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

Proceeding	91218461
Party	Defendant Sales, David
Correspondence Address	SALES, DAVID 26841 CALE HERMOSA STE A CAPISTRANO BEACH, CA 92624  drdavidsales@gmail.com
Submission	Answer
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Date	11/03/2014
Attachments	AnswerToOpposition_Athletika.pdf(239078 bytes )

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

Athleta, Inc.	)	Opposition No.: 91218461
	)	
v.	)	Serial Nos. 86097195, 86098697
	)	
David Sales	)	
_____	)	

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, David Sales, hereby answers the Opposition in the above-captioned action as follows:

In response to the unnumbered introductory paragraph, Applicant denies that Opposer will be damaged by issuance of registrations for the marks that are the subject of Applicant's application Serial Nos. 86/097195 and 86/098697 (the "Subject Marks"). Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the unnumbered introductory paragraph and, accordingly, denies the same.

1. Applicant does not have sufficient information to admit or deny the allegations of paragraph 1, accordingly paragraph 1 is denied.
2. Applicant does not have sufficient information to admit or deny the allegations of paragraph 2, accordingly paragraph 2 is denied.
3. Applicant does not have sufficient information to admit or deny the allegations of paragraph 3, accordingly paragraph 3 is denied.
4. Applicant does not have sufficient information to admit or deny the allegations of paragraph 4, accordingly paragraph 4 is denied.
5. Applicant admits that he is an individual with an address at 26841 Calle Hermosa,

Suite A, Capistrano Beach, California 92624.

6. Applicant admits that Applicant filed an application for the registration of the mark “ATHLETIKA” in Class 005 for “Analgesic balm; Medical adhesive tape,” and in Class 010 for “Body rehabilitation apparatus for medical purposes; Compression socks for medical or therapeutic use; Exercise machines for therapeutic purposes; Foam rollers for use in physical therapy; Manually-operated exercise equipment for physical therapy purposes; Manually-operated resistance bands for physical therapy purposes; Manually-operated resistance tubing for physical therapy purposes; Medical and therapeutic device and apparatus, namely, a force and motion sensing apparatus and assisted exercise machine for the rehabilitation of hands and wrists, feet and ankles, knees and shoulders affected by neuromuscular diseases, disorders, or injuries for home or clinical use; Medical braces for hands and wrists, feet and ankles, knees and shoulders; Medical ice packs; Physical exercise apparatus, for medical purposes; Protective sleeves used with orthopedic bracing systems to protect skin from abrasions; Therapeutic hot and cold compression wraps; Therapeutic hot and cold therapy packs; Thermal packs for first aid purposes,” and in Class 025 for “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Boxer shorts; Compression garments for athletic or other non-medical use, namely, socks, shirts, shorts, and pants; Hats; Headwear; Socks; T-shirts; Underwear” on October 21, 2013 and that on May 28, 2014, Applicant deleted all of Class 025 from the application, including all of the goods “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Boxer shorts; Compression garments for athletic or other non-medical use, namely, socks, shirts, shorts, and pants; Hats; Headwear; Socks; T-shirts; Underwear.” Applicant denies all of the remaining allegations of paragraph 6.

7. Applicant admits that Applicant filed an application for the registration of the mark “ATHLETIKA SP” in Class 005 for “Analgesic balm; Medical adhesive tape,” and in Class 010 for “Body rehabilitation apparatus for medical purposes; Compression socks for medical or therapeutic use; Exercise machines for therapeutic purposes; Foam rollers for use in physical therapy; Manually-operated exercise equipment for physical therapy purposes;

