

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

In re: Application of Naked Juice Co. of Glendora, Inc.

Mark : NAKED
Serial No. : 78/687,007
Filing Date : August 5, 2005
Publication Date : August 22, 2006

Bear Naked, Inc.,)	
)	
Opposer,)	
)	Opposition No.:
v.)	
)	
Naked Juice Co. of Glendora, Inc.,)	
)	
Applicant.)	
)	

Notice of Opposition

Bear Naked, Inc., a Connecticut corporation having its principal place of business at One Selleck Street, Norwalk, Connecticut 06855 (“Bear Naked” or “Opposer”), believes it will be damaged by the registration of the mark NAKED for certain goods classified in International Classes 29 and 31, as sought to be registered by Naked Juice Co. of Glendora, Inc. (“Applicant”) in Application Serial No. 78/687,007, as published in the Official Gazette on August 22, 2006. Consequently, Bear Naked hereby opposes the registration of the mark NAKED for the following goods:

International Class 29 –

Protein based, nutrient-dense bars; processed nuts
Snack mix consisting primarily of processed fruits, processed nuts and/or raisins;
Yogurt

International Class 31 - Unprocessed nuts.

The grounds for opposition are as follows:

1. On August 5, 2005, Applicant filed an application to register the mark NAKED for various goods, as follows:

IC 29 - Protein based, nutrient-dense bars; processed nuts; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; soup; soy-based beverage used as a milk substitute; soy chips; yogurt

IC 30 - Cookies; crackers; frozen yogurt; fruit ice bar; Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn

IC 31 - Unprocessed nuts

IC 32 - Frozen fruit beverages, soy-based beverages not being milk substitutes

(the “Application”).

2. The Application was published for opposition on August 22, 2006.

3. The Application was filed under Section 1(b) of the Trademark Act, indicating that Applicant has a *bona fide* intention to use the mark in commerce for the goods stated in the Application.

4. The time for filing a notice of opposition was set to expire on September 21, 2006. On August 25, 2006, Bear Naked filed a first 30-Day Request for Extension of Time to file an opposition, which was granted. On October 23, 2006, Bear Naked filed a Request for a 60-Day Extension of Time to file an opposition, up to and including December 20, 2006, which request was also granted. Accordingly, this Notice of Opposition is timely.

5. Bear Naked is a leading producer of all-natural snacks and breakfast foods sold under the name BEAR NAKED. The BEAR NAKED products are “bearly processed” and “utterly naked” – terms chosen to connote the fact that Bear Naked’s products contain only

natural ingredients and real whole grains, and involve a minimal amount of processing. In short, the use of the term NAKED is intended by Opposer to reflect the fact that its products are marketed, in part, as being healthy, nutritious foods. The BEAR NAKED name appears prominently on the packaging of every BEAR NAKED product, as well as on all product literature and promotional materials and on Opposer’s website, www.bearnaked.com.

6. Bear Naked is the owner of the following allowed applications and registrations which incorporate the term “naked” (collectively, “Opposer’s Marks”):

<u>Mark</u>	<u>Reg. (Ser.) No.</u>	<u>Date of First Use</u>	<u>Goods (Class)</u>
BEAR NAKED	RN 2,800,495	October 2002	IC 30 Granola cereals
BEAR NAKED	RN 3,161,484	October 2002	IC 30 Granola-based trail mix, muffins, baked snacks, namely bakery-based snack foods, breads and cookies (use-based)
BEAR NAKED	SN 76/594,523	(ITU - Allowed)	IC 29 Dried fruits and vegetables, fruit based snack food, namely, snack bars composed of fruit, nuts and cereals, snack mix consisting primarily of fruits, nuts and/or raisins.
BEAR NAKED	SN 76/594,521	(ITU - Allowed)	IC 30 Granola-based snack bars; ready-to-eat cereal derived fruit bars; snack bars composed of cereal and fruit; snack bars composed of cereal, fruit and nuts, and snack bars composed of cereal and nuts.
BEAR NAKED	SN 78/956,284	November 1, 2005	IC 30 Oatmeal, rolled oats and breakfast cereals

7. Each of Opposer's Marks for which a certificate of registration has issued ("Opposer's Registrations") was based on applications filed in the United States Patent and Trademark Office on a date prior to the date of the filing of Applicant's Application.

8. With just one exception, each of Opposer's Marks for which an intent-to-use application is pending was filed in the United States Patent and Trademark Office on a date prior to the date of the filing of Applicant's Application.

9. At the time that Applicant filed the Application, it had constructive knowledge of Opposer's Marks.

10. Each of Opposer's Registrations is valid, subsisting and in full force and effect.

11. At considerable expense, and for several years, Opposer has advertised, sold and distributed goods under its BEAR NAKED marks throughout the United States and internationally.

12. Upon information and belief, at the time that Applicant filed the Application, it had actual knowledge of Opposer's Marks.

13. Additionally, Opposer has plans to expand its use of its BEAR NAKED mark to various related products, and in addition, has a *bona fide* intent to use the BEAR NAKED mark consistent with its pending applications.

14. Applicant's proposed mark uses the same word—NAKED—that forms the dominant portion of Opposer's Marks.

15. Upon information and belief, like Opposer, Applicant markets its products as being all-natural, healthy and nutritious foods.

16. Upon information and belief, Applicant's NAKED mark is intended to be used for products equivalent to and competitive with products sold by Opposer under its BEAR NAKED Mark:

Applicant's Product

Opposer's Related Product

Unprocessed nuts

Granola-based trail mix; dried fruits and vegetables

Protein based, nutrient-dense bars

Granola-based snack bars, ready-to-eat cereal derived food bars, snack bars composed of cereal and fruit, snack bars composed of cereal, fruit and nuts, and snack bars composed of cereals and nuts

Snack mix consisting primarily of processed fruits, processed nuts and/or raisins

Granola-based trail mix; dried fruits and vegetables, fruit-based snack food, namely, snack bars composed of fruit, nuts and cereals, snack mix consisting primarily of fruits, nuts and/or raisins.

Processed nuts

Granola-based trail mix; dried fruits and vegetables

Yogurt

Granola cereals (generally marketed with yogurt)

17. Upon information and belief, Applicant's NAKED mark is intended to be used for products that are to be sold to the same classes of consumers and through the same channels of trade as Opposer's BEAR NAKED products.

18. The use and registration of Applicant's mark for the products identified would result in confusion, mistake and/or deception as to the source and origin of Applicant's products, leading to consumers to believe that Applicant's products are somehow affiliated with, approved, sponsored, or licensed by Opposer.

3. Opposer will be damaged by the registration of Applicant's NAKED mark for the goods specified because such registration will assist and support Applicant in the confusing and misleading use of the mark for which Applicant seeks registration, and Applicant will obtain statutory rights in connection with that mark in violation of Opposer's prior and superior rights.

20. Registration of Applicant's NAKED mark for the goods specified would damage Opposer by generating confusion, mistake and/or deception, and the diminution of Opposer's ability to control the quality of the goods sold thereunder.

WHEREFORE, Opposer believes that it will be damaged by the registration of Applicant's mark for the goods specified above, and therefore prays that this opposition be sustained, and that Application Serial No. 78/687,007 be denied.

Dated: December 19, 2006

Robinson & Cole LLP

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CERTIFICATE OF SUBMISSION

I, Amy Span Wergeles, do hereby certify that the foregoing Notice of Opposition was submitted to the U.S. Trademark Trial and Appeal Board through its ESTTA Electronic Filing system, on this 19th day of December, 2006.

//Amy Span Wergeles//
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