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

Proceeding	91202403
Party	Defendant Anthony Petrone, David Schoelles
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Date	12/08/2011
Attachments	LEAFSTRONG - ANSWER TO NOTICE OF OPPOSITION.pdf (6 pages)(159791 bytes)

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

In re: Trademark Application Ser. No.: 85,248,707
Mark: LEAFSTRONG
Published: July 5, 2011

Lance Armstrong Foundation	)	**Opposition No.:** 91202403
	)	
Opposer,	)	**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**
	)	
vs.	)	
	)	
David Schoelles, an individual and Anthony Petrone, an individual	)	
	)	
Applicants.	)	

Applicant, David Schoelles, an individual and Anthony Petrone, an individual, respectively with a principal place of business at 2915 East Beryl Avenue, Phoenix, Arizona 85028, (hereinafter "Applicants"), for their answer to the Notice of Opposition filed by Lance Armstrong Foundation, (hereafter "Opposer") against the registration of their trademark LEAFSTRONG, published for opposition on July 5, 2011, under application Serial No. 85/248707, hereby generally and specifically deny each and every allegation contained in the Notice of Opposition hereinafter not specifically admitted, modified, or qualified, and strict proof is demanded thereof. Applicants further responds as follows:

Applicants deny the prefatory remarks and allegations preceding the grounds identified in the Notice of Opposition.

1. Applicants admit the allegations contained in paragraph 1 of the Notice of Opposition.

2. Based on the information available to Applicants, namely the USPTO Trademark

Trial & Appeal Board Office Records, Applicants admit the allegations contained in paragraph 2 of the Notice of Opposition.

3. Applicants are without any specific knowledge or information sufficient to form a belief as to the sundry allegations contained in paragraph 3 of the Notice of Opposition and therefore deny same.

4. Applicants are without any specific knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the Notice of Opposition and therefore deny same. Applicants further deny the admissibility of the uncertified alleged "TARR records dated November 2, 2011," as were allegedly attached as Exhibit A to the Notice of Opposition and are further without any specific knowledge sufficient to form a belief as to the allegations referenced therein and therefore deny same.

5. Applicants are without any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of the Notice of Opposition and therefore deny same. Applicants further deny the Opposer's claim to any "valid common law rights in the color yellow and the color combination of yellow and black on and in connection with the Opposer's (alleged) goods and services" and further object to such allegations as immaterial and are irrelevant to the issues presented in this Opposition proceeding.

6. Applicants are without any specific knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 of the Notice of Opposition and therefore deny same. Applicants further deny and object to the Opposer's claims as related to the alleged "Trade Dress" mentioned therein.

7. Applicants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of the Notice of Opposition and therefore deny same. Applicants further deny and object to the Opposer's claims as related to the alleged

"Trade Dress" mentioned therein.

8. Applicants are without knowledge or information sufficient to form a belief as to the allegation that "Opposer is also the registered owner of the domain name <livestrong.org>, which is an integral part of its business." Applicants are without information sufficient to form a belief and/or deny the remaining allegations contained in paragraph 8 of the Notice of Opposition. Applicants further deny and object to the Opposer's claims as related to the alleged domain names and "Trade Dress" mentioned therein as immaterial and irrelevant to this Opposition proceeding.

9. Applicants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Notice of Opposition and therefore deny same.

10. Applicants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of the Notice of Opposition and therefore deny same.

11. Applicants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Notice of Opposition and therefore deny same.

12. Applicants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Notice of Opposition and therefore deny same.

13. Applicants deny the allegations contained in paragraph 13 of the Notice of Opposition, and further object to same as vague and ambiguous as plead.

14. Applicants deny the allegations contained in paragraph 14 of the Notice of Opposition.

15. Applicants deny the allegations contained in paragraph 15 of the Notice of Opposition. Applicants further deny and object to the Opposer's claims as related to the alleged "Trade Dress" mentioned therein as immaterial and irrelevant to the issues presented herein.

16. Applicants deny the allegations contained in paragraph 16 of the Notice of Opposition.

17. Applicants deny the allegations contained in paragraph 17 of the Notice of Opposition. Applicants further deny and object to the Opposer's claims as related to the alleged "Trade Dress" mentioned therein as immaterial and irrelevant to the issues presented herein.

18. Applicants deny the allegations contained in paragraph 18 of the Notice of Opposition.

19. Applicants admit that if they are "granted the registration herein opposed, they would obtain a prima facie exclusive right to their mark. Applicants deny the remaining allegations contained in paragraph 19 of the Notice of Opposition.

Applicants deny the prayer and further denies Opposer's requests that registration be rejected, that no registration be issued thereon and that the Opposition be sustained in favor of Opposer.

AFFIRMATIVE DEFENSES

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state any legally sufficient grounds for sustaining the opposition.

2. There is no likelihood of confusion, mistake or deception because, inter alia, the Applicant's mark and the pleaded marks of the Opposer are not confusingly similar. Applicant's mark in its entirety is sufficiently distinctively different from Opposer's alleged marks to avoid

confusion, deception or mistake as to the source or sponsorship or association of Applicant's goods.

3. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's alleged goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

4. Applicant's mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship or approval of Applicant's goods by Opposer.

5. The overwhelming majority of the Opposer's goods specified in its alleged Trademark Registrations are highly dissimilar in nature as compared to Applicant's goods sought in the subject application.

6. Opposer's purported rights extend no further than to the specific mark(s) which Opposer alleges it owns, namely a word mark consisting of the term "LIVESTRONG" and one or more design marks containing the term "LIVESTRONG." The parties respective marks are not the same, nor are likely to be confused with one another in terms of sound, connotation, appearance or pronunciation.

7. There are a significant number of of adoptions and uses of the terms LIVE, STRONG and LEAF (as is and/or was simultaneously registered to the Opposer and other third parties, and a myriad of adoptions and uses of such common terms, and therefore LIVESTRONG and its respective parts is/are highly diluted as a trademark formative. Both the terms LIVE and STRONG have been previously adopted and are contemporaneously used widely within several industries, particularly including goods and services related to the goods in International Class 025 of the Applicant and Opposer as well as a variety of non-competing uses. As a result, any

claim to the terms and their components are hence weak. As such, Opposer's baseless and unsupported claim as to any right of exclusivity and dilution of its alleged LIVESTRONG mark is significantly diminished. As such, and inasmuch as because the term STRONG as contained within the Applicant's mark suggestively refers indirectly to the nature and quality of Applicant's goods there cannot exist any likelihood of confusion between the Opposer's alleged mark(s) and the Applicant's mark.

In view of the foregoing, Applicants maintain (along with the Examiner who reviewed the subject application) that no confusion is likely and thus that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer and Applicant prays that this Opposition be dismissed and that Applicant, be granted registration of its trademark.

ANDERSON & ASSOCIATES

Dated: December 8, 2011

By: /Stephen L. Anderson/
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Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed first-class mail, postage prepaid, to:
Paul A. McLean and Heather Dunn
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555 Mission Street, Suite 2400
San Francisco, CA 94105
(Attorneys for for Opposer)

Dated: December 8, 2011

Stephen L. Anderson