Manually-operated resistance bands for physical therapy purposes; Manually-operated resistance tubing for physical therapy purposes; Medical and therapeutic device and apparatus, namely, a force and motion sensing apparatus and assisted exercise machine for the rehabilitation of hands and wrists, feet and ankles, knees and shoulders affected by neuromuscular diseases, disorders, or injuries for home or clinical use; Medical braces for hands and wrists, feet and ankles, knees and shoulders; Medical ice packs; Physical exercise apparatus, for medical purposes; Protective sleeves used with orthopedic bracing systems to protect skin from abrasions; Therapeutic hot and cold compression wraps; Therapeutic hot and cold therapy packs; Thermal packs for first aid purposes,” and in Class 025 for “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Boxer shorts; Compression garments for athletic or other non-medical use, namely, socks, shirts, shorts, and pants; Hats; Headwear; Socks; T-shirts; Underwear” on October 22, 2013 and that on May 28, 2014, deleted all of Class 025 from the application, including all of the goods “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Boxer shorts; Compression garments for athletic or other non-medical use, namely, socks, shirts, shorts, and pants; Hats; Headwear; Socks; T-shirts; Underwear.” Applicant denies all of the remaining allegations of paragraph 7.

8. Applicant admits that he is not connected to Opposer and denies that he needs Opposer’s authorization to use the marks “ATHLETIKA” and “ATHLETIKA SP.”

9. Applicant does not have sufficient information to admit or deny the allegations of paragraph 9, accordingly paragraph 9 is denied.

10. Applicant does not have sufficient information to admit or deny the allegations of paragraph 10, accordingly paragraph 10 is denied.

11. Applicant denies each and every allegation of paragraph 11.

12. Applicant denies each and every allegation of paragraph 12.

13. Applicant denies each and every allegation of paragraph 13.

14. Applicant denies each and every allegation of paragraph 14.

15. Applicant denies each and every allegation of paragraph 15.

## **AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to the claims in the Opposition, Applicant alleges as follows:

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

1. The Notice of Opposition fails to state a claim on which relief may be granted

### **SECOND AFFIRMATIVE DEFENSE**

#### **(No Likelihood of Confusion)**

2. There is no likelihood of confusion with Applicant's marks and goods as set forth in the applications.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(No Likelihood of Confusion, Mistake, or Deception)**

3. The Subject Marks, when used in connection with the goods listed in the applications, are not likely to cause confusion, mistake, or deception as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of such goods by Opposer because of the differences in the parties' respective marks as to appearance, sound, connotation, and commercial impression; the goods offered thereunder; the channels of trade in which those goods are sold; and other relevant *DuPont* factors, for which a reasonable opportunity for investigation or discovery is likely to provide evidentiary support.

### **FOURTH AFFIRMATIVE DEFENSE**

#### **(Good Faith)**

4. At all times herein, the Applicant acted in good faith, without malice and took the actions it did for legitimate reasons

### **FIFTH AFFIRMATIVE DEFENSE**

#### **(Opposer's Permission is Not Needed)**

5. Applicant does not need Opposer's permission to use its marks.

As Applicant lacks sufficient knowledge or information to form a belief as to whether it may have additional separate or affirmative defenses not stated in this Answer, Applicant reserves the right to assert additional separate or affirmative defenses based on further discovery, investigation, or analysis.

Applicant hereby appoints Michael J. Thomas, a member of the Bars of the State of California, at the firm of: Downey Brand LLP, 621 Capitol Mall, 18th Floor, Sacramento, California 95814, (916) 444-1000, trademark@downeybrand.com to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in 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

DATED: November 3, 2014

DAVID SALES:

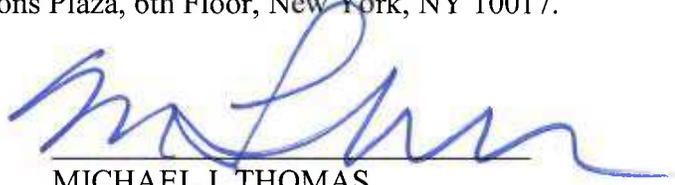
By:



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(916) 444-1000  
Attorneys for Applicant

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and Affirmative Defenses is being served on Opposer's counsel James D. Weinberger, by mailing said copy on November 3, 2014, via first class mail, postage prepaid to James D. Weinberger, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, 6th Floor, New York, NY 10017.



MICHAEL J. THOMAS