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

Proceeding	91254642
Party	Plaintiff My Own Meals, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MY OWN MEALS, INC.,

Opposer,

v.

PURFOODS, LLC,

Applicant.

Consolidated Proceedings

Opposition No: 91254642 (Parent)
Cancellation No. 92073705

In the matter of:
Application Serial No. 88/611,072

Mark: MOM'S MEALS and design

**OPPOSER'S RESPONSE TO APPLICANT'S COMBINED MOTION FOR SUMMARY
JUDGMENT IN OPPOSITION AND MEMORANDUM IN SUPPORT**

Opposer, My Own Meals, Inc. ("Opposer") hereby submits this brief in opposition to Purfoods ("Applicant") Motion for Summary Judgment (hereinafter "Motion"). For the reasons set forth herein, Opposer respectfully requests that Applicant's Motion be denied.

I. INTRODUCTION

Applicant's Motion should be denied because Opposer's use was prior to Applicant's. Applicant's own documents and statements prove that there is a genuine dispute of material fact as to whether Applicant has shown its priority of use of the trademark and service mark. Moreover, Applicant seeks to bypass the discovery process in this matter and worse, Applicant seeks to use this motion practice to avoid having to explain what might amount to a fraud on the U.S. Patent and Trademark Office, as alleged in the Petition for Cancellation. Indeed, there are clear triable material issues of fact in connection with Opposer's claims. Applicant has failed to meet its burden and summary judgment is inappropriate.

II. FACTS

Opposer is the owner of various federally registered trademarks, known as 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 (“Opposer’s Registrations”). Opposer filed a use-based application for the mark M.O.M. Ser. No. 88/509,153 in International classes 29, 30, 35, 39, and 43 on July 11, 2019 (“Opposer’s M.O.M. App.”).

Opposer is one of the first companies to enter the shelf-stable meals market and is recognized as the creator of children’s shelf stable meals, the creator of the first dual certified kosher and halal shelf stable meals, the creator of kosher and halal related institutional meal programs, and the creator of US Military Religious Rations known as Meals Ready to Eat (MRE)-Kosher and Meals Ready to Eat (MRE)-Halal. In 1987, Opposer introduced a line of all-natural, no MSG, no preservatives shelf stable meals developed for the taste and nutritional needs of children ages 2-10.

On April 17, 1987, Opposer filed Application Serial No. 73/655,766 to register the mark MY OWN MEAL in International Class 29 in connection to the following goods: prepackaged prepared meals namely, meat and vegetable entrees, which registered on December 29, 1987 (Reg. No. 1,470,809). On November 4, 1988, Opposer filed Application Serial No. 73/761,781 to register mark MY OWN MEAL in International Class 30 in connection to the following goods: prepackaged, prepared pasta dinners, which registered on July 18, 1989 (Reg. No. 1,548,528). On May 14, 2010, Opposer filed Application Serial No. 85/039,297 to register the mark MY OWN MEAL and Design in International Class 29 in connection to the following goods: packaged meals consisting primarily of meat, fish, poultry or vegetables, which registered on

May 24, 2011 (Reg. No. 3,964,874). On April 4, 2018, Opposer filed Application Serial No. 87/862,862 to register the mark MY OWN MEAL and Design in International Class 29 in connection to the following goods: prepackaged prepared meals, namely, meat and vegetable entrees, which registered on December 18, 2018 (Reg. No. 5,631,463). As early as 1986, Opposer started using the mark MOM and M.O.M., an acronym for My Own Meals (hereinafter references to “MOM” include “M.O.M.”). *See* Declaration of Mary Anne Jackson attached hereto as Exhibit 1.

As early as 1988, Opposer’s PR campaigns used MOM in its press releases. Furthermore, as early as 1988, publications, television, radio and public speaking events referred to Opposer as MOM. (*See* Exhibits 4-5, sample of newspaper, magazine articles and public speaking announcements). Opposer has consistently and substantially exclusively been referred to as “MOM” in the food industry for over three (3) decades. *See* Exhibit 2.

On July 11, 2019, Opposer filed Application Serial No. 88/509,153 (currently pending) to register the mark M.O.M. in International Classes 29, 30, 35, 39 and 43. On May 12, 1999, Mom’s Meals, Ltd. filed Application Serial No. 75/703,467 to register the mark MOM’S MEALS in International Class 43 (hereinafter “MOM’S MEALS Word Mark”). The MOM’S MEALS Word Mark registered on February 27, 2001 (Reg. No. 2,430,824). On July 19, 2012, Applicant filed Application Serial No. 85/681,167 to register the mark MOM’S MEALS and Design including a ladle, (hereinafter “MOM’S MEALS Design Mark”) in International Class 42 in connection to the following services: “food preparation, namely, preparation of home cooked meals and preparation of frozen or shelf-stable meals; restaurant services featuring home delivery[.]”

Applicant's Vice President, Michael Lee Anderson, admitted that the MOM'S MEALS mark was never used in connection with restaurant services. *See* Exhibit 3, Michael Lee Anderson Deposition, 45 ¶¶18-22. Applicant's Vice President, Michael Lee Anderson, admitted that the MOM'S MEALS mark was never used in connection with catering. *See* Exhibit 3, Michael Lee Anderson Deposition, 46 ¶¶3-5. Applicant's Vice President, Michael Lee Anderson, admitted that the mark MOM'S MEALS NOURISHCARE is no longer in use. *See* Exhibit 3, Michael Lee Anderson Deposition, 70 ¶¶11, ¶¶23-24, 73 ¶¶15-18. Applicant's Vice President, Michael Lee Anderson, admitted that the design mark MOM'S MEALS with the ladle is no longer in use. *See* Exhibit 3, Michael Lee Anderson Deposition, 72 ¶¶11-19. Finally, Applicant's Vice President, Michael Lee Anderson, admitted that Applicant's newest 2019 logo replaces *all* prior logos. *See* Exhibit 3, Michael Lee Anderson Deposition, 70 ¶¶4-10.

III. ARGUMENT

A. Legal Standard for Summary Judgment

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). This burden is greater than the evidentiary burden at trial. *Gasser Chair Co. v. Infanti Chair Manufacturing Corp.*, 60 F.3d 770, 34 U.S.P.Q.2d 1822, 1824 (Fed. Cir. 1995). A motion for summary judgment is not a place to try issues of fact; instead, it is a place to determine whether any genuine issues of fact exist. *Dyneer Corp. v. Auto. Prods., plc*, 37 U.S.P.Q.2d 1251, 1254 (T.T.A.B. 1995). The nonmovant "need only present evidence from which a jury might return a verdict in [its] favor" to defeat a motion for summary judgment, and "the Board must draw all reasonable inferences in favor of the nonmovant." *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 202, 22 U.S.P.Q.2d

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