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

Proceeding no.	92078906
Party	Defendant Purfoods, LLC
Correspondence address	PURFOODS, LLC 3210 SE CORPORATE WOODS DRIVE ANKENY, IA 50021 UNITED STATES Primary email: help@purfoods.com No phone number provided
Submission	Answer
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Date	03/07/2022
Attachments	Moms Meals Answer to Nourishcare Petition for Cancellation.pdf(157239 bytes)

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

<p>MY OWN MEALS, INC.,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>PURFOODS, LLC,</p> <p style="padding-left: 40px;">Registrant.</p>	<p>Opposition No: 92078906</p> <p>In the matter of:</p> <p>Registration No. 4638408 Mark: MOM'S MEALS NOURISHCARE Registration Date: April 9, 2013</p>
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REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION

Registrant, Purfoods, LLC, ("Registrant") hereby answers the Petition for Cancellation filed by Petitioner, My Own Meals, Inc. ("Petitioner").

With respect to the numbered paragraphs of the Notice, Registrant responds as follows:

1. Denied that Petitioner will be damaged by Registration No. 4,638,408 for the mark MOM'S MEALS NOURISHCARE. Registrant is without sufficient knowledge as to the remaining allegations of paragraph 1, and on that basis denies the allegations.
2. Admitted.

BACKGROUND

3. Admitted that Petitioner is the listed as the owner of record with respect to United States Trademark Registration Nos. 1,470,809, 1,548,528, 3,964,874, 5,631,463 and 6,067,075

registered respectively on December 29, 1987, July 18, 1989, May 24, 2011, December 18, 2018, and June 2, 2020. Registrant is without sufficient knowledge as to the remaining allegations of paragraph 3, and on that basis denies the allegations.

4. Admitted that Petitioner is listed as the Applicant of record for Application Serial No. 88/509,153, which stands rejected by USPTO. Registrant is without sufficient knowledge as to the remaining allegations, and on that basis denies the allegations.

5. Registrant is without sufficient knowledge as to the allegations of paragraph 5, and on that basis denies the allegations.

6. Registrant is without sufficient knowledge as to the allegations of paragraph 6, and on that basis denies the allegations.

7. Admitted that Petitioner filed Application Serial No. 85/039,297, and submits that the document speaks for itself.

8. Admitted that Petitioner filed Application Serial No. 73/761,781, and submits that the document speaks for itself.

9. Admitted that Petitioner filed Application Serial No. 85/039,297 and submits that the document speaks for itself.

10. Admitted that Petitioner filed Application Serial No. 87/862,862 and submits that the document speaks for itself.

11. Admitted that Petitioner filed Application Serial No. 88/475,046 and submits that the document speaks for itself.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Registrant is without sufficient knowledge as to the allegations of paragraph 16, and on that basis denies the allegations.

17. Admitted that Petitioner is listed as the Applicant of record for Application Serial No. 88/509,153 and submits that the document speaks for itself.

18. Admitted that Petitioner filed Application Serial No. 86/128,595, and submits that the document speaks for itself.

19. Admitted that Reg. No. 4,638,408 registered on November 11, 2014, and submits that the document speaks for itself.

20. Admitted that USPTO issued an Office Action in U.S. Serial No. 88/509,153 and submits that the document speaks for itself.

COUNT I – ABANDONMENT OF MOM’S MEALS DESIGN MARK

21. This is a statement reincorporating Petitioner’s allegations in the prior paragraphs of the Petition to Cancel, to which no response is required. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Petition to Cancel.

22. Denied.

23. Admitted that the goods listed in Registration No. 4,638,408 are listed as: “Prepared, packaged meals consisting primarily of meat, fish, poultry or vegetables.”

24. Denied.

25. Denied.

26. Denied.

27. Admitted that during the 30(b)(6) deposition, a non-lawyer representative of Registrant answered questions, and subject to objection by counsel, without context or background to understand how the Trademark Office defines “use” in support of a trademark registration. The remaining allegations of paragraph 27 are denied.

28. Admitted that Registrant filed a Section 8 and 15 combined affidavit in Registration No. 4,638,408 on October 21, 2020.

29. Admitted that during the 30(b)(6) deposition, a non-lawyer representative of Registrant answered questions, subject to objection by counsel, without context or background to understand how the Trademark Office defines “use” in support of a trademark registration.

30. Denied.

31. Denied.

32. Denied.

33. Admitted.

34. Denied.

35. Denied.

**COUNT II – MOM’S MEALS DESIGN MARK IS VOID AB INITIO FOR FRAUD ON
THE USPTO BASED ON NON-USE**

36. This is a statement reincorporating Petitioner’s allegations in the prior paragraphs of the Second Amended Petition to Cancel, to which no response is required. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Second Amended Petition to Cancel.

37. Denied.

38. Denied.

39. Registrant admits that it submitted a declaration in support of Registration No. 4,638,408 and that document speaks for itself.

40. Registrant admits that it submitted a declaration in support of Registration No. 4,638,408 and that document speaks for itself.

41. Denied.

42. Registrant admits that it submitted a declaration in support of Registration No. 4,638,408 on October 21, 2020. The remaining allegations of paragraph 42 are denied.

43. Admitted that during the 30(b)(6) deposition, a non-lawyer representative of Registrant was asked questions, subject to objection by counsel, without context or background to understand how the Trademark Office defines “use” in support of a trademark registration.

44. Denied.

45. This statement does not require a response. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Petition to Cancel.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. This statement does not require a response. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Petition to Cancel.

51. Denied.

52. This statement does not require a response. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Petition to Cancel.

53. Denied.

**COUNT III – REGISTRANT’S TRADEMARK REGISTRATION NO. 4,638,408 IS VOID
FOR FRAUD ON THE USPTO BASED ON PRIOR USER**

54. This is a statement reincorporating Petitioner’s allegations in the prior paragraphs of the Petition to Cancel, to which no response is required. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Petition to Cancel.

55. Denied.

56. Registrant is without sufficient knowledge as to the allegations of paragraph 64, and on that basis denies the allegations.

57. Denied.

58. Denied.

59. Denied.

60. This statement purports to recite case law pertaining to Petitioner’s burden of proof, to which it would not appear a response from Registrant is required. To the extent a response is required, Registrant reincorporates its responses to the prior paragraphs of the Second Amended Petition to Cancel.

61. Registrant is unable to understand the allegations of paragraph 61 and on that basis denies the same. To the extent a response is required, Registrant denies the allegations.

62. Registrant is unable to understand the allegations of paragraph 70 and on that basis denies the same. To the extent a response is required, Registrant denies the allegations.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Admitted that Registrant signed a declaration with the filing of its trademark Application Serial No. 86/128,595, and submits that the document speaks for itself.

68. Admitted that Registrant signed a declaration with the filing of its trademark Application Serial No. 86/128,595, and submits that the document speaks for itself.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

PRAYER FOR RELIEF

The remainder of the Notice constitutes Petitioner's request for relief to which no responsive pleading is necessary. To the extent a responsive pleading is required, Registrant denies that Petitioner is entitled to the relief sought. All allegations that have not been specifically admitted are hereby denied.

AFFIRMATIVE DEFENSES

In addition to the foregoing, and as separate and distinct affirmative defenses to Petitioner's claims, Registrant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of laches. More particularly, Petitioner unreasonably delayed in bringing the cancellation proceeding as Petitioner had constructive

notice of Registration No. 4,638,408 which issued more than 7 years ago and Registrant's marketing activities relating to its "MOM'S MEALS NOURISHCARE" trademark, yet let them go unabated. Further, Petitioner has had actual knowledge of Registrant since as least as early as 2010 and took no steps at that time to place Registrant on notice of its alleged rights or take any action against Petitioner, as admitted through deposition testimony in a related administrative proceeding. Registrant has been prejudiced in view of this unreasonable delay by investing in its marketing and sales of its "MOM'S MEALS NOURISHCARE" goods that it would not have done had Petitioner filed its Petition for Cancellation earlier.

SECOND AFFIRMATIVE DEFENSE

To the extent the Petition includes allegations of fraud, such allegations are not plead with particularity and do not meet either the standards of the Federal Rules of Civil Procedure, as interpreted in either *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1966 (2007) or *In re Bose*, 580 F.3d 1240, 91 U.S.P.Q.2d 1938 (Fed. Cir. 2009).

WHEREFORE, Registrant prays that the Petition for Cancellation be denied in its entirety with prejudice; and that any such further relief be granted as may be deemed appropriate.

Dated: March 7, 2022

Respectfully submitted,

/wendy k. marsh/

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ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Registrant's Answer to the Petition for Cancellation was served on this 7th day of March, 2022, by e-mail, addressed to Petitioner's attorney of record Michele S. Katz, Advitam IP, LLC, 160 N. Wacker Drive, Chicago, Illinois 60606.

/wendy k. marsh/

Wendy K. Marsh