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

Proceeding	91217657
Party	Defendant Pro Nutra, LLC
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Date	11/10/2014
Attachments	Fit 15 - Answer to 24 Hr Fitness Opposition Brief - Final.pdf(103354 bytes)

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

**In the matter of Application Serial No. 86/113,978
Published in the *Official Gazette* on April 1, 2014
Mark: FIT 15**

24 Hour Fitness USA, Inc.,

Opposer,

v.

OPPOSITION NO. 91217657

Pro Nutra, LLC,

Applicant.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Pro Nutra, LLC (“Applicant”) hereby Answers the Notice of Opposition filed by 24 Hour Fitness, USA, Inc. (“Opposer”) and alleges as follows:

1. Admitted.
2. Denied as to “International Class 41” but otherwise admitted.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3, and therefore denies those allegations.
4. Admitted.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, and therefore denies those allegations.
6. Admitted that Applicant has filed Application Serial No. 86/113,978 for “FIT 15” on November 8, 2013, and bases its application on Section 1(b) of the Lanham

Act (the “Mark”). As to the remainder of Paragraph 6, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies those allegations.

7. Denied.

8. Denied.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and therefore denies those allegations.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and therefore denies those allegations.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

With respect to Opposer’s “WHEREFORE” clause, Applicant denies each and every allegation contained therein and denies that Opposer is entitled to any of the relief requested in the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant asserts that the following affirmative defenses bar Opposer’s requested relief in its Notice of Opposition.

1. **First Affirmative Defense:** Opposer fails to state a claim upon which relief can be granted.

2. **Second Affirmative Defense:** There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant’s Mark and the alleged trademarks of

Opposer are not confusingly similar. Opposer's mark is "Apex Fit 150" – whereas Applicant's mark is "Fit 15" such that the marks differ, *inter alia*, in sound and look.

3. **Third Affirmative Defense:** Both Registration Number 4,179,095 and 4,283,994 contain the statement: "No claim is made to the exclusive right to use "150" apart from the mark as shown." Any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of the numbers "15" which is not distinctive. As a result, under the anti-dissection rule any secondary meaning Opposer may have in its alleged trademarks is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the word "FIT."

4. **Fourth Affirmative Defense:** Opposer's Notice of Opposition and claims therein are barred, precluded, or limited because, upon information and belief, there are significant numbers of third party users of the "FIT 150" and "APEX 150" marks for a variety of goods and services unrelated to those provided by Opposer. Therefore the terms "FIT 150" and "APEX 150" are highly diluted and unworthy of a wide scope of protection.

5. **Fifth Affirmative Defense:** Opposer will not be damaged and is not likely to be damaged by the registration of Application Serial No. 86/113,978.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and that judgment be entered in favor of Applicant, thereby allow registration to be issued on U.S. Trademark Application Serial Number 86/113,978.

Dated: November 10, 2014.

Respectfully submitted,

/s/ John Carey

John C. Carey

Ernesto M. Rubi

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Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing ANSWER TO NOTICE OF
OPPOSITION is being served this 10th day of November, 2014 on Counsel for Opposer
via First Class mail at the address below:

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By: /s/ John Carey
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