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04-04-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

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

Nexx Online, Inc.,)	
)	
Opposer,)	ANSWER TO NOTICE OF OPPOSITION
)	
v.)	Opposition No. 91155050
)	Application Serial No. 76/404,827
Nexx LLC,)	
)	Published in the Official Gazette on January
Applicant.)	14, 2003
)	
)	Mark: LIVE LIFE AT THE NEXX LEVEL
)	

Applicant Nexx LLC ("Applicant") hereby answers the Notice of Opposition of Nexx Online, Inc. as follows:

RESPONSES TO SPECIFIC ALLEGATIONS

1. Applicant admits the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition.

<p>CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, Box TTAB No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513, on:</p>	
<p><u>Christine Beaman</u> Print Name</p>	<p><u>4/1/03</u> Date of Deposit</p>
<p><u>[Signature]</u> Signature</p>	<p><u>4/1/03</u> Date</p>

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3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations set forth in Paragraph 4 of the Notice of Opposition.

5. Applicant denies that the NEXX trademark is legally famous but otherwise lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant admits that its trademark application (Serial No. 76/404,827) is based upon an intent to use the mark LIVE AT THE NEXX LEVEL for “training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services” and that it has filed three other trademark applications but otherwise denies the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant admits the allegations in Paragraph 11 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. Insofar as the Notice of Opposition alleges a claim for trademark dilution, that claim is barred by the U.S. Supreme Court's holding in *Moseley v. Victoria's Secret Catalogue*.
3. The Notice of Opposition is barred by the doctrines of waiver, estoppel and/or acquiescence.
4. The Notice of Opposition is barred by laches or otherwise by Opposer's conduct.

WHEREFORE, Applicant requests that the opposition be dismissed and that the application proceed to registration.

Date: April 1, 2003

Respectfully Submitted,

By: 

Christine S. Beaman, Esq.
Corporate Counsel
Nexx LLC

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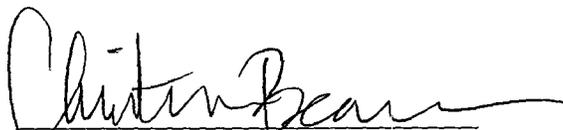
CERTIFICATE OF SERVICE BY MAIL

I, Christine Beaman, declare as follows:

On April 1, 2003, I served the attached, **ANSWER TO NOTICE OF OPPOSITION** on the party in said cause by placing a true copy of the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope containing the document named above for deposit in the United States Postal Service by placing the document for collection and mailing this day, following the ordinary business practices at NEXX, LLC.

Scott W. Petersen
Lewis T. Steadman Jr.
Holland & Knight LLC
55 West Monroe, Suite 800
Chicago, Illinois 60603

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on April 1, 2003.


Christine S. Beaman, Esq.