

ESTTA Tracking number: **ESTTA279476**

Filing date: **04/21/2009**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Body By Jake, Inc.		
Entity	Corporation	Citizenship	California
Address	11611 San Vicente Blvd., Suite 515 Los Angeles, CA 90049 UNITED STATES		

Correspondence information	Michael P. Martin Charlston, Revich & Wollitz, LLP 1925 Century Park East, Suite 1250 Los Angeles, CA 90067 UNITED STATES mmartin@crwllp.com Phone:310 551 7015		
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Applicant Information

Application No	77372691	Publication date	03/24/2009
Opposition Filing Date	04/21/2009	Opposition Period Ends	04/23/2009
Applicant	Miller, Benna R. 5606 Las Virgenes Road Unit 68 Calabasas, CA 91302 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: DVDs featuring choreographed fitness; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital disks featuring health, fitness, motivation, exercise, and nutrition

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1373726	Application Date	10/09/1984
Registration Date	12/03/1985	Foreign Priority Date	NONE
Word Mark	BODY BY JAKE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1984/06/25 First Use In Commerce: 1984/06/25 SERIES OF BOOKS AND ARTICLES Class 020. First use: First Use: 1983/01/00 First Use In Commerce: 1983/01/00 ORNAMENTAL BUTTONS Class 025. First use: First Use: 1983/01/00 First Use In Commerce: 1983/01/00 SWEAT SUITS, SWEATSHIRTS, SWEAT BANDS, T-SHIRTS, JEANS, SHORTS, TRUNKS, AND JACKETS Class 041. First use: First Use: 1983/02/00 First Use In Commerce: 1983/02/00 EDUCATIONAL AND ENTERTAINMENT SERVICES IN THE NATURE OF CUSTOM PERSONALIZED TRAINING PROGRAMS

U.S. Registration No.	1877452	Application Date	09/02/1993
Registration Date	02/07/1995	Foreign Priority Date	NONE
Word Mark	BODY BY JAKE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1984/06/00 First Use In Commerce: 1984/06/00 cinematographic films and pre-recorded audio and video tapes in the field of exercise, entertainment and education, generally featuring topics of health, motivation, exercise, and nutrition Class 028. First use: First Use: 1992/10/00 First Use In Commerce: 1992/10/00 manually operated exercise equipment and exercise machines		

U.S. Registration No.	2848325	Application Date	03/14/2002
Registration Date	06/01/2004	Foreign Priority Date	NONE
Word Mark	BODY BY JAKE TOTAL BODY TRAINER		
Design Mark	BODY BY JAKE TOTAL BODY TRAINER		
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2002/05/00 First Use In Commerce: 2002/05/00 Manually operated exercise equipment		

Attachments	76383417#TMSN.gif (1 page)(bytes) Opposition.pdf (4 pages)(122477 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael P. Martin/
Name	Michael P. Martin
Date	04/21/2009

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

In the Matter of Trademark Application

Serial No.: 77/372691

Mark: BODIESBYBENNA (Stylized)

Filed: January 16, 2008

Published: March 24, 2009

Int'l Class:9

Our File: 2087-005

BODY BY JAKE, INC., a California
corporation,

Opposer,

v.

BENNA R. MILLER, believed to be a United
States Citizen,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Box TTAB FEE

Assistant Commissioner of Trademarks

PO Box 1451

Alexandria, VA 22313-1451

Sir:

Opposer Body By Jake, Inc., a California corporation, (hereinafter "Opposer") believes that it will be damaged by registration of the mark shown in the above identified application, and hereby opposes the same in accordance with the provisions of Section 13 of the Lanham Act. (15 U.S.C. 1063) and Section 2(d) of the Lanham Act (15 U.S.C. 1052(d)).

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The grounds for opposition are as follows:

1. Opposer owns the following United States Trademark Registration Nos., among others: 1,373,726 for the mark BODY BY JAKE; 1,877,452 for the mark BODY BY JAKE; and 2,848,325 for the mark BODY BY JAKE TOTAL BODY TRAINER. ; Opposer also owns numerous other "BODY BY JAKE" marks. Opposer has been using said marks since at least January, 1983 and has been using said marks in interstate commerce since at least January, 1983.

2. Opposer manufactures, sells, distributes, advertises, and licenses various types of health and fitness related products and services. Opposer utilizes the above-referenced BODY BY marks in various combinations on its products and services, in sales catalogs and in advertising to identify them as originating from Opposer.

3. Opposer has developed extensive goodwill with respect to its BODY BY JAKE marks, individually and in composite. Opposer has expended substantial sums in the advertising and promotion of its products, and by its efforts and its considerable expenditures for promotional activities, Opposer has developed an extensive and valuable reputation for its marks.

4. By virtue of its efforts, and the expenditures of considerable sums for promotional activities as well as the excellence of the quality of its products and services, Opposer has gained a valuable reputation through its above-identified BODY BY JAKE marks.

5. Opposer's marks are inherently distinctive, have acquired substantial goodwill and secondary meaning, and are famous within the meaning of 15 U.S.C. § 1125(c)(1).

6. On January 16, 2008, Benna R. Miller (hereinafter "Applicant") filed an application to register the mark BODIES BY BENNA FUSING FITNESS AND FUN and Design) for: "DVDs featuring choreographed fitness; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital disks featuring health, fitness, motivation, exercise, and nutrition" in International Class 9. This application was assigned Serial No. 77/372,691 and proceeded to publication in the Official Gazette of the United States Patent and Trademark Office on March 24, 2009.

7. Opposer is informed and believes that Applicant's proposed mark is likely to confuse Opposer's customers and potential customers, and the public generally in relation to its own marks.

9. Opposer is informed and believes that Applicant's use or intended use of the proposed mark began after Opposer's marks became famous and will and/or may dilute the strength of Opposer's marks by lessening the capacity of Opposer's marks to identify and distinguish Opposer's goods and services.

10. Opposer has not and does not consent in any way to Applicant's proposed use of the mark referenced herein.

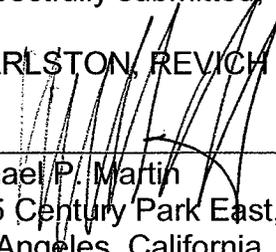
WHEREFORE, Opposer respectfully requests that registration of Applicant's mark under the above identified application be refused and that this opposition be sustained.

Please charge any additional fees due, or credit any overage to Deposit Account No. 50-4158

Respectfully submitted,

CHARLSTON, REVICH & WOLLITZ LLP

Dated: April 21, 2009

By: 
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