

TTAB

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



04-28-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Nexx Online, Inc.,	)	
	)	
Opposer,	)	ANSWER TO NOTICE OF OPPOSITION
	)	
v.	)	Opposition No. 91155532
	)	Application Serial No. 76/404,828
Nexx LLC,	)	
	)	Published in the Official Gazette on
Applicant.	)	February 11, 2003
	)	
	)	Mark: NEXX & Design
	)	Class: 41

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.

<b>CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)</b>	
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:	
<i>Christine Beaman</i>	<i>4/23/03</i>
Print Name	Date of Deposit
<i>Christine Beaman</i>	<i>4/23/03</i>
Signature	Date

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 OPPOSER's trademark and trade name NEXX 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. 76/404,828) is based upon an intent to use NEXX & Design 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 23, 2003

Respectfully Submitted,

By: 

Christine S. Beaman, Esq.  
Corporate Counsel  
Nexx LLC

Address all correspondence to:

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**CERTIFICATE OF SERVICE BY MAIL**

I, Christine Beaman, declare as follows:

On April 23, 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 23, 2003.

  
Christine S. Beaman, Esq.