

ESTTA Tracking number: **ESTTA456277**

Filing date: **02/14/2012**

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

Proceeding	91202586
Party	Defendant Andrew Smith
Correspondence Address	ANDREW SMITH 580 BEACH DRIVE VICTORIA, BC V8S 2M5 CANADA autrade@gmail.com
Submission	Answer
Filer's Name	Andrew Smith
Filer's e-mail	autrade@gmail.com
Signature	/Andrew Smith/
Date	02/14/2012
Attachments	Answer to Opposition-91202586.pdf (9 pages)(160004 bytes) Exhibit 1- 91202586.pdf (16 pages)(473096 bytes) Certificate of Service of Answer.pdf (1 page)(39615 bytes)

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

MapMyFitness, LLC v. Andrew Smith

Opposition No. 91202586

ANSWER

Using the numbered paragraphs as set forth in the notice of opposition (Opposition No. 91202586) dated November 08, 2011, the Defendant states as follows:

1. Defendant does not have sufficient information to admit or deny.
2. Defendant does not have sufficient information to admit or deny.
3. Defendant does not have sufficient information to admit or deny.
4. Defendant does not have sufficient information to admit or deny.
5. Defendant does not have sufficient information to admit or deny.
6. Defendant does not have sufficient information to admit or deny.
7. Defendant does not have sufficient information to admit or deny.
8. Defendant does not have sufficient information to admit or deny.
9. Defendant denies that its application to register the mark, MAPMY for goods and services namely:
 - a. Application software for the input, capture, storing, processing and displaying of information, data, ads, coordinates and media in lists, pages and on a graphical information system or map on computers and mobile devices; communication software for electronically capturing, processing and distributing voice, voice commands, media, data, coordinates and information across computers and mobile

devices; computer games entertainment software for running computer games on computers and mobile devices; computer graphics software to manipulate images on computers and mobile devices; computer programs and recorded software for searching, downloading, recording and playing music and sounds on PC and mobile devices; computer software for analyzing data, namely, address and property information, stock market information, and displaying results on computer and mobile devices; computer software for managing networks, authorizing access and security on computer and mobile devices; computer software for publishing ads, blogs, video and media files on PC and mobile devices; computer software for communication purposes between microcomputers and mobile devices; interactive computer software for real time chat, video streaming, maps, advertising and gaming; computer software for managing the location of a device and devices in a region, and mapping and satellite imagery software

- b. Writing, design, creation, engineering, renting and upgrading of software and hardware for the capture, processing, storage and display of information, data, ads, coordinates and media on web pages, geographical information systems and maps, on computers, mobile devices, navigation or GPS systems; writing, design, creation, engineering, renting and upgrading of computer software and hardware for mapping, navigation and communications; writing, design, creation, engineering, renting and upgrading of computer and microcomputer navigation components and hardware; mapping software and hardware design and technical consultancy; installation and maintenance of computer software for publishing, mapping and communications; online provision of web-based non-downloadable software for the capture, processing and display of information, data, ads, coordinates and media on webpages

and geographical information systems, maps and navigation and GPS systems

(Defendant's Pending Mark)

is confusingly similar to Opposer's MAPMYRUN and MAPMYFITNESS registration and Opposer's Pending Applications, MAPMYTRI, MAPMYHIKE, MAPMYRIDE, MAPMYWALK on the following grounds:

- a. there is no connection between the goods and services of Defendant's Pending Mark and the goods and services of Opposer's MAPMYRUN and MAPYFITNESS registrations and Opposer's Pending Applications, MAPMYTRI, MAPMYHIKE, MAPMYRIDE, MAPMYWALK ("Opposer's goods and services") for reasons:
 - (i) Defendant's and Opposer's respective goods and services are used in different, unrelated ways to fulfil different and unrelated purposes.
 - (ii) Defendant's and Opposer's respective goods and services are generally marketed through different media and marketing channels.
 - (iii) Consumer motivation for the use and purchase of each of Defendant's and Opposer's respective goods and services is separate and distinct.
 - (iv) The packaging, trade dress and marketing materials used by Defendant and Opposer in connection with their respective goods and services are distinctly different in appearance.
 - (v) Defendant's goods and services are in Classes 9 and 42. Opposer's goods and services covered Classes 35, 38, 41, 42 and 45. The only class of goods and services that Opposer's and Defendant's marks have in common is Class 42. Defendant denies that there is any similarity in the goods and services offered under this Class 42 and there is no similarity between the goods and services of Defendant's Pending Mark and that of Opposer's MAPMYRUN and

MAPMYFITNESS registration and its MAPMYTRI, MAPMYHIKE, MAPMYRIDE, MAPMYWALK applications.

