

ESTTA Tracking number: **ESTTA721529**

Filing date: **01/20/2016**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Implus Footcare LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	2001 TW Alexander Drive, Box 13925 Durham, NC 27709 UNITED STATES		

Attorney information	Bryce J. Maynard Buchanan Ingersoll & Rooney PC 1737 King Street Suite 500 Alexandria, VA 22314 UNITED STATES bryce.maynard@bipc.com		
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**Applicant Information**

Application No	86522780	Publication date	12/29/2015
Opposition Filing Date	01/20/2016	Opposition Period Ends	01/28/2016
Applicant	Polar Fusion LLC 10605 SE 240th St. #400 Kent, WA 98031 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Massage apparatus, namely, for muscle relaxation and pain relief; massage roller; handheld massaging apparatus; massage apparatus for manual rubbing, kneading and stimulation of muscles; portable manual massage apparatus; foam massage roller
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3712930	Application Date	07/03/2008
Registration Date	11/17/2009	Foreign Priority Date	NONE
Word Mark	TRIGGERPOINT PERFORMANCE THERAPY		

Design Mark	
Description of Mark	<p>The mark consists of a stylized arrow having a green tip, black midsection, and white shaft section and shaft, that is overlaid upon a black polygon having rounded corners and bordered with green trim, to the left of the words "TRIGGERPOINT PERFORMANCE THERAPY." The "TRIGGER" portion of the word "TRIGGERPOINT" and the word "THERAPY" are in white. The "POINT" portion of the word "TRIGGERPOINT" and the word "PERFORMANCE" are in green.</p>
Goods/Services	<p>Class 010. First use: First Use: 2008/02/00 First Use In Commerce: 2008/02/00  Non-electric biomechanical enhancement devices used to improve the performance of the human body's ability to counteract weight distribution and negative biomechanics, and particularly, designed to strengthen specific areas of the body, defined by the dysfunction surrounding the levers and fulcrums of the body that restrict fluid movement</p>

U.S. Application No.	86566194	Application Date	03/17/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TRIGGERPOINT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2005/06/14 First Use In Commerce: 2005/06/14  DVDs in the field of fitness</p> <p>Class 010. First use: First Use: 2006/12/31 First Use In Commerce: 2006/12/31  Foam massage rollers; massage balls; sleeves specially adapted for massage balls; hand-held massage apparatus; kits containing massage apparatus, DVDs, and books</p> <p>Class 016. First use: First Use: 2010/12/31 First Use In Commerce: 2010/12/31  Books in the field of fitness</p>		

Attachments	77515018#TMSN.png( bytes ) 86566194#TMSN.png( bytes ) Notice of Opposition TRIGGERPOINTRX.pdf(19755 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bryce J. Maynard/
Name	Bryce J. Maynard
Date	01/20/2016

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

RE: U.S. Trademark Application Serial No. 86/522,780  
Published in the *Official Gazette* on December 29, 2015

Implus Footcare LLC	:	
	:	
Opposer,	:	
	:	Opposition No. _____
-v-	:	
	:	
Polar Fusion LLC	:	
	:	
Applicant	:	
_____	:	

**NOTICE OF OPPOSITION**

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

Commissioner:

In the matter of U.S. Trademark Application Serial No. 86/522,780, filed on February 3, 2015 by Polar Fusion LLC (“Applicant”) to register the mark TRIGGERPOINT RX (“Applicant’s TRIGGERPOINT RX Mark”) in connection with “massage apparatus, namely, for muscle relaxation and pain relief; massage roller; handheld massaging apparatus; massage apparatus for manual rubbing, kneading, and stimulation of muscles; portable manual massage apparatus; foam massage roller” in International Class 10 (“Applicant’s Goods”), and published in the *Official Gazette* on December 29, 2015, Implus Footcare LLC (“Opposer”) believes that it will be damaged by registration of Applicant’s TRIGGERPOINT RX Mark and hereby opposes same. The grounds for this opposition are as follows:

1. Applicant is the owner of Application Serial No. 86/522,780 for Applicant's TRIGGERPOINT RX Mark in connection with Applicant's Goods.
2. Upon information and belief, Applicant did not use Applicant's TRIGGERPOINT RX Mark in connection with Applicant's Goods prior to February 3, 2015 filing date of Application Serial No. 86/522,780.
3. Upon information and belief, Applicant did not use Applicant's TRIGGERPOINT RX Mark in connection with Applicant's Goods in interstate commerce in the United States prior to the February 3, 2015 filing date of Application Serial No. 86/522,780.
4. Opposer is a Delaware limited liability company located and doing business at 2001 TW Alexander Drive, Box 13925, Durham, North Carolina, 27709.
5. Opposer is the owner of U.S. Registration No. 3,712,930 for the mark TRIGGERPOINT PERFORMANCE THERAPY and Design in connection with "Non-electric biomechanical enhancement devices used to improve the performance of the human body's ability to counteract weight distribution and negative biomechanics, and particularly, designed to strengthen specific areas of the body, defined by the dysfunction surrounding the leavers and fulcrums of the body that restrict fluid movement" in International Class 10.
6. Opposer is also the owner of pending Application Serial No. 86/566,194 for the mark TRIGGERPOINT in connection with "foam rollers; massage balls; sleeves for massage balls; hand-held massage apparatus; hand-held cooling devices; kits containing massage apparatus, DVDs and books" in International Class 10 as well as related products in Classes 9, 16, and 28.

7. The marks listed in Paragraphs 5-6 are hereinafter referred to collectively as “Opposer’s TRIGGERPOINT Marks.” The goods covered by these registrations are referred to as “Opposer’s Goods.”

8. Opposer and its predecessors in interest have used the mark TRIGGERPOINT in connection with Opposer’s Goods in commerce continuously and without interruption since at least as early as 2006.

9. Opposer’s TRIGGERPOINT Marks are inherently distinctive and have a high degree of acquired distinctiveness. Consumers have come to recognize Opposer’s TRIGGERPOINT Marks and to associate them exclusively with Opposer and Opposer’s Goods.

10. Opposer’s 2006 date of first use of Opposer’s TRIGGERPOINT Marks is well prior to the February 3, 2015 filing date of Application Serial No. 86/522,780 for Applicant’s TRIGGERPOINT RX Mark.

11. Therefore, Opposer’s rights in Opposer’s TRIGGERPOINT Marks are superior to any rights that Applicant may have in Applicant’s TRIGGERPOINT RX Mark.

12. Applicant’s TRIGGERPOINT RX Mark is virtually identical to Opposer’s TRIGGERPOINT Marks in appearance, pronunciation, and commercial impression. The term RX is merely descriptive of products that are offered via prescription and does not serve to distinguish Applicant’s TRIGGERPOINT RX Mark from Opposer’s TRIGGERPOINT Mark.

13. Applicant’s Goods are identical to Opposer’s Goods, and will be offered and promoted to the same classes of consumers through identical or virtually identical channels of trade.

14. Upon information and belief, Applicant adopted Applicant's TRIGGERPOINT RX Mark with full knowledge of Opposer's prior rights in Opposer's TRIGGERPOINT Marks, and with the intent to trade off the goodwill associated with Opposer's TRIGGERPOINT Marks.

15. Applicant's TRIGGERPOINT RX Mark in Application Serial No. 86/522,780 so resembles Opposer's TRIGGERPOINT Marks, when applied to Applicant's Goods, as to be likely to cause confusion, to cause mistake, or to deceive, by creating the erroneous impression that Applicant's Goods originate from or are associated with Opposer, or that Applicant's Goods are authorized, endorsed or sponsored by Opposer.

16. Applicant's filing of Application Serial No. 86/522,780 for Applicant's TRIGGERPOINT RX Mark was without license, authorization or permission from Opposer.

17. The granting of a trademark registration for Applicant's TRIGGERPOINT RX Mark would violate and diminish the prior and superior rights of Opposer in Opposer's TRIGGERPOINT Marks and would be in violation of 15 U.S.C. § 1052(d).

18. Opposer will be damaged if Application Serial No. 86/522,780 is allowed to register because Applicant would obtain statutory rights in Applicant's TRIGGERPOINT RX Mark in violation and derogation of the established prior rights of Opposer in Opposer's TRIGGERPOINT Marks.

WHEREFORE, Opposer requests that its Opposition be sustained, that Application Serial No. 86/522,780 be rejected, that the registration of Applicant's TRIGGERPOINT RX Mark as a trademark to Applicant be refused, and for all such other relief as may be deemed just and proper.

Respectfully submitted,

IMPLUS FOOTCARE, LLC

Date: January 20, 2016

/Bryce J. Maynard/

Bryce J. Maynard

Buchanan Ingersoll & Rooney PC

1737 King Street, Suite 500

Alexandria, Virginia 22313-1404

(703) 836-6620

Attorney for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served  
this 20<sup>th</sup> day of January by first-class mail, postage prepaid, on:

Hayley J. Talbert  
Seed IP Law Group PLLC  
Seattle, Washington 98104-7064

/Florence Goodman/  
Florence Goodman