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

Proceeding no.	92083962
Party	Defendant Fresh, Inc.
Correspondence address	FRESH, INC. 3/F 19 EAST 57TH STREET NEW YORK, NY 10022 UNITED STATES No email provided 312-984-3100
Submission	Answer
Filer's name	Nick Barnhorst
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Date	01/29/2024
Attachments	GLOW POWDER Cancellation Action - Fresh ANSWER 1.29.24.pdf(123666 bytes)

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

BUMP HEALTH, INC. Petitioner, v. FRESH, INC., Registrant.	Cancellation No. 92083962 Reg. No. 5633879 Mark: GLOW POWDER
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ANSWER TO THE PETITION FOR CANCELLATION

Registrant Fresh, Inc. (“Registrant”), owner of Reg. No. 5633879 for the mark GLOW POWDER in International Class 3, submits this Answer to the Petition to Cancel filed by Bump Health, Inc. (“Petitioner”).

Registrant responds, solely for this proceeding, to each of the grounds set forth in the Petition to Cancel as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1, and therefore denies same.
2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2, and therefore denies same.
3. Admitted to the extent that details on Exhibit 1 match the records of the USPTO.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4, and therefore denies same.
5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5, and therefore denies same.

6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6, and therefore denies same.

7. Admitted that Fresh, Inc. registered its GLOW POWDER mark in connection with the following class 03 goods: Non-medicated skin care preparations.

8. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8, and therefore denies same.

9. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9, and therefore denies same.

10. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10, and therefore denies same.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11, and therefore denies same.

12. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12, and therefore denies same.

13. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13, and therefore denies same.

14. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14, and therefore denies same.

15. Paragraph 15 contains legal conclusions to which no response is required. To the extent a response is required, Registrant denies the allegations within this Paragraph 15.

AFFIRMATIVE DEFENSES

First Affirmative Defense

i. Petitioner's Petition for Cancellation is barred by laches. Petitioner did not seek cancellation of the Respondent's registration for nearly 5 years following the registration date of the GLOW POWDER mark.

Second Affirmative Defense

ii. Petitioner's Petition for Cancellation is barred by acquiescence. Petitioner did not seek to cancel respondent's registration for such a long period of time that it amounts to a relinquishment of any claims by Petitioner to cancel it.

Third Affirmative Defense

iii. A number of third-party entities own allowed applications or registrations for, and use at common law, trademarks which are similar to Petitioner's Mark such that the designations in Petitioner's Mark are entitled to a narrow scope of protection. The word GLOW is a commonly used word in relation to class 03 goods. Therefore, the Petitioner cannot claim any exclusivity or monopoly over the word GLOW.


Registrant reserves the right to assert any and all other affirmative defenses of which Registrant becomes aware through discovery and factual development in this case.

WHEREFORE, Registrant requests that the Petition to Cancel be dismissed with prejudice and that the Board grant further relief as it shall deem appropriate.

Respectfully submitted.

Dated: January 29, 2024

Fresh, Inc.

By: 

Nick Barnhorst
General Counsel
3/F 19 East 57th Street
New York, NY 10022
(347) 897-6423

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Answer to the Petition for Cancellation has been forwarded via email to Petitioner at jtdb@pb-iplaw.com.

Dated: January 29, 2024

By: 

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General Counsel
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