- (vi) Opposer by its own written admission by letter dated 18 September 2009 admitted to Defendant that there are “substantial differences between the activities associated with the respective trade marks” (referring to the Defendant’s MAPMY registration in Australia and the Opposer’s then MAPMYFITNESS application in Australia). Opposer has also proposed a coexistence agreement to Defendant by letter dated 18 September 2009 (see Exhibit 1).
- (vii) Defendant holds two MAPMY trade mark registrations in Australia and did not oppose Opposer’s application for mark, MAPMYFITNESS in Australia on the basis that Defendant believed the goods and services of Defendant’s registered trade mark MAPMY and Opposer’s pending mark, MAPMYFITNESS to be significantly differentiated in the market place and in no way confuses the market or any customer. In addition, Defendant accepted in good faith Opposer’s letter dated 18 September 2009 stating Opposer’s view that there are “substantial differences between the activities associated with the respective trade marks” and that they can co-exist in the market place.
- (viii) Defendant has not experienced any market confusion with Opposer’s names and Opposer has never advised of any confusion and in fact has admitted in writing that there are “substantial differences between the activities associated with the respective trade marks” and proposed a coexistence agreement to Defendant by letter dated 18 September 2009.

- b. The market and class of users for and the use of Defendant's goods and services differ significantly from that of Opposer's goods and services under its registered and Pending Applications.
 - c. There are other registered marks with the word "mapmy", namely, mapmywealth and mapmypage.
10. Defendant does not have sufficient information to admit or deny that Defendant's filing date is junior to Opposer's dates of first use in commerce for Opposer's MAPMYRUN and MAPMYFITNESS registration. Defendant's mark MAPMY is registered in Australia from 27 November 2007 and by way of International Registration Number 1004782 and under the Madrid Protocol, Defendant filed its application in the United States on 14 May 2009. Defendant's first use in commerce in 2005 and has actively operated a social media under the Defendant's MAPMY name/brand for over 5 years. Defendant holds MAPMY mark registrations in Australia, Canada, Japan and the United Kingdom, the filing dates for Defendant's MAPMY registrations in Australia and the United Kingdom is senior to the filing dates of Opposer's MAPMYRUN AND MAPMYFITNESS registrations and all of Opposer's Pending Applications. The filing dates of Opposer's applications for marks, MAPMYRIDE, MAPMYWALK, MAPMYHIKE, MAPMYTRI and MAPMYMEDIA are junior to the filing date and date of first use in commerce of Defendant's pending application for MAPMY in the United States.
11. Defendant denies that Opposer has standing to file the notice of opposition dated November 8, 2011. Defendant denies that if Defendant's application to register MAPMY for goods and services as set out in Defendant's application is allowed, it is likely to cause confusion under Section 2(d) of the Lanham Act due to similarities to Opposer's marks and its goods and services and Opposer's family of MAPMY-marks on grounds

that Defendant's mark, MAPMY when used on or in connection with its goods and services is dissimilar to Opposer's marks when used on or in connection with Opposer's goods and services and is not likely to cause confusion, or to cause mistake, or to deceive supported by the following:

- (i) Defendant's and Opposer's respective goods and services are used in different, unrelated ways to fulfil different and unrelated purposes.
- (ii) Defendant's and Opposer's respective goods and services are generally marketed through different media and marketing channels.
- (iii) Consumer motivation for the use and purchase of each of Defendant's and Opposer's respective goods and services is separate and distinct.
- (iv) The packaging, trade dress and marketing materials used by Defendant and Opposer in connection with their respective goods and services are distinctly different in appearance.
- (v) Defendant's goods and services are in Classes 9 and 42. Opposer's goods and services covered Classes 35, 38, 41, 42 and 45. The only class of goods and services that Opposer's and Defendant's marks have in common is Class 42. Defendant denies that there is any similarity in the goods and services offered under this Class 42 and there is no similarity between the goods and services of Defendant's Pending Mark and that of Opposer's MAPMYRUN and MAPMYFITNESS registration and its MAPMYTRI, MAPMYHIKE, MAPMYRIDE, MAPMYWALK applications.
- (vi) Opposer has admitted to Defendant in writing that there are "substantial differences between the activities associated with the respective trade marks" (referring to the Defendant's MAPMY registration in Australia and the Opposer's then MAPMYFITNESS application in Australia). Opposer has also

proposed a coexistence agreement to Defendant by letter dated 18 September 2009 (see Exhibit 1).

- (vii) Defendant holds 2 MAPMY trade mark registrations in Australia and did not oppose the Opposer's application for mark, MAPMYFITNESS in Australia on the basis that Defendant believed its goods and services to be significantly differentiated in the market place and in no way confuses the market or any customer. In addition, Defendant accepted in good faith Opposer's letter dated 18 September 2009 stating Opposer's view that there are "substantial differences between the activities associated with the respective trade marks" and that they can co-exist in the market place.
- (viii) Defendant has not experienced any market confusion with Opposer's names and Opposer has never advised of any confusion and in fact has admitted in writing that there are "substantial differences between the activities associated with the respective trade marks" and has proposed a coexistence agreement to Defendant by letter dated 18 September 2009.
- (ix) The market and class of users for and use of Defendant's goods and services differ significantly from that of Opposer's goods and services under its registered and Pending Applications.
- (x) There are other registered marks with the word "mapmy", namely mapmywealth, mapmypage.

Defendant denies that if Defendant's application to register MAPMY for goods and services as set out in Defendant's application is allowed, Opposer would face irreparable harm on grounds that Defendant's name when used on or in connection with its goods is not similar or confusingly similar with that of Opposer's marks and Pending Application

and is not likely to cause confusion or to cause mistake or to deceive and as such will not cause any harm to Opposer.

Defendant denies and disagrees that Defendant's mark, MAPMY as applied for by Defendant is not proper subject matter for registration on grounds that Defendant has standing to file its application and the mark is of proper subject matter for registration. Defendant holds MAPMY registration in four (4) countries.

12. Defendant denies Opposer has additional standing to file the Notice of Opposition dated November 8, 2011. Defendant holds MAPMY registration in Australia and three (3) other countries and has a legitimate standing to apply and file for registration of Defendant's mark in the United States. Defendant denies Opposer's submission that Defendant's application has or will cause damage to Opposer. Opposer and Defendant currently coexist in Australia and under Opposer's own written admission by letter dated 18 September 2009 (see Exhibit 1) that there are "substantial differences between the activities associated with the respective trade marks" (referring to the Defendant's MAPMY registration in Australia and the Opposer's then MAPMYFITNESS application in Australia). Opposer has also proposed a coexistence agreement in Australia and in the United States covering its MAPMYRUN and MAPMYFITNESS registration and its pending applications (MAPMYTRI, MAPMYHIKE, MAPMYRIDE, MAPMYWALK) with the exception of its MAPMYMEDIA pending application which was filed in November 2011, at a date junior to Defendant's filing date and date of first use in commerce for Defendant's MAPMY application.

NOW THEREFORE, for the reasons set forth above, Defendant respectfully submits that Opposer's opposition to Defendant's application for mark, MAPMY be dismissed and that Defendant's application be approved for registration.

By: /Andrew Smith/

Andrew Smith

Defendant

Suite 1, 37 Bundall Road

Surfers Paradise

QLD 4217, Australia

61 7 55047800

autrade@gmail.com

Dated: February 14, 2012

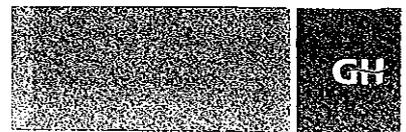


Exhibit 1

Mr Andrew Smith
PO Box 6794
GOLD COAST MAIL CENTRE
BUNDALL QLD 9726

MapMyFitness, LLC v Andrew Smith
Opposition No. 91202586
Serial No. 79069678

18 September 2009

Exhibit offered by:
Andrew Smith, Defendant

Dear Sir

**Australian Trade Mark Application No. 1280277 MAPMY (Logo)
in the name of Andrew Smith
-and-
Opposition thereto by Mapmyfitness Inc. (formerly called Mapmyfitness, LLC)
Our Ref: AT:MCR:OP80146.AU**

We act for Mapmyfitness Inc, a corporation of Delaware United States of America. Our client has established a valuable and extensive international reputation in connection with a series of trade marks containing the term MAPMY including MAPMYFITNESS, MAPMYRUN, MAPMYRIDE, MAPMYHIKE, MAPMYTRI and MAPMYWALK. Our client's reputation commenced at least as early as July 2005.

We are enclosing a Media Kit that explains the activities of our client and we also refer to the attached status report for our client's Trade Mark Application No. 1295024 for the trade mark MAPMYFITNESS which includes a description of the services of interest to our client.

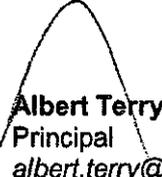
Our client is aware of your use of the trade mark MAPMY in connection with the website <http://mapmy.com.au> that appears to be a social networking site.

As there are, in our client's view, substantial differences between the activities associated with the respective trade marks we have advised our client that it will be possible for the trade marks to coexist without conflict. We have been instructed to request to you to sign the attached Letter of Consent which will allow the respective trade marks MAPMY and MAPMYFITNESS to coexist on the Australian Trade Mark Register.

As you may be aware, our client has lodged an opposition to your application 1280277 MAPMY. As this matter would appear to be capable of settlement by agreement, our client would agree to withdraw that opposition on receipt of the attached executed letter of consent.

If you have any questions, please let me know.

Yours sincerely


Albert Terry
Principal
albert.terry@griffithhack.com.au

Encs.

Registrar of Trade Marks
PO Box 200
Woden ACT 2606

18 September 2009

Dear Sir

Australian Trade Mark Application No. 1295024
Applicant: MAPMYFITNESS Inc.
Mark: MAPMYFITNESS
Classes: 35, 38, 41, 42 and 45

I, **Andrew Smith**, of Suite 1, 37 Bundall Road, Surfers Paradise, 4217 Queensland, Australia, the registered proprietor of Australian Trade Mark Registration No. 1212850 MAPMY in Classes 9 and 42 AND the Applicant in connection with Australian Trade Mark Application No. 1280277 MAPMY in Classes 9, 35, 38 and 42 hereby consent to the use and registration of the trade mark MAPMYFITNESS, subject of Australian Trade Mark Application No. 1295024 in Classes 35, 38, 41, 42 and 45 in the name of Mapmyfitness Inc., a corporation of the State of Delaware, of Suite 100, 5303 E. Evans Avenue, Denver Colorado 80222, United States of America in respect to of:

Class: 35 Dissemination of advertising for others via the Internet

Class: 38 Providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise

Class: 41 Providing a website through which users can locate, rate, and share information about fitness events and competitions in the field of fitness and exercise; online journals, namely blogs featuring fitness and exercise; providing information and newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events

Class: 42 Computer services, namely, creating and hosting an online community for registered users to use fitness tools, namely, electronically gather, analyze, and format fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology; providing tools to allow users to upload, exchange, and share fitness and exercise photos and stories within a fitness community

Class: 45 Online social networking services in the field of fitness and exercise

Executed by Andrew Smith this

day of

2009

Andrew Smith

[REDACTED]

Trade Mark Details

Trade Mark : 1295024

Word: MAPMYFITNESS
Image:
Lodgement Date: 20-APR-2009
Convention Details: 18-MAR-2009
77693650
UNITED STATES OF AMERICA
Acceptance Due: 05-AUG-2010
First Report: 05-MAY-2009
Class/es: 35, 38, 41, 42, 45
Status: Under Examination - Extension Fees Not Required
Kind: n/a
Type of Mark: Fancy
Examiner: Paul KNIGHT

MAPMYFITNESS

Owner/s: **MapMyFitness, LLC**
Limited Liability Company Colorado
Suite 100
5303 E. Evans Avenue
Denver Colorado 80222
UNITED STATES OF AMERICA

Address for Service: Griffith Hack
GPO Box 4164
SYDNEY NSW 2001
AUSTRALIA

Goods & Services

Class: 35 Dissemination of advertising for others via the Internet

Class: 38 Providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise

Class: 41 Providing a website through which users can locate, rate, and share information about fitness events and competitions in the field of fitness and exercise; online journals, namely blogs featuring fitness and exercise; providing information and newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events

Class: 42 Computer services, namely, creating and hosting an online community for registered users to use fitness tools, namely, electronically gather, analyze, and format fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology; providing tools to allow users to upload, exchange, and share fitness and exercise photos and stories within a fitness community

Class: 45 Online social networking services in the field of fitness and exercise

Indexing Details - Word Constituents

MAPMYFITNESS

Indexing Details - Image Constituents

CONSENT AND COEXISTENCE AGREEMENT

THIS CONSENT AND COEXISTENCE AGREEMENT ("Agreement") is entered into on this _____ day of _____, 2010, by and between **MAPMYFITNESS, INC.**, of Suite 100, 5303 E. Evans Avenue, Denver Colorado 80222 UNITED STATES OF AMERICA ("MapMyFitness"), and **ANDREW SMITH** of Suite 1, 37 Bundall Road, Surfers Paradise, QLD 4217 AUSTRALIA ("Andrew Smith").

WITNESSETH

WHEREAS, MapMyFitness has applied to register the trademark MAPMYFITNESS in Australia in connection with Australian Trade Mark Application No. 1295024 dated 20 April 2009 in respect of the services set out in Annexure "A"; and

WHEREAS, MapMyFitness registered the trademarks MAPMYRUN and MAPMYFITNESS in the United States in connection with United States Trademark Registrations Nos. 3672762 dated 12 February 2009 and 3672997 dated 18 March 2009 in respect of the services set out in Annexure "B"; and has applied to register the trademarks MAPMYTRI, MAPMYHIKE, MAPEMYRIDE, and MAPYMYWALK in the United States in connection with United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, and 77/762972 dated 18 June 2009 in respect of the services set out in Annexure "C"; and

WHEREAS, Andrew Smith has registered the trade mark MAPMY in Australia in connection with Australian Trade Mark Registration No. 1212850 dated 29 November 2007 in respect of the goods and services set out in Annexure "D"; and has applied to register the trade mark MAPMY (Stylised), in connection with Australian Trade Mark Application No. 1280277, dated 8 January 2009, in respect of the goods and services set out in Annexure "E"; and

WHEREAS, Andrew Smith has applied to register the trademark MAPMY in the United States in connection with United States Trademark Serial No. 79/069678, dated 14 May 2009, in respect of the goods and services set out in Annexure "F"; and

WHEREAS MapMyFitness, Inc. has opposed the registration of Australian Trade Mark Application No. 1280277 in the name of Andrew Smith and plans to oppose the application of United States Trademark Serial No. 79/069678 in the name of Andrew Smith.

NOW, THEREFORE, the parties have considered their commercial interests with care and as reputable business persons, and users of valuable trade marks, that have no interest in causing public confusion. In view of the foregoing, and in consideration of the mutual undertakings set forth herein, the parties agree as follows:

1. That no likelihood of confusion exists between the trade marks of MapMyFitness subject of Australian Trade Mark Application No. 1295024, United States Trademark Registrations Nos. 3672762 and 3672997, and United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, and 77/762972 as used in relation to the services covered in the registrations and applications, on the one hand, and the trade marks of Andrew Smith, subject of Australian Trade Mark Registration No. 1212850 and Australian Trade Mark

Application No. 1280277 and United States Trademark Serial No. 79/069678 in relation to the goods and services covered by the registration and applications based on the following factors:

- a) The parties' respective goods and services are generally marketed through different media and marketing channels;
 - b) Consumer motivation for the purchase of each party's respective services is separate and distinct;
 - c) The parties' respective services are used in different, unrelated ways to fulfill different and unrelated purposes; and
 - d) The packaging, trade dress, and marketing materials of the parties used in connection with their respective services are distinctly different in appearance.
2. MapMyFitness will not use or authorise others to use the trade marks of MapMyFitness subject of Australian Trade Mark Application No. 1295024, United States Trademark Registrations Nos. 3672762 and 3672997, or United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, and 77/762972 in connection with any of the goods or services covered by Australian Trade Mark Registration No. 1212850, Australian Trade Mark Application No. 1280277, or United States Trademark Serial No. 79/069678 in the name of Andrew Smith.
 3. Andrew Smith will not use or authorise others to use the trade marks of Andrew Smith subject of Australian Trade Mark Registration No. 1212850, Australian Trade Mark Application No. 1280277, and US Serial No. 79/069678 in connection with the services covered by Australian Trade Mark Application No. 1295024, United States Trademark Registrations Nos. 3672762 and 3672997, and United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, and 77/762972 in the name of MapMyFitness.
 4. The parties agree to cooperate and consult with one another, in good faith, should future conditions or developments suggest to either that the parties' respective marks are being confused with one another, all with a view to ensure that no substantial confusion between the parties' marks as they are used in commerce shall occur. Specifically, the parties agree that if one of them notifies the other that specific instances of confusion have arisen due to the other's actions, or due to actions of a third party in advertising or promoting the other's mark or services, the notified party will take appropriate steps, not inconsistent with its ownership interests in its own trade mark, and the proper and lawful use thereof, insofar as is reasonably possible, to correct such confusion and to avoid further confusion.

5. MapMyFitness agrees that it will not oppose, petition to cancel, or otherwise interfere with the interests of Andrew Smith in the trade marks MAPMY in relation to the goods and services covered by Australian Trade Mark Registration No. 1212850, Australian Trade Mark Application No. 1280277, and United States Trademark Serial No. 79/069678, and in particular, agrees to withdraw opposition to Australian Trade Mark Application No. 1280277 and not to oppose United States Trademark Serial No. 79/069678.
6. Andrew Smith agrees that he will not oppose, petition to cancel, or otherwise interfere with the use by MapMyFitness of the trademarks subject of Australian Trade Mark Application No. 1295024, United States Trademark Registrations Nos. 3672762 and 3672997, or United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, 77/762972 in connection with the services covered by those registrations and applications.
7. MapMyFitness expressly consents to the registration of the trade mark MAPMY (Stylised) by Andrew Smith in Australia in connection with the goods and services covered by Australian Trade Mark Registration No. 1212850 and Australian Trade Mark Application No. 1280277; MapMyFitness expressly consents to the registration of the United States Trademark Serial No. 79/069678 by Andrew Smith in the United States in connection with the goods covered within the application.
8. Andrew Smith expressly consents to the registration of the trade mark MAPMYFITNESS by MapMyFitness in Australia in connection with the services covered by Australian Trade Mark Application No. 1295024; Andrew Smith expressly consents to the registration of United States Trademark Serial Nos. 77/762962, 77/762964, 77/762967, and 77/762972 by MapMyFitness in the United States in connection with the services covered within the applications.
9. Both parties to this Agreement may license or assign their respective rights hereunder, in whole or in part, provided that such license or assignment is subject to and does not extend beyond the provisions of this Agreement.
10. Should either party abandon its mark, its rights shall be lost, and the other party may thereafter use its mark in all proper and legal ways, unrestricted by the terms of this Agreement.
11. This Agreement is fully integrated, constitutes the entire agreement between the parties, and constitutes the complete, final and exclusive embodiment of their agreement relating to the subject matter hereof.
12. This Agreement may be amended only by writing signed by both parties.

13. This Agreement shall bind the parents, subsidiaries, affiliates, agents, representatives, successors and assigns of each party and inure to the benefit of each party, its agents, directors, officers, employees, parents, subsidiaries, successors and assigns.
14. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.
15. The parties agree that this Agreement may be submitted to the Australian Trade Marks Office and the United States Patent and Trademark Office as evidence of the mutual consents granted in Paragraph 7 and 8 above.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement, effective as of the last date of signature below.

SIGNED for and on behalf of)
MAPMYFITNESS, INC.)
 by its duly appointed officer)
 in the presence of)

 Signature of Authorised Officer

 Witness

 Name of Authorised Officer

 Name of witness (please print)

SIGNED by **ANDREW SMITH**)
 in the presence of)
)

 Andrew Smith

 Witness

 Name of witness (please print)

ND: 4845-0906-9574, v. 2
 AT:MCR:OP80146.AU

ANNEXURE A

Services of Australian Trade Mark Application No. 1295024

Representation of the mark: MAPMYFITNESS

Class: 35 Dissemination of advertising for others via the Internet

Class: 38 Providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise

Class: 41 Providing a website through which users can locate, rate, and share information about fitness events and competitions in the field of fitness and exercise; online journals, namely blogs featuring fitness and exercise; providing information and newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events

Class: 42 Computer services, namely, creating and hosting an online community for registered users to use fitness tools, namely, electronically gather, analyze, and format fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology; providing tools to allow users to upload, exchange, and share fitness and exercise photos and stories within a fitness community

Class: 45 Online social networking services in the field of fitness and exercise.

ANNEXURE B

Services of United States Trademark Registration No. 3672762

Representation of the mark: **MAPMYRUN**

Class: 38 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise.

Class: 41 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events.

Class: 42 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community.

Class: 45 online social networking services in the field of fitness and exercise.

Services of United States Trademark Registration No 3672997

Representation of the mark: **MAPMYFITNESS**

Class: 35 dissemination of advertising for others via the Internet.

Class: 38 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise.

Class: 41 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events.

Class: 42 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community.

Class: 45 online social networking services in the field of fitness and exercise

ANNEXURE C

Services of United States Trade Mark Serial Nos. 771762962, 771762964, 771762967, and 771762972

Representation of the mark: **MAPMYTRI**

Class: 38 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise.

Class: 41 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events.

Class: 42 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor, and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community.

Class: 45 online social networking services in the field of fitness and exercise.

Representation of the mark: **MAPMYHIKE**

Services: Same as above

Representation of the mark: **MAPMYRIDE**

Services: Same as above

Representation of the mark: **MAPMYWALK**

Services: Same as above

ANNEXURE D

Goods and Services of Australian Trade Mark Registration No. 1212850

Representation of the mark: **MapMy**

Class: 9 Application software; communication software; communications processing computer software; computer games entertainment software; computer games programmes (software); computer games programs (software); computer games programs downloaded via the Internet (software); computer games programs downloaded via the Internet (software); computer games software; computer graphics software; computer programmes (programs) and recorded software distributed online; computer programs (downloadable software); computer software; computer software (programs); computer software downloaded from the Internet; computer software for analysing address files; computer software for analysing market information; computer software for authorising access to data bases; computer software for business purposes; computer software for communicating purposes between microcomputers; computer software for processing address files; computer software for processing market information; computer software products; computer software programs; computer software programs for database management; data communications software; games software for use with computers; integrated software packages; interactive computer software; interactive entertainment software for use with computers; interactive video software; network management computer software; satellite imagery software

Class: 42 Computer software design; computer software development; computer software engineering; design of computer software; development of computer software; development of computer software application solutions; development of software; information technology (IT) services (computer hardware, software and peripherals design and technical consultancy); installation and maintenance of computer software; installation of computer software; installation of middleware (software); installation, repair and maintenance of middleware (software); online provision of web-based software; rental of computer software; software creation; software engineering; updating of computer software; upgrading of computer software; writing of computer software.

ANNEXURE E

Goods and Services of Australian Trade Mark Application No. 1280277

Representation of the trade mark:



Class: 9 Apparatus for automatically placing messages via telecommunications equipment; apparatus for telecommunications engineering; call barring devices for use with telecommunications apparatus; call charging apparatus for use with telecommunications apparatus; cellular telecommunications apparatus; cellular telecommunications instruments; computer controlled telecommunications exchange apparatus; computer programs for the control of telecommunication apparatus; computer programs for the control of telecommunication instruments; computer programs for use in telecommunications; converters being telecommunications apparatus for television signals; digital telecommunications apparatus; digital telecommunications instruments; electric apparatus relating to telecommunications; electrical instruments for telecommunications purposes; electronic components for telecommunications; high capacity broadband telecommunications switching apparatus; memory apparatus for telecommunications network design; memory apparatus for telecommunications network management; mobile telecommunications apparatus; portable telecommunications apparatus; programmable telecommunication apparatus; strategic telecommunication apparatus for aircraft; strategic telecommunication apparatus for land vehicles; strategic telecommunication apparatus for ships; telecommunications alarm apparatus; telecommunications apparatus; telecommunications apparatus for interfacing purposes; telecommunications apparatus for measuring purposes; telecommunications apparatus for transferring data to computers; telecommunications apparatus for transmission purposes; telecommunications apparatus for transmitting data for use with computers; telecommunications apparatus for use in cellular radio networks; telecommunications apparatus for use with analogue signals; telecommunications apparatus for use with digital signals; telecommunications circuit board units; telecommunications devices; telecommunications digital exchange apparatus; telecommunications equipment; telecommunications installations; telecommunications instruments; telecommunications instruments for use in cellular radio networks; telecommunications machines; telecommunications network management installations; telecommunications networks; transmitters (telecommunication); transmitting apparatus for telecommunications

Class: 35 Arranging subscriptions to telecommunication services (for others); bundling (arranging) subscriptions to utilities (gas, water, electricity, telecommunications) for others; organisation and management of customer loyalty programmes whereby customers obtain a discount on their utilities bills (gas, water, electricity, telecommunications) by obtaining these services

Class: 38 Advisory services relating to telecommunications; cellular telecommunications services; charitable services, namely telecommunications; chat room services (telecommunications services); communication of data by means of telecommunications; consultancy services relating to telecommunications; data transmission services over telecommunications networks; delivery of digital music by telecommunications; digital network telecommunications services; electronic bulletin board services (telecommunications services); information about telecommunication; information services relating to telecommunications; internet cafe services being the provision of telecommunications access to the internet; message storage and transmission (telecommunications); operation of telecommunications apparatus; operation of telecommunications systems; operation of wide-band telecommunications networks; optical fibre telecommunications services; providing information, including online, about telecommunications; providing of access to telecommunication warehousing services; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; provision of telecommunication facilities; radio telecommunications; relaying rescue beacon signals (telecommunications); remote transmission of data by means of telecommunications; rental of telecommunication apparatus; rental of telecommunication equipment; switching network services (telecommunications); telecommunications; telecommunications advisory services; telecommunications brokerage; telecommunications consultancy; telecommunications routing and junction services; telecommunications security (providing secure connections and access including to computers and the global computer network); telecommunications services by satellite; telecommunications services for the distribution of data; telegraph telecommunications services; video conference services (telecommunications services)

Class: 42 Design of telecommunications apparatus; design of telecommunications installations; development, maintenance and updating of a telecommunication network search engine; research relating to telecommunication.

ANNEXURE F

Goods and Services of United States Trademark Serial No. 79/069678

Representation of the mark: **MAPMY**

Class: 9 Application software for the input, capture, storing, processing and displaying of information, data, ads, coordinates and media in lists, pages and on a graphical information system or map on computers and mobile devices; communication software for electronically capturing, processing and distributing voice, voice commands, media, data, coordinates and information across computers and mobile devices; computer games entertainment software for running computer games on computers and mobile devices; computer graphics software to manipulate images on computers and mobile devices; computer programs and recorded software for searching, downloading, recording and playing music and sounds on PC and mobile devices; computer software for analyzing data, namely, address and property information, stock market information, and displaying results on computer and mobile devices; computer software for managing networks, authorizing access and security on computer and mobile devices; computer software for publishing ads, blogs, video and media files on PC and mobile devices; computer software for communication purposes between microcomputers and mobile devices; interactive computer software for real time chat, video streaming, maps, advertising and gaming; computer software for managing the location of a device and devices in a region, and mapping and satellite imagery software

Class: 42 Writing, design, creation, engineering, renting and upgrading of software and hardware for the capture, processing, storage and display of information, data, ads, coordinates and media on web pages, geographical information systems and maps, on computers, mobile devices, navigation or GPS systems; writing, design, creation, engineering, renting and upgrading of computer software and hardware for mapping, navigation and communications; writing, design, creation, engineering, renting and upgrading of computer and microcomputer navigation components and hardware; mapping software and hardware design and technical consultancy; installation and maintenance of computer software for publishing, mapping and communications; online provision of web-based non-downloadable software for the capture, processing and display of information, data, ads, coordinates and media on webpages and geographical information systems, maps and navigation and GPS systems

CERTIFICATE OF SERVICE – ANSWER TO NOTICE OF OPPOSITION

Opposition No: 91202586

MapMyFitness, LLC v. Andrew Smith

Serial No: 79069678

I hereby certify that a copy of these papers (Answer + Exhibit 1) have been served upon the attorney for the Opposer at their address on record on 14 February 2012 by registered international post (RR142852744AU).

Signature: /Andrew Smith/
Name: Andrew Smith
Date: 14 February 2012