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

Proceeding	91222454
Party	Defendant Vita Enrollment Solutions, LLC
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Submission	Answer
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Date	07/27/2015
Attachments	OppAnswer-91222454.pdf(77265 bytes )

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

In the matter of: U.S. Serial No. 86338931  
Date of filing: July 16, 2014  
Mark: EVOLVE BENEFITS  
Date of Publication: April 21, 2015

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Independent Health Association, Inc.	)	
Opposer,	)	Opposition No.: 91222454
	)	
v.	)	Application Serial No.: 86338931
	)	
Vita Enrollment Solutions, LLC,	)	Mark: EVOLVE BENEFITS
dba Evolve Benefits	)	
Applicant.	)	

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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant, Vita Enrollment Solutions, LLC, dba Evolve Benefits (“Applicant”), for its Answer to the Notice of Opposition filed by Independent Health Association, Inc. (“Opposer”) against application for registration of Applicant's trademark EVOLVE BENEFITS, serial number 86338931, filed July 16, 2014 and published in the Official Gazette April 21, 2015, pleads and avers as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1, and accordingly denies the same.

2. Admitted.
3. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3, and accordingly denies the same.
4. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 4, and accordingly denies the same.
5. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 5, and accordingly denies the same.
6. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6, and accordingly denies the same.
7. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 7, and accordingly denies the same.
8. Admitted.
9. Admitted as to Applicant's filing date of the opposed application and the first use in commerce date. Applicant is without knowledge or information sufficient to form a belief as to the remainder of the allegations set forth in paragraph 9, and accordingly denies the same.
10. Admitted as to the allegation that the opposed application was initially refused registration by the examining attorney. Applicant is without knowledge or information sufficient to form a belief as to the remainder of the allegations set forth in paragraph 10, and accordingly denies the same.
11. Denied.
12. Admitted as to the allegation that Applicant was required to disclaim "BENEFITS" apart from its use in the mark in its entirety. The remainder of the allegations set forth in paragraph 12 are denied.
13. Admitted as to allegation of use of Applicant's mark in connection with "advisory services in the field of employee benefits for group healthcare and business insurance offered to

employees”. Applicant is without knowledge or information sufficient to form a belief as to the remainder of the allegations set forth in paragraph 13, and accordingly denies the same.

14. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 14, and accordingly denies the same.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

#### **AFFIRMATIVE DEFENSES**

19. There is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded mark of Opposer are not confusingly similar. Although both Applicant’s mark and Opposer’s pleaded marks contain the term “EVOLVE,” that term is presented with the additional term “BENEFITS” in Applicant’s mark and such term is not present in Opposer’s pleaded marks. There is no likelihood of confusion when that obvious distinction is combined with additional differences to create a combination that is not similar in sight, sound or meaning to Opposer’s pleaded marks.

20. There is no likelihood of confusion, mistake or deception because, inter alia, Applicant’s mark is not confusingly similar to the pleaded mark of Opposer where the marks have coexisted with no apparent instances of actual confusion for over two years, since at least April 1, 2013.

21. There is no likelihood of confusion, mistake or deception because, inter alia, the services offered under the marks at issue are considerably different and are not competitive.

22. Opposer will not be damaged by the registration of Applicant's trademark.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in

fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer and Applicant prays that this Opposition be dismissed and that Applicant be granted registration of its trademark.

Dated: July 27, 2015

Respectfully submitted,

**/JMD/**

Jackson MacDonald

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## CERTIFICATE OF SERVICE

This is to certify that a copy of this APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, is being deposited with the U.S. Postal Service on July 27, 2015 by first-class mail, postage prepaid to the counsel of record in an envelope addressed as follows:

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