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

Proceeding	92074735
Party	Defendant Mohammad B. Chowdhury And Noya Distributors Inc.
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Date	08/26/2020
Attachments	Answer PADMA BRAND CLASSIC 92074735.pdf(203629 bytes)

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

Eastasia Food And Trading Inc,
Plaintiff,

v.

Mohammad B. Chowdhury;
Noya Distributors Inc.,
Defendants.

Cancellation: 92074735

Mark: PADMA BRAND CLASSIC

Serial No. 88263911

ANSWER

Defendants Mohammad B. Chowdhury and Noya Distributors Inc. (“Defendants”), by and through their counsel, for their Answer to the Petition for Cancellation (“Petition”) filed by Eastasia Food And Trading Inc (“Plaintiff”, “Petitioner”) on July 15, 2020, in the above-captioned matter, admit, deny, and aver as follows:

Responding to the unnumbered first paragraph of the Petition, Defendants ADMIT that they are the lawful owners of trademark PADMA BRAND CLASSIC (U.S. Registration No. 5843315). With respect to the reference to the petitioner-corporation and its subjective belief, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore DENY the same.

Defendants respond to the numbered paragraphs of the Petition with the same, like-numbered paragraphs as follows:

1. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Petition, especially because the paragraph is vague as it fails to unambiguously identify the mark referenced therein by a serial number. Therefore, Defendants DENY the allegations.

2. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Petition, and therefore

DENY the allegation.

3. Based on their review of the public records on file with the USPTO, Defendants ADMIT the allegations contained in Paragraph 3 of the Petition.

4. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Petition, and therefore DENY the allegation.

5. Defendants ADMIT that they filed the registration application for PADMA BRAND CLASSIC (U.S. Registration No. 5843315) on January 16, 2019 and that the date of first use in commerce stated on the application was December 15, 2014. To the extent that this allegation calls for a legal conclusion pertaining to the entitlement to a claim, no response is required.

6. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Petition, and therefore DENY the allegation.

7. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Petition, and therefore DENY the allegation.

8. Defendants DENY the allegations set forth in Paragraph 8 of the Petition. Defendants further DENY the allegations on the basis that the Petitioner was incorporated in the state of New York on November 22, 2004, therefore any assertions by the Petitioner that it has first used the mark PADMA BRAND CLASSIC in commerce prior to that date, e.g., April 2004, are fraudulent misrepresentations to the USPTO. *See* U.S. Trademark Application Serial No. 90046096.

9. Defendants DENY the allegations set forth in Paragraph 9 of the Petition.

10. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Petition, and therefore DENY the allegation.

11. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Petition, and therefore DENY the allegation.

12. Defendants DENY the allegations set forth in Paragraph 12 of the Petition.

13. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 of the Petition, and therefore DENY the allegation.

14. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of the Petition, and therefore DENY the allegation.

15. Defendants DENY the allegations set forth in Paragraph 15 of the Petition.

16. Defendants DENY the allegations set forth in Paragraph 16 of the Petition.

17. Defendants ADMIT the allegations set forth in Paragraph 17 of the Petition and on the basis of which further states that no consent or permission from the Petitioner is required because Defendants are the lawful owner of the mark PADMA BRAND CLASSIC (U.S. Registration No. 5843315).

18. Defendants DENY the allegations set forth in Paragraph 18 of the Petition.

19. Defendants DENY the allegations set forth in Paragraph 19 of the Petition.

20. Defendants repeat Paragraphs 1-19 of this Answer.

21. Defendants DENY the allegations set forth in Paragraph 21 of the Petition.

22. Defendants DENY the allegations set forth in Paragraph 22 of the Petition.

23. Defendants DENY the allegations set forth in Paragraph 23 of the Petition.

24. Defendants DENY the allegations set forth in Paragraph 24 of the Petition.

25. Defendants DENY the allegations set forth in Paragraph 25 of the Petition.

26. Defendants DENY the allegations set forth in Paragraph 26 of the Petition.

27. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 27 of the Petition, and therefore

DENY the allegation. Defendants further DENY the allegation to the extent that the declaration is characterized as “false and fraudulent.”

28. Defendants DENY the allegations set forth in Paragraph 28 of the Petition.

29. Defendants DENY the allegations set forth in Paragraph 29 of the Petition.

30. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 30 of the Petition, and therefore DENY the allegation. Defendants further DENY the allegation to the extent that the declaration is characterized as “false and fraudulent” and the acts as “knowing [sic] fraudulent.”

31. Defendants repeat Paragraphs 1-30 of this Answer.

32. Defendants DENY the allegations set forth in Paragraph 32 of the Petition. To the extent that this allegation calls for a legal conclusion pertaining to void ab initio, no response is required.

33. Defendants DENY the allegations set forth in Paragraph 33 of the Petition.

34. Defendants DENY the allegations set forth in Paragraph 34 of the Petition.

35. Defendants DENY the allegations set forth in Paragraph 35 of the Petition.

36. Defendants DENY the allegations set forth in Paragraph 36 of the Petition.

37. Defendants DENY the allegations set forth in Paragraph 37 of the Petition.

38. Defendants DENY the allegations set forth in Paragraph 38 of the Petition.

39. Defendants DENY the allegations set forth in Paragraph 39 of the Petition.

40. Defendants DENY the allegations set forth in Paragraph 40 of the Petition.

41. Defendants DENY the allegations set forth in Paragraph 41 of the Petition.

42. Defendants DENY the allegations set forth in Paragraph 42 of the Petition.

43. Defendants DENY the allegations set forth in Paragraph 43 of the Petition.

44. Defendants DENY the allegations set forth in Paragraph 44 of the Petition.

AFFIRMATIVE DEFENSE

FURTHERMORE, Defendants allege the following affirmative defenses:

1. First Affirmative Defense: The Petition for Cancellation fails to state a claim upon

which relief can be granted.

2. Second Affirmative Defense: Defendants are informed and believe, and on this basis assert that the Petition for Cancellation is barred by the equitable doctrine of laches due to Petitioner's unreasonable delay in bringing this action.

3. Third Affirmative Defense: Defendants are informed and believe, and on this basis assert that the Petition for Cancellation is barred by the equitable doctrine of unclean hands because Petitioner, by its own conduct, has acted in such a way as to preclude any recovery against Defendants.

4. Fourth Affirmative Defense: Defendants are informed and believe, and on this basis assert that the Petition for Cancellation is barred by the equitable doctrine of acquiescence because Petitioner, by its own conduct, has affirmatively acted in a manner consistent with its acquiescence to Defendants' use and registration of their mark.

5. Fifth Affirmative Defense: Defendants are informed and believe, and on this basis assert that the Petition for Cancellation is barred by the equitable doctrine of estoppel.

6. Sixth Affirmative Defense: Defendants are informed and believe, and on this basis assert that Petitioner has committed fraud on the USPTO by asserting that its first date of use of the mark PADMA BRAND CLASSIC in commerce was April 2004 in the U.S. Trademark Application Serial No. 90046096 and by asserting that its legal entity type is limited liability company instead of corporation.

7. Defendants reserve the right upon further investigation to add affirmative defenses and any potential counterclaims.

WHEREFORE, Defendants respectfully request that Petitioner's claims be denied in their entirety, that the instant cancellation proceeding be dismissed AND that judgment be entered in favor of the Defendants and against the Petitioner.

Respectfully submitted.

Date: August 26, 2020



Wensheng Ma

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER is being served by electronic mail to the opposing party below:

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Date: August 26, 2020



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