

ESTTA Tracking number: **ESTTA585392**

Filing date: **02/03/2014**

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

Proceeding	91214193
Party	Defendant Workout Anytime Franchising Systems, LLC
Correspondence Address	PAUL S. SUDA 1362 SALEM DR ALPHARETTA, GA 30009-3148  sudalaw@bellsouth.net
Submission	Answer
Filer's Name	Paul S. Suda
Filer's e-mail	sudalaw@bellsouth.net
Signature	/Paul S. Suda/
Date	02/03/2014
Attachments	Answer to Opposition.pdf(133667 bytes )

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

In the matter of Application Serial  
No. 85954555 Published in the  
Official Gazette on August 27, 2013  
Mark 24 7 & Design

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24 HOUR FITNESS, USA, INC.,

Opposer,

OPPOSITION

v.

NO: 91214193

WORKOUT ANYTIME FRANCHISING  
SYSTEMS, LLC d/b/a  
WORKOUT ANYTIME,

Applicant.

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**APPLICANT'S ANSWER**

**COMES NOW** Applicant, WORKOUT ANYTIME FRANCHISING  
SYSTEMS, LLC d/b/a WORKOUT ANYTIME (“WORKOUT ANYTIME”),  
by and through its undersigned counsel, and for its Answer avers as follows:

1. Applicant admits to the allegations contained in Paragraph 1 of  
Opposer’s Notice of Opposition.
2. Applicant admits to the allegations contained in Paragraph 2 of  
Opposer’s Notice of Opposition.

3. Applicants aver that the allegations contained in Paragraph 3 of Opposer's Notice of Opposition are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 3 of Opposer's Notice of Opposition.

4. Applicant avers that the allegations contained in Paragraph 4 of Opposer's Notice of Opposition, so far as such relates to Opposer's claim of its marks being "famous", are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 4 of Opposer's Notice of Opposition with respect to same. Applicant does admit, however, that Opposer owns numerous marks.

5. Applicant admits to the allegations contained in Paragraph 5 of Opposer's Notice of Opposition.

6. Applicant avers that the allegations contained in Paragraph 6 of Opposer's Notice of Opposition are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 6 of Opposer's Notice of Opposition.

7. Applicant avers that the allegations contained in Paragraph 7 of Opposer's Notice of Opposition are vague and ambiguous, and therefore

Applicant denies the allegations contained in Paragraph 7 of Opposer's Notice of Opposition.

8. Applicant avers that the allegations contained in Paragraph 8 of Opposer's Notice of Opposition are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 8 of Opposer's Notice of Opposition.

9. Applicant avers that the allegations contained in Paragraph 9 of Opposer's Notice of Opposition are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 9 of Opposer's Notice of Opposition.

10. Applicant avers that the allegations contained in Paragraph 10 of Opposer's Notice of Opposition are vague and ambiguous, and therefore Applicant denies the allegations contained in Paragraph 10 of Opposer's Notice of Opposition.

11. Applicant denies the allegations contained in Paragraph 11 of Opposer's Notice of Opposition so far as such involves the claim of there being no priority and that Applicant's first use of the mark at issue was on December 1, 2012. Applicant further avers that the remaining allegations contained in Paragraph 11 of Opposer's Notice of Opposition are vague and ambiguous, and

therefore Applicant denies all other allegations contained in Paragraph 11 of Opposer's Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of Opposer's Notice of Opposition.

13. Applicant denies the allegations contained in Paragraph 13 of Opposer's Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of Opposer's Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of Opposer's Notice of Opposition.

16. Applicant denies the allegations contained in Paragraph 16 of Opposer's Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of Opposer's Notice of Opposition.

18. Applicant denies the allegations contained in Paragraph 18 of Opposer's Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of Opposer's Notice of Opposition.

20. Applicant denies the allegations contained in Paragraph 20 of Opposer's Notice of Opposition.

Unless otherwise responded to herein, Applicant denies any remaining allegations in the Notice of Opposition.

### **AFFIRMATIVE OR OTHER DEFENSES**

#### **FIRST DEFENSE**

Opposer's Notice of Opposition fails to state a claim or cause of action upon which relief may be granted.

#### **SECOND DEFENSE**

Opposer has failed to plead a *prima facie* case.

#### **THIRD DEFENSE**

Opposer's claims under specific provisions of 15 U.S.C §§ 1051 *et seq.* are barred, in whole or in part, because it cannot establish that it or the general consuming public will be damaged in any way.

#### **FOURTH DEFENSE**

Opposer's claims are barred in whole or in part by the Doctrines of Prior Use, Fair Use and Collateral Use.

## **FIFTH DEFENSE**

Because Opposer's Notice of Opposition is phrased in conclusory terms, Applicant cannot fully anticipate all defenses which may be applicable to this action. Accordingly, Applicant reserves the right to assert additional defenses or counterclaims in this action.

Respectfully submitted: February 3, 2014

*/s/ Paul S. Suda*

Paul S. Suda

Georgia Bar No. 690748

[sudalaw@bellsouth.net](mailto:sudalaw@bellsouth.net)

1362 Salem Drive

Alpharetta, Georgia 30009

Tel: (404) 219-1775

ATTORNEY FOR APPLICANT

WORKOUT ANYTIME

FRANCHISING SYSTEMS, LLC

d/b/a WORKOUT ANYTIME

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**CERTIFICATE OF SERVICE**

I certify that on Monday, February 3, 2014, I electronically filed the foregoing **APPLICANT’S ANSWER** with the United States Trademark Trial and Appeal Board, and mailed a copy of same via the United State Postal Service in an envelope containing sufficient postage to ensure delivery to Opposer’s counsel of record as follows:

Susan Hollander, Esq.  
Sharoni Finkelstein, Esq.  
K&L Gates LLP  
Four Embarcadero Center Suite 1200  
San Francisco, CA 94111

/s/ Paul S. Suda  
Paul S. Suda

Georgia Bar No. 690748  
[sudalaw@bellsouth.net](mailto:sudalaw@bellsouth.net)  
1362 Salem Drive  
Alpharetta, Georgia 30009  
Tel: (404) 219-1775

ATTORNEY FOR APPLICANT