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Filing date: **02/11/2012**

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

Proceeding	91203240
Party	Defendant LEAP into Wellness
Correspondence Address	Stephen P. Kearney Attorney at Law 559 Summer Street Duxbury, MA 02332  SKearneyLaw@aol.com
Submission	Answer
Filer's Name	Stephen P. Kearney
Filer's e-mail	SKearneyLaw@aol.com
Signature	/Stephen P. Kearney/
Date	02/11/2012
Attachments	Answ_Affirm_Defenses001.pdf ( 5 pages )(2474448 bytes )

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

In the matter of Application Serial No. 77/952,833  
Filed: March 8, 2010  
Mark: LEAP INTO WELLNESS  
Published in the Official Gazette on December 13, 2011

LEWIS COUNTY PRIMARY CARE CENTER, INC.	)	
doing business as PRIMARYPLUS,	)	
	)	
Opposer,	)	
	)	Opposition No. 91203240
v.	)	
	)	
LEAP INTO WELLNESS,	)	
	)	
Applicant.	)	
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**ANSWER**

Applicant, LEAP INTO WELLNESS, LLC (Applicant), by and through its undersigned counsel, hereby answers the Notice of Opposition to the registration of its mark LEAP INTO WELLNESS, subject of Serial No. 77/952,833.

Applicant denies each and every allegation contained in the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Applicant is without knowledge or information sufficient to form a basis as to the truth of the averments in paragraph 1 of the Notice of Opposition, and therefore denies same.
2. Applicant is without knowledge or information sufficient to form a basis as to the truth of the averments in paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a basis as to the truth of the averments in paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Applicant admits that it filed an application to register the word mark LEAP INTO WELLNESS in association with, “Consulting in the field of health and wellness to bring about personal happiness; Counseling services in the fields of health, nutrition and lifestyle wellness; Dietitian service; Proving a website featuring content regarding healthy living and lifestyle wellness; providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Wellness and health-related consulting services” in international Class 044; that the application bears a filing date of March 8, 2010. Applicant admits its application to register the word mark LEAP INTO WELLNESS was published for opposition in the *Official Gazette* on December 13, 2011.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in paragraph 5 of the Notice of Opposition and, therefore, denies the same.
6. DENIED.
7. DENIED.

**AFFIRMATIVE DEFENSES**

For its affirmative defenses, Applicant asserts as follows:

8. Opposer will not be damaged by registration of Applicant’s mark.
9. Opposer’s claims are barred by laches.
10. Opposer’s claims are barred by acquiescence.
11. Opposer fails to state a claim upon which relief can be granted.
12. Opposer’s mark is not protectable as sought in the Complaint.

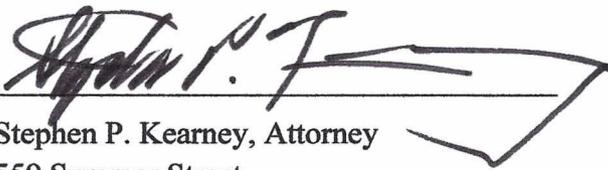
13. Applicant's mark is entirely different from Opposer's mark. Applicant's mark, LEAP INTO WELLNESS, is a play on words referencing the training and official recognition of Applicant's principal, Amy Rose Sager, as a LEAP certified therapist by Signet Diagnostic Corporation of Riviera Beach, Florida; consumers are more likely to associate the Applicant's mark, LEAP INTO WELLNESS, with the LEAP certification offered through the Signet Diagnostic Corporation and its unregistered trademark, LEAP; Signet Diagnostic Corporation has been using the unregistered trademark LEAP continuously in interstate and intrastate commerce since at least September 15, 1996 to market medical diagnostic testing, monitoring and reporting services, and medical information, namely, consumer-authorized clinical laboratory testing services that are reported directly to the patient, nutritional counseling and medical services; and, through the common law and its prior registration, Signet Diagnostic Corporation has rights to the trademark LEAP that are superior to Opposer's.
14. Signet Diagnostic Corporation was the owner of the registered trademark LEAP, registration number 2156253 issued May 12, 1998 based on a first use dating back until at least September 15, 1996. Though the registration was not renewed, Signet Diagnostic Corporation has common law rights to the trademark LEAP that are superior to the rights of Opposer. As with all LEAP certified technicians throughout the country, Applicant's principal, Amy Rose Sager, has general authorization from Signet Diagnostic Corporation to use the term LEAP in the marketing of her business. Additionally, Applicant's principal, Amy Rose Sager, has specific written authorization from Signet Diagnostic Corporation to use the term LEAP in the marketing of her business.
15. A significant number of third parties provide similar services under the designation LEAP. Opposer cannot claim exclusive rights in LEAP formative trademarks in association with all class 044 services.
16. There is no likelihood of confusion between any mark owned by Opposer and Applicant's mark LEAP INTO WELLNESS for class 044 services.

17. Applicant reserves the right to add additional affirmative defenses as they become known through discovery.

WHEREFORE, Applicant prays that the Opposition be dismissed and that the mark LEAP INTO WELLNESS, subject of Serial No. 77/952,833, proceed to registration on the Principal Register.

Dated: 11 February 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen P. Kearney", is written over a horizontal line. To the right of the signature is a large, stylized, hand-drawn flourish or scribble.

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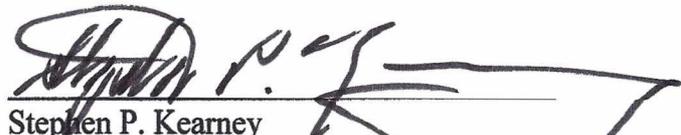
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**CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION**

I hereby certify that on 11 February 2012, the foregoing ANSWER was electronically filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board. Notice of this filing was served by First Class Mail, postage prepaid, on the following attorney for Opposer:

Attorney Jack A. Wheat  
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Stephen P. Kearney  
Attorney for Applicant