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

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| Proceeding | 91206208 |
| Party | Defendant Palladian Health, LLC |
| Correspondence Address | MARYBETH PRIORE COLUCCI & GALLAHER, P.C. 424 MAIN ST 2000 Liberty Building BUFFALO, NY 14202 mpriore@colucci-gallaher.com |
| Submission | Answer |
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| Signature | /Marybeth Priore/ |
| Date | 08/31/2012 |
| Attachments | Palladian-Fitblue.Answer to Notice of Opposition.FINAL.20120831.pdf (6 pages) (145806 bytes) |

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

BLUE CROSS AND BLUE SHIELD
ASSOCIATION,

Opposer,

vs.

PALLADIAN HEALTH, LLC,

Applicant.

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* OPPOSITION NO. 91206208
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* MARK: FITBLUE
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* APPLICATION NO. 85363867
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ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, Palladian Health, LLC, by its attorneys, for its Answer to Opposer, Blue Cross and Blue Shield Association's, Notice of Opposition, alleges as follows:

1. Applicant admits that it filed an application to register FITBLUE under Serial Number 85363867 in International Class 35 on July 6, 2011. The description of the goods and services was changed on or about November 15, 2011 to "Administration of health benefit plans concerning fitness center memberships; promoting enrollment in fitness centers to health benefit plan members" as part of Applicant's Response to Office Action. Applicant admits that the mark was published in the *Official Gazette* on January 24, 2012.

2. Applicant is with without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

3. Applicant is with without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of

Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. Applicant is with without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

5. Applicant is with without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

6. Applicant is with without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

FURTHERMORE, Applicant sets forth the following in support of its position:

1. Applicant's mark is unique and distinctive.
2. The wording in Applicant's mark is different from the wording in any of Opposer's marks.
3. Applicant's mark is different in appearance from any of Opposer's marks.
4. Applicant's mark has a different spelling from any of Opposer's marks.
5. Applicant's mark and Opposer's marks create different commercial impressions.
6. Applicant's mark contains the word "FIT" not present in Opposer's marks.
7. "FIT" is registered in trademarks for health related goods and services not owned by Opposer.
8. "FIT" is used in commerce by third parties as part of trademarks for health related goods and services.
9. Applicant's services and Opposer's services are not marketed through the same channels of trade.
10. Applicant and Opposer provide different services.
11. Applicant's mark and Opposer's marks are not likely to cause confusion, mistake or deception to purchasers as to the source of Opposer's goods or services.
12. Applicant's mark and Opposer's marks are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant.
13. Applicant has priority and came up with the mark.
14. Applicant was the first to use the mark in commerce.
15. Opposer waived any rights to the mark.

16. Applicant's mark is not likely to dilute the distinctive quality of any of Opposer's marks.

17. Opposer's actions constituted a full release of any and all claims to the mark.

18. The Notice of Opposition is barred by reason of acts, omissions, representations and courses of conduct by Opposer which Applicant was led to rely to its detriment, thereby barring, under the doctrine of equitable estoppel, any claims to the mark.

19. Opposer's inequitable conduct constitutes unclean hands and therefore bars any claims to the mark.

20. Opposer did not timely commence this action and it is therefore barred.

21. Defects in the Notice of Opposition and in service of the Notice of Opposition are a bar to this action.

Applicant hereby appoints Marybeth Priore, a member of the bar of the State of New York, at the firm of:

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to act as attorneys in the matter of the Opposition identified above, to prosecute said Opposition, to transact all business with the United States Patent and Trademark Office, and the United States courts connected with the Opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all

communications relating to the same.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial Number 85363867 in the United States Patent and Trademark Office.

DATED: August 31, 2012

Respectfully Submitted,

/s/ Marybeth Priore

Marybeth Priore

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Attorneys for Applicant

Palladian Health, LLC

CERTIFICATE OF SERVICE

I, Marybeth Priore, hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition was served on the parties listed below, by mailing said copies on August 31, 2012, via U.S. First Class Mail, postage pre-paid to:

Susan G. O'Neill, Esq.
Garner K. Weng, Esq.
Christopher S. Walters, Esq.
Hanson Bridgett, LLP
425 Market Street, 26th Floor
San Francisco, California 94105

Dated: August 31, 2012

/s/ Marybeth Priore
Marybeth Priore