

ESTTA Tracking number: **ESTTA722461**

Filing date: **01/25/2016**

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	Beachbody, LLC
Granted to Date of previous extension	02/17/2016
Address	3301 Exposition Blvd.Third Floor Santa Monica, CA 90404 UNITED STATES
Attorney information	Camille M. Miller Cozen O'Connor 1650 Market Street One Liberty Place Philadelphia, PA 19103 UNITED STATES cmiller@cozen.com, jcloak@cozen.com, cbranka@cozen.com Phone:2156657273

Applicant Information

Application No	86448775	Publication date	10/20/2015
Opposition Filing Date	01/25/2016	Opposition Period Ends	02/17/2016
Applicant	Shaklee Corporation 4747 Willow Road Pleasanton, CA 94588 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2869491	Application Date	05/30/2003
Registration Date	08/03/2004	Foreign Priority Date	NONE
Word Mark	P90X		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 2003/07/21 First Use In Commerce: 2003/07/21 NUTRITIONAL AND DIETARY SUPPLEMENTS

U.S. Registration No.	2869490	Application Date	05/30/2003
Registration Date	08/03/2004	Foreign Priority Date	NONE

Word Mark	P90X
-----------	------



Description of Mark	NONE
---------------------	------

Goods/Services	Class 005. First use: First Use: 2003/07/21 First Use In Commerce: 2003/07/21 meal replacement bars, nutritional and dietary supplements
----------------	---

U.S. Registration No.	4503107	Application Date	03/08/2013
Registration Date	03/25/2014	Foreign Priority Date	NONE

Word Mark	P90X3
-----------	-------



Description of Mark	NONE
---------------------	------

Goods/Services	Class 009. First use: First Use: 2013/12/10 First Use In Commerce: 2013/12/10 pre-recorded video tapes, audio and video cassettes, DVDs and CDs featuring exercise, fitness and dietary information and instruction and instructional materials distributed in connection therewith sold as a unit; computer application software for mobile phones, portable media players, handheld computers, namely, software for use in database management and use in electronic storage of data Class 041. First use: First Use: 2013/12/01 First Use In Commerce: 2013/12/10 Educational services, namely, providing web-based, classroom and other training in the field of exercise equipment, physical fitness, diet and nutritional programs for certification of instructors and continuing education for instructors and distribution of training material in connection therewith; educational ser-
----------------	---

	<p>vices, namely, conducting classes, seminars, conferences, workshops, and field trips in the field of exercise equipment, diet and nutritional programs, and sales techniques and distribution of training material in connection therewith; membership club services, namely, providing training to members in the field of exercise equipment, diet and nutritional programs, and sales techniques; educational services, namely, offering of assessments and surveys in the field of educator training and performance for the purpose of improving teaching procedures; physical fitness training services and consultancy; providing information in the field of exercise training; providing a web site featuring on-line instruction in the field of physical exercise and nutrition and tracking progress of workouts; educational services and on-line educational services, namely, providing instruction in the fields of exercise equipment, physical exercise and nutrition, and instructional materials distributed in connection therewith; entertainment services, namely, conducting contests; physical fitness training services, namely, instruction in the field of tracking progress of workouts for others; entertainment services, namely, providing a website featuring non-downloadable content, namely, audio clips, video clips, musical performances, musical videos, film clips, photographs, other multimedia materials in the field of physical exercise and fitness</p>
--	---

U.S. Registration No.	4508267	Application Date	08/01/2013
Registration Date	04/01/2014	Foreign Priority Date	NONE
Word Mark	P90X3		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/12/10 First Use In Commerce: 2013/12/10 Shirts, T-shirts, golf shirts, jackets, wind resistant jackets, sweat shirts, sweat pants, running suits, shorts, caps and hats		

Attachments	<p>78256343#TMSN.png(bytes) 85871657#TMSN.png(bytes) 86025889#TMSN.png(bytes) PP-5940US_ Notice of Opposition to Shaklee Corporation concerning PX3 COMPLEX 1_25_2016.PDF(34648 bytes)</p>
-------------	--

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	/Camille M. Miller/
-----------	---------------------

Name	Camille M. Miller
Date	01/25/2016

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

BEACHBODY, LLC,)	
)	Opposition No.: -----
Opposer,)	
)	Serial No.: 86/448,775
v.)	
)	Mark: PX3 COMPLEX
SHAKLEE CORPORATION,)	
)	
Applicant.)	

**OPPOSER, BEACHBODY, LLC’S, NOTICE OF OPPOSITION TO
APPLICANT SHAKLEE CORPORATION**

Opposer, Beachbody, LLC (“Beachbody”), a Delaware limited liability company with a principal place of business at 3301 Exposition Blvd., Santa Monica, CA 90404, believes that it will be damaged by the allowance and/or registration of the mark shown in the above-referenced application, published in the October 