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

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| Proceeding | 91201995 |
| Party | Defendant FITFAST, LLC. |
| Correspondence Address | FITFAST, LLC. FITFAST, LLC. 402 HEYWOOD AVE ORANGE, NJ 07050-2007 fitfast@gmail.com |
| Submission | Answer |
| Filer's Name | Duke Richman |
| Filer's e-mail | fitfast@gmail.com |
| Signature | /Duke Richman/ |
| Date | 11/21/2011 |
| Attachments | fitfood-answer to notice of opposition.pdf (5 pages)(128530 bytes) |

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

In re Application of: FITFAST LLC
Serial No. 85/017519
Filed: April 19, 2010
Trademark: FITFOOD
Int'l Classes: 43
Published: September 13, 2011

Mendias & Milton, LLC,

Opposer

v.

FITFAST LLC,

Applicant

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, FITFAST LLC, composed of Duke Richman, for its/his answer to the Notice of Opposition filed by Mendias & Milton, LLC against application for registration of FITFAST's trademark FITFOOD ("Applicant's mark"), Serial No. 85/017519 filed April 19, 2010, and published in the Official Gazette of September 13, 2011, pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits the allegations thereof.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained

therein and accordingly denies the allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

9. Answering paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

12. Answering paragraph 12 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

13. Answering paragraph 13 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

14. Answering paragraph 14 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

15. Answering paragraph 15 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

16. Answering paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

17. Applicant further affirmatively alleges that as a result of its usage of its mark FITFOOD since adoption, and such mark's relationship to and accompaniment with Applicant's FITFAST brand and logo, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark and umbrella FITFAST brand. Such goodwill and usage has made the mark distinctive to the Applicant.

18. Applicant affirmatively alleges that Applicant's services are not closely related to Opposer's food preparation and take out services, as Applicant does not offer take out services, nor does it prepare and package frozen foods. Further, Applicant does not offer its products through the same channels of trade or to the same prospective customers; Opposer markets its products solely in Texas, while the Applicant is based in the northeast. For these reasons, Applicant's mark will not be able to gain a subliminal or subconscious association with Opposer's

mark, as consumers who have seen one mark have not likely seen the other.

19. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and pleaded mark of Opposer are not confusingly similar. Any similarity, if at all, between Applicant's mark and the pleaded mark of Opposer is in the use of the words "fit" and "foods" which, upon information and belief, have been used and registered by numerous third parties in the food, restaurant, and fitness businesses. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant of the words "fit" and food". Any trademark or service mark rights that Opposer may have are narrowly circumscribed to the goods or services indicated and any other use would not lead to a likelihood of confusion.

20. Applicant further affirmatively alleges that there is no likelihood of Applicant's mark injuring the reputation of Opposer, as, by information and belief, Opposer's mark is associated with low quality, pre-packaged, microwavable foods that promote weight loss by virtue of the fact that no consumer would actually eat them. Opposer has therefore already injured its pleaded mark by providing such low quality foods in the market. (See

http://blogs.dallasobserver.com/cityofate/2011/08/my_fit_foods_losing_weight_by.php.)

Applicant's mark is associated with high quality products.

21. Applicant further affirmatively alleges that there is no likelihood of dilution of Opposer's mark, and no risk of damaging and injuring Opposer. Opposer's mark is related to and associated solely with products and services in Dallas,

Houston, San Antonio and Austin, Texas. Opposer's market is extremely narrow, and unknown outside of Texas. Consumers in Applicant's northeast market are not familiar with Opposer's mark. Additionally, Opposer's mark is associated with inexpensive, convenient or easy but frozen and low quality items whereas Applicant's mark is associated with a high quality brand and high quality products. Opposer's mark is more likely to dilute Applicant's mark, as well as damage and injure Applicant.

22. Applicant further affirmatively alleges that there is no likelihood of dilution because Opposer's and Applicant's marks are not sufficiently similar; there are, upon information and belief, numerous uses and registrations of third party marks with the words "fit" and "foods"; Applicant does not intend any association with Opposer's mark; and upon information and belief, ordinary prospective purchasers of Applicant's products do not associate Applicant's and Opposer's marks.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed.

Respectfully submitted,

FITFAST LLC

By: /S/Duke Richman
Duke Richman

Date: November 20, 2011