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

McDonald's Corporation,

Opposer,

v.

Patchell Holdings Inc.,

Applicant.

77/020,401

Opposition Nos. 91179290 (MCFIT)
91179352 (MCGYM)
(as consolidated)

ANSWER AND AFFIRMATIVE DEFENSES IN OPPOSITION NO. 91179352

Applicant Patchell Holdings Inc. ("Applicant") for its Answer to the Notice of Opposition in Opposition No. 9179352, responds to the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant admits that it seeks to register the mark MCGYM for "educational services, namely, providing physical fitness programs for fitness clubs and health and exercise centers; fitness centers, namely, providing fitness and exercise facilities" in International Class 41, and that such application is an intent-to-use based application under 15 U.S.C. § 1051(l)(b). Applicant denies the remainder of the allegations contained in paragraph 1.

2. Paragraph 2 contains only legal conclusions to which no answer is required. To the extent an answer is required, Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 2 and, therefore, denies same.

3. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 3 and, therefore, denies same.



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4. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 4 and, therefore, denies same.

5. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 5 and, therefore, denies same.

6. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 6 and, therefore, denies same.

7. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 7 and, therefore, denies same.

8. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 8 and, therefore, denies same.

9. Applicant denies that Opposer owns a "family" of "MC" marks for various goods and services, or any "MC" formative marks for services relating to physical fitness facilities or physical fitness education. Applicant is without sufficient information to form a belief as to the remainder of the allegations set forth in Paragraph 9 and, therefore, denies same

10. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 10 and, therefore, denies same.

11. Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 11 and, therefore, denies same.

12. Paragraph 12 contains only legal conclusions to which no answer is required. To the extent an answer is required, Applicant is without sufficient information to form a belief as to the allegations set forth in Paragraph 12 and, therefore, denies same.

13. Denied.

14. Applicant admits that it filed the application to register MCGYM, Serial No. 77/020,407. Applicant denies the remainder of the allegations contained in Paragraph 14, if any.

15. Denied.

16. The allegations raised in this paragraph are the subject of Applicant's Motion to Dismiss Claim of Dilution filed concurrently herewith. Applicant reserves the right to respond consistent with the Board's relief in that Motion.

17. Denied as to all allegations except for the allegation that: "Registration of this term to Applicant would also dilute the distinctiveness of Opposer's marks". This allegation are the subject of Applicant's Motion to Dismiss Claim of Dilution filed concurrently herewith. Applicant reserves the right to respond consistent with the Board's relief in that Motion.

FIRST AFFIRMATIVE DEFENSE

Opposer has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Applicant's mark MCGYM and Opposer's pleaded marks are not sufficiently identical for purposes of establishing dilution pursuant to 15 U.S.C. 1125(c).

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety with prejudice and that Opposer's prayer for relief be denied.

Respectfully submitted,

WILEY REIN LLP

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Dated: November 16, 2007

CERTIFICATE OF SERVICE

I, Jennifer L. Elgin, hereby certify that on this 16th day of November, 2007, I caused a copy of the foregoing Answer and Affirmative Defenses in Opposition No. 91179352 to be mailed via first-class postage prepaid mail to the following:

John A. Cullis, Esq.
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Jennifer L. Elgin