations in Paragraph 5 of the Petition for Cancellation consist in part of legal arguments or statements of law to which no answer is required; Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner's remaining allegations in Paragraph 5 of the Petition for Cancellation and therefore denies same.

6. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner's allegations in Paragraph 6 of the Petition for Cancellation and therefore denies same.

7. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner's allegations in Paragraph 7 of the Petition for Cancellation and therefore denies same.

8. Petitioner's allegations in Paragraph 8 of the Petition for Cancellation consist of legal arguments or conclusions to which no answer is required; Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner's remaining allegations in Paragraph 8 of the Petition for Cancellation and therefore denies same.

9. Registrant admits Petitioner's allegations in Paragraph 9 of the Petition for Cancellation.

10. Registrant admits Petitioner's allegations in Paragraph 10 of the Petition for Cancellation.

11. Registrant admits Petitioner's allegations in Paragraph 11 of the Petition for Cancellation.

12. Registrant admits that it is a Canadian company and that it has manufactured and distributed its N8KED shakes and powders throughout Canada; Registrant further admits that its N8KED-branded shakes and powders have provided individuals with additional calories and proteins, among other health benefits.

13. Petitioner's allegations in Paragraph 13 of the Petition for Cancellation do not constitute a parsable English sentence, as Petitioner's use of the word "either" suggests a choice

between two possibilities, yet only one possibility is presented in Paragraph 13 (“Upon information and belief, and based on thorough investigation, [Registrant] either discontinued use of N8KED for ‘Dietary supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Vitamin supplements.’”) Registrant therefore denies same.

14. Registrant lacks knowledge sufficient to form a belief as to the truth of Petitioner’s allegations in Paragraph 14 of the Petition for Cancellation concerning Petitioner’s “Internet searches” and “attempts to purchase [Registrant’s] product” allegedly performed by an unspecified person or persons at an unspecified day/time and from an unspecified location or locations, and therefore denies same.

15. No response is necessary to Paragraph 15 of the Petition for Cancellation.

16. Registrant denies Petitioner’s allegations in Paragraph 16 of the Petition for Cancellation.

17. Registrant denies Petitioner’s allegations in Paragraph 17 of the Petition for Cancellation.

18. Petitioner’s allegations in Paragraph 18 of the Petition for Cancellation consist of legal arguments or conclusions to which no answer is required; to the extent an answer is required, Registrant denies same.

*** ***** ***

AFFIRMATIVE DEFENSES

1. The Petition for Cancellation is barred due to Petitioner’s failure to state a claim; Petitioner does not state a cause of action that may be maintained, and thus is not entitled to any relief in this matter or against Registrant.
2. The Petition for Cancellation is barred due to waiver.
3. The Petition for Cancellation is barred due to laches.

4. The Petition for Cancellation is barred due to acquiescence.
5. The Petition for Cancellation is barred due to estoppel.

RESERVATION OF DEFENSES

Registrant specifically reserves the right to interpose such other and further defenses as continuing investigation and discovery reveals.

*** ***** ***

WHEREFORE, Registrant prays that the Trademark Trial and Appeal Board deny the Petition for Cancellation and uphold U.S. Trademark Registration No. 5,624,960.

Date: August 26, 2020

/Sean Ploen/
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Certificate of Service

I, the undersigned attorney, hereby certify that I caused to be served a true and correct copy of the foregoing document upon the following parties in the manner indicated on this 26th day of August, 2020:

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By:

- U.S. Postal Service, ordinary First Class mail
- U.S. Postal Service, certified or registered mail
- Return receipt requested
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- Facsimile
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- Other (specify)

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