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

Proceeding	92077411
Party	Defendant Oh!Nutrition LLC
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Submission	Answer
Filer's Name	Michael L. Lovitz
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Date	10/30/2021
Attachments	Answer to petition to cancel.pdf(69809 bytes )

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

Seoul Trading USA Co. :  
 :  
Petitioner, :  
 :  
v. : Cancellation No. 92077411  
 :  
Oh! Nutrition LLC :  
 : Attorney Docket No. O1003-9001  
Registrant. :

**ANSWER TO PETITION FOR  
CANCELLATION OF REGISTRATION**

Oh!Nutrition LLC, an Arizona limited liability company having a business address at 3020 Old Ranch Parkway, Suite 300, Seal Beach, CA 90640 (“Registrant”), hereby responds to the Petition for Cancellation filed by Seoul Trading USA Co., a New Jersey corporation having a business address at 360 South Van Brunt Street, Englewood, NJ 07631 (“Petitioner”) with respect to U.S. Registration No. 4,993,745 (the “Registration”):

1. Registrant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph, and therefore denies the same.
2. Registrant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph, and therefore denies the same.
3. Registrant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph, and therefore denies the same.
4. Denied. Registrant is without knowledge or information as to Petitioner’s beliefs; however, to the extent that this paragraph is alleging that Registrant is not currently using the Registration in commerce in connection with the goods identified therein, Registrant denies such allegations.

5. Denied. Registrant has since 2016 made commercial use of the mark of the Registration and continues to make use of such mark, and Registration further states that at no time has commercial use of such mark been discontinued.

6. Denied. Registrant denies that it has abandoned its OH!VEGAN & Design trademark, and therefore also denies that its registration is subject to cancellation under Section 14 of the Trademark Act. Registrant therefore requests this Petition be dismissed, with prejudice.

### **AFFIRMATIVE DEFENSES**

- A. Petitioner lacks standing to bring the instant cancellation proceeding.
- B. Petitioner has failed to state a claim upon which relief may be granted.
- C. Petitioner has failed to plead any valid rights upon which it relies in support of the instant Petition for Cancellation.
- D. Petitioner has failed to plead any rights in its O! VEGAN & Design trademark that predate those of Registrant in its OH!VEGAN & Design mark.
- E. Petitioner cannot demonstrate injury to any valid U.S. rights that Petitioner may establish during the cancellation proceeding.
- F. Petitioner has failed to identify any actual harm it has suffered, or will suffer, from the registration sought to be cancelled in that no final refusal has been issued in the matter of Petitioner's pending trademark application, U.S. Application Serial No. 90476692 (the "Application").
- G. Petitioner's application is invalid for fraud since Petitioner has never made valid commercial use of the mark of the Application in the U.S., and the statements contained in the Application whereby Petitioner alleges use of such mark in commerce constituted false and material representations with the intent to deceive the USPTO.

WHEREFORE, Registrant prays that this Cancellation proceeding be dismissed, with prejudice.

Respectfully submitted,

Dated: October 30, 2021

By:           /michael l lovitz/            
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Attorneys for Registrant

**CERTIFICATE OF SERVICE**

I, Michael L. Lovitz, hereby certify that on October 30, 2021, a true and correct copy of the foregoing **Answer to Petition for Cancellation of Registration** was served upon counsel of record by e-mail at the following address:

Michael N. Mercanti, Esq.  
LUCAS & MERCANTI LLP

mnm@lmiplaw.com, with copy to info@lmiplaw.com

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/michael l lovitz/  
Michael L. Lovitz, Esq.