

ESTTA Tracking number: **ESTTA334050**

Filing date: **02/24/2010**

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

Proceeding	91193777
Party	Defendant Travis, Krista-Alana
Correspondence Address	KRISTA-ALANA TRAVIS KRISTA-ALANA TRAVIS 3 CRYSTAL CT MANALAPAN, NJ 07726-8881 UNITED STATES krista.alana@gmail.com
Submission	Answer
Filer's Name	Krista-Alana Travis
Filer's e-mail	krista.alana@gmail.com
Signature	/krista-alana travis/
Date	02/24/2010
Attachments	KRISTA_ALANA_TRAVIS.pdf ( 6 pages )(30470 bytes )

KRISTA-ALANA TRAVIS  
KRISTA-ALANA TRAVIS  
3 CRYSTAL CT  
MANALAPAN, NJ 07726-8881  
krista.alana@gmail.com

Curves International, Inc.  
v.  
Travis, Krista-Alana

James E. Hudson III  
Crain, Caton & James, P.C.  
1401 McKinney Suite 1700  
Houston, TX 77010  
jHUDSON@CCJ-LAW.COM

Krista-Alana Travis, on behalf of Vixen Curves, LLC, believes that Curves International, Inc.'s claim that the "Vixen Curves" trademark will in any way hurt their own brand or confuse their customers is false and without merit. Curves International, Inc. was in no way an inspiration for Vixen Curves. Vixen Curves is a company solely invested in delivering DVD-based exercise videos for urban women in the age range of 18-34. Considering Curves International Inc. has no rights to any DVD-based videos and operates in the form of physical fitness centers, their claim should be dismissed. Also, "Vixen Curves" is trademarked together as a phrase, not as two separate words. Our emphasis is on "Vixen" more so than "Curves" anyway in our branding. While we do refer to "Vixen" without the marriage of the word "Curves", we never use "Curves" without the word "Vixen" in our business. Ever.

1. Curves International, Inc. owns trademarks involving food, clothing, retail stores, and education for fitness clubs and centers including "Meal replacement and dietary supplement drink mixes, nutritional supplements;" "Educational services, namely providing health and fitness programs for fitness clubs and health and exercise centers;" "Athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, bodysuits, robes, pants, sweatpants, warm-up suits, jackets, socks and shorts and specifically excluding boots, hiking boots, dress shoes, and casual nonathletic shoes other than shower shoes, flip flops and thongs; athletic accessories, namely, hats, visors and sweat bands;" "Retail store services featuring exercise equipment, clothing and health and fitness products, namely, nutritional products and fitness accessories;" "Weight reduction diet planning, counseling and supervision;" "Dispensers for cleaning and disinfecting solutions; Dispensers for liquid soap; Soap dispensers;" "Athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, warm-up suits, jackets, socks, shorts, slippers, shoes, specifically excluding boots, hiking boots, and casual non-athletic shoes other than shower shoes, flip flops, thongs, slippers, and houseshoes; athletic accessories, namely, hats, visors and sweat bands;" "Granola-based snack bars;" "Ready to eat, cereal derived food bars; Microwave popcorn; Popcorn;" and "Bases for making milk shakes;" etc. In no way is Vixen Curves involved in any of those categories. "Vixen Curves" is solely trademarked in the category of "DVDs featuring exercise routines". Even though Curves International Inc. did ensure they own the name in a widely random group of categories (from popcorn to soap dispensers), they have no claim in the fitness DVD category. The only claim they have in video recordings involves fitness instruction for fitness center management, sales, etc., not in fitness exercise routines. Being that Curves International Inc. holds no trademark in a remotely similar category, their claim that "Vixen Curves" infringes on their trademark is false. There is no mistaking our separate brands.

2. Curves International, Inc. has never promoted "such products and services" similar to Vixen Curves's DVD trademark.

3. The idea that "Vixen Curves" will capitalize on any "goodwill" from Curves International, Inc. is false. Curves International, Inc. is recognized as fitness centers. "Vixen Curves" is a line of DVD's women can do in the privacy of their own home. Furthermore, "Vixen Curves" is trademarked as two words used together. Never will "Curves" be used without "Vixen". It is "Vixen Curves" together that form our trademark. Even more importantly, our two separate trad The idea of a DVD line called "Vixen Curves" bringing up images of a fitness center called "Curves

4. Legally, you cannot declare yourself having use of a word "without limitation".

5. It is well and good that "Curves" is nationally recognized in "foodstuffs and health and fitness centers". "Vixen Curves" will not be used in "foodstuffs and health and fitness centers".

6. Curves International, Inc.'s trademark in "educational services, namely providing health and fitness programs for fitness clubs and health centers; fitness centers, namely providing fitness and exercise facilities in International Class 41" has no relation to my "Vixen Curves" trademark due to the fact that I do not and will not provide "educational services for fitness clubs and health centers or operate fitness centers" under the Vixen Curves trademark.

7. "Vixen Curves" does no business in "meal replacement and dietary supplement drink mixes, nutritional supplements in International Class 005."

8. "Vixen Curves" does not provided "education services, namely providing health and fitness programs for fitness clubs and health centers in International Class 041.

9. "Vixen Curves" does not use the trademark to sell "athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, bodysuits, robes, pants, sweatpants, warm-up suits, jackets, socks and shorts and specifically excluding boots, hiking boots, dress shoes, and casual nonathletic shoes other than shower shoes, flip flops and thongs; athletic accessories, namely, hats, visors and sweat bands" in Class International 025 or "Retail store services featuring exercise equipment, clothing and health and fitness products, namely, nutritional products and fitness accessories" in International Class 035

10. "Vixen Curves" does not use the trademark to sell "athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, bodysuits, robes, pants, sweatpants, warm-up suits, jackets, socks and shorts and specifically excluding boots, hiking boots, dress shoes, and casual nonathletic shoes other than shower shoes, flip flops and thongs; athletic accessories, namely, hats, visors and sweat bands" in International Class 025 or "Retail store services featuring exercise equipment, clothing and health and fitness products, namely, nutritional products and fitness accessories, namely, nutritional supplements or fitness accessories" in Class 035.

11. "Vixen Curves" does not offer "weight reduction diet planning, counseling and supervision in International Class 044."

12. "Vixen Curves" is not remotely similar to "Curves University" and will not supply "Educations services, namely, conducting classes in the field of kinesiology and nutrition and distributing course materials in connection therewith".

13. "Vixen Curves" is not remotely similar to "Curves Learning Experience" nor does not supply "Video recordings featuring instruction in fitness center management and operation,

sales and lead generation, fitness consultation and instruction, and weight reduction diet planning, counseling and supervision".

14. "Vixen Curves" is not remotely similar to "Curves University" nor does it supply "Clothing, namely, t-shirts, shirts, and sweatshirts; athletic accessories, namely, hats" under that name.

15. "Vixen Curves" is not remotely similar to "Curves Smart" nor does it supply "Devices for measuring, estimating, and/or recording physiological conditions, namely, heart rate, pulse rate, and/or caloric energy expenditure" or "Exercise equipment, namely, strength training equipment, aerobic fitness equipment, and/or cardiovascular exercise equipment, all with devices and components for measuring, estimating, and/or recording physiological conditions".

16. "Vixen Curves" is not remotely similar to "Curves Complete". And while we do have a website for our company, we do not offer much information regarding fitness and exercise through online means, therefore we do not supply "Providing information about physical fitness and exercise via a website available over the Internet and other global computer networks" Class 041 or 044.

17. "Vixen Curves" is not remotely similar to "Curves Products," so while it does sell merchandise online, "Vixen Curves" and "Curves Products" are very distinguishable to consumers.

18. "Vixen Curves" does not provide "Dispensers for cleaning and disinfecting solutions; Dispensers for liquid soap; Soap dispensers".

19. "Vixen Curves" is not remotely similar to "Curves Quest" and will not provide "T-Shirts" under the "Curves Quest" mark.

20. "Vixen Curves" is not remotely similar to "Curves for Women" and will not provide "Athletic shoes, shower shoes, flip flops, thongs, slippers, house shoes, sports bras" under the "Curves for Women" mark.

21. "Vixen Curves" does not provide "Athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, warm-up suits, jackets, socks, shorts, slippers, shoes, specifically excluding boots, hiking boots, and casual non-athletic shoes other than shower shoes, flip flops, thongs, slippers, and houseshoes; athletic accessories, namely, hats, visors and sweat bands" with the word "Curves" written upon the item.

22. "Vixen Curves" text is not remotely similar to the "Curves" logo and will not provide "Athletic clothing, namely, t-shirts, shirts, turtlenecks, tank tops, sweatshirts, warm-up suits, jackets, socks, shorts, slippers, shoes, specifically excluding boots, hiking boots, and casual non-athletic shoes other than shower shoes, flip flops, and thongs; athletic accessories, namely, hats, visors and sweat bands" under the "Curves" distinct font.

23. "Vixen Curves" is not remotely similar to "Curves Circuit Gear" and will not provide "Plastic water bottles sold empty" under the "Curves Circuit Gear" mark, nor will "Vixen Curves" be written in plane text on merchandise.

24. "Vixen Curves" does not provide "Granola-based snack bars".

25. "Vixen Curves" is different than "My Curves" and does not provide "Providing newsletters in the field of health, nutrition, fitness, and wellness via e-mail" under the

"Vixen Curves" trademark.

26. "Vixen Curves" is different than "My Curves" and does not engage in "Providing electronic bulletin boards for registered users for transmission of messages concerning health and fitness; providing multiple use access to global computer information networks for the transfer and dissemination of a wide range of information, namely, providing access to information via websites and online forums over the Internet" under the "Vixen Curves" trademark.

27. "Vixen Curves" is different than "My Curves" and does not engage in "Providing on-line information via an Internet web page in the field of fitness" International Class 041 and 044. We do not provide fitness information or tips online.

28. "Vixen Curves" does not provide "Ready to eat, cereal derived food bars; Microwave popcorn; Popcorn".

29. "Vixen Curves does not provide "Bases for making milk shakes".

30. Curves International, Inc. does not own any trademark involving "DVDs featuring exercise routines". The only trademark Curves International, Inc. owns in the field of video involves "Video recordings featuring instruction in fitness center management and operation, sales and lead generation, fitness consultation and instruction, and weight reduction diet planning, counseling and supervision". "Vixen Curves" videos are pure exercise routines - nothing to teach fitness centers or their management anything. "Vixen Curves" also does not provide "weight reduction diet planning". "Vixen Curves" offers no diet regimen to follow. "Vixen Curves" fitness videos are simply "DVDs featuring exercise routines".

31. True.

32. The plain-text "Vixen Curves" mark is not confusing to the "Curves" plain-text mark. Firstly, "Vixen Curves" always appears as two words - Vixen Curves. Never will "Curves" appear without "Vixen". Secondly, the main identifier in our mark is "Vixen". Thirdly, none of our customers would confuse "Vixen Curves" as a subset of Curves International, Inc. for many reasons. "Vixen Curves" customers know what our name stands for - for women who want to add or keep their curvaceous bodies as they exercise and lose fat. Also, our demographic is NOT Curves International, Inc.'s demographic. Curves International Inc. attracts older women into their gyms. Our videos are for young, urban women. Customers also know that Curves International, Inc. operate as fitness facilities - not videos. Perhaps I gave Curves International, Inc. the idea to move into the fitness video realm, however they cannot oppose my trademark to allow themselves to sweep in and trademark under the category. Furthermore, Curves International Inc.'s claim of providing "training materials in video form including exercise training" is for use by exercise facility management for the purpose of their training. That is dissimilar from "Vixen Curves" "DVDs featuring exercise routines" - the emphasis being on "DVDs" (Curves: "video") and "routines" (Curves: "training"). "Vixen Curves" DVD's are choreographed exercise for sale to customers. Curves International, Inc.'s videos are for training purposes only.

33. Curves International, Inc. holds no legal rights regarding DVD's featuring exercise routines. Our goods/services are NOT similar. There is not one trademark and category that is remotely similar to the "Vixen Curves" trademark and category.

34. "Vixen Curves" is not in direct competition with Curves International Inc. because our target demographics are very different. "Vixen Curves" customers are young 20-somethings

that not only want to get in shape, but keep their curvy bodies. They do not have time to workout at an exercise facility, nor do they desire to. Working out via DVD's is their only option. "Vixen Curves" exercises are sexy and edgy. Curves International Inc.'s clients are older women who do traditional exercises and have no other goal than to lose weight. "Vixen Curves" customers probably never heard of Curves gyms, and customers of Curves gyms probably will never hear of "Vixen Curves". Furthermore, even if "Vixen Curves" was in direct competition with Curves International Inc., "competition" is not grounds to oppose a trademark.

35. Curves International Inc. has made themselves in the women's fitness industry in the realm of fitness centers, not "DVD's featuring exercise routines". Many companies have made a name for themselves in the women's fitness industry. That, again, is not grounds for opposition.

36. The "Vixen Curves" mark will not be "likely to deceive to cause confusion or mistake among members of the public as the source or sponsorship," because, "Vixen Curves" mark is used in the real of "DVD's featuring exercise routines". This is not a realm the Curves International Inc. holds any ownership or in which currently operates. Curves International Inc. does not produce "DVD's featuring exercise routines," therefore no confusion can take place.

37. The "Vixen Curves" mark should not be refused. I have every right to the "Vixen Curves" mark for the purpose of "DVDs featuring exercise routines". It will not "cause confusion or to cause mistake or deceive" because, "Vixen Curves" mark is used in the real of "DVD's featuring exercise routines". This is not a realm the Curves International Inc. holds any ownership or in which currently operates. Curves International Inc. does not produce "DVD's featuring exercise routines," therefore no confusion can take place.

38. The "Vixen Curves" mark will not cause damage to Curves International Inc. "Vixen Curves" operates in a different and separate field of the fitness industry and attracts a very different customer than Curves International, Inc.

I am obviously defending myself Pro Se, against a big corporation in this matter, but I do believe my point has been made defending my "Vixen Curves" trademark. What is also obvious is Curves International Inc.'s overreach of their legal rights to the word "Curves". What they are trying to do is claim ownership in a category to which they have none. Simply, I will restate my response to Curves International Inc.'s opposition: The "Vixen Curves" trademark consists of two words together, with an emphasis on "Vixen" more-so than "Curves". Never will "Curves" be used on our DVD's without the preceding "Vixen". The phrase "Vixen Curves" is not confusing with the one word "Curves" or the phrases "Curves University," "My Curves," etc. The phrase "Vixen Curves" solely represents our "DVD's featuring exercise routines". Being that "Vixen Curves" is solely trademarked under the category of "DVD's featuring exercise routines" and Curves International Inc. holds no trademarks under that, or a very similar, category, their claim for opposition should be denied.

I would also like to apologize on behalf of James E. Hudson who filed this opposition against me, for both his use of the word "prays" regarding his hopes for my trademark's dismissal, and his waste of all of our time. I found that choice of word perplexing and inappropriate.

Thank you.

Sincerely,  
Krista-Alana Travis

3 CRYSTAL CT  
MANALAPAN, NJ 07726-8881  
krista.alana@gmail.com  
(908) 692-6281