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

Proceeding	92075170
Party	Defendant Alfwear Inc.
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Signature	/s S. Brandon Owen /
Date	10/23/2020
Attachments	Answer to Petition for Cancellation.pdf(24247 bytes )

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

In the Matter of Trademark Application: Serial No. 76,572,171  
Mark: KÜHL  
Filed: January 23, 2004  
Registered: November 1, 2005  
Cancellation No. 92075170

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MAST-JAEGERMEISTER US, INC.,

Petitioner,

v.

ALFWEAR, INC.,

Respondent.

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**ANSWER TO PETITION FOR CANCELLATION**

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Respondent Alfwear, Inc. (“Respondent” or “Alfwear”), by and through its undersigned counsel, answers Petitioner Mast-Jaegermeister US, Inc.’s Petition for Cancellation as follows. As to the unnumbered allegations of the opening paragraph of the Petition, Respondent denies them.

1. With respect to the allegations of paragraph 1, Respondent admits that it owns Registration No. 3,011,867 for the mark KÜHL shown in the registration. As to the remaining allegations, Respondent responds that Registration No. 3,011,867 speaks for itself.

2. With respect to the allegations of paragraph 2, Respondent admits that it acquired this registration through assignment. With respect to the contents of the assignment, the document speaks for itself. Respondent denies that it acquired the registration without a bona fide intent to use the mark KÜHL in commerce. Respondent denies that the mark KÜHL is descriptive for the goods identified in Registration No. 3,011,867. Respondent otherwise denies the allegations of paragraph 2.

3. Respondent denies the allegations of paragraph 3.

4. Respondent denies the allegations of paragraph 4.

5. Respondent denies the allegations of paragraph 5.

6. Respondent denies the allegations of paragraph 6.

7. Respondent denies the allegations of paragraph 7.

8. Respondent denies the allegations of paragraph 8.

9. Respondent denies the allegations of paragraph 9.

10. Respondent admits that it filed a complaint for trademark infringement and dilution against Petitioner. The complaint speaks for itself as to its contents. Respondent specifically denies that Petitioner’s use of the term KÜHL is descriptive. As to the allegations of

paragraph 10 regarding Respondent's positions in the lawsuit, the filings in the trademark infringement and dilution lawsuit speak for themselves. Respondent otherwise denies the allegations of paragraph 10.

11. Respondent denies that Petitioner will be damaged by Respondent's registration. Respondent denies that Respondent's registration will damage any third parties and also denies that any such damage is irrelevant to Petitioner. Respondent lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations regarding examples of third-party uses of kühl or kuhl and on that ground denies them. Respondent otherwise denies the allegations of paragraph 11.

Respondent further denies that Petitioner is entitled to any relief.

Respondent denies each and every allegation of the Petition not specifically and expressly admitted.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE** **(Failure to State Claim)**

1. The Petition fails, in whole or in part, to state a claim upon which relief can be granted. Respondent's mark was registered more than five years ago. Petitioner cannot seek to cancel the registration on the ground that the mark is descriptive, deceptive, or deceptively misdescriptive.

#### **SECOND AFFIRMATIVE DEFENSE** **(Waiver, Estoppel, Consent and Ratification)**

2. On information and belief, the Petition fails, in whole or in part, under the doctrines of waiver, estoppel, consent, and ratification.

**THIRD AFFIRMATIVE DEFENSE**  
**(Acquiescence)**

3. On information and belief, the Petition fails, in whole or in part, under the doctrine of acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Laches)**

4. On information and belief, the Petition fails, in whole or in part, under the doctrine of laches.

**OTHER AFFIRMATIVE DEFENSES RESERVED**

5. Respondent reserves the right to assert any additional affirmative defenses as may be warranted by discovery in this matter.

6. Respondent reserves the right to assert additional claims as discovery progresses.

**REQUEST FOR RELIEF**

WHEREFORE, Respondent requests that the Trademark Trial and Appeal Board dismiss Petitioner's Petition.

DATED this 23rd day of October, 2020.

RAY QUINNEY & NEBEKER P.C.

/s S. Brandon Owen /

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S. Brandon Owen  
Adam K. Richards

/s Trent Baker/

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*Attorneys for Respondent Alfwear, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **ANSWER TO PETITION FOR CANCELLATION** was served on counsel for Petitioner by forwarding said copy on this 23rd day of October, 2020, via email to:

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DATED this 23rd day of October, 2020.

/s Kelly D. Pickering /  
Kelly D. Pickering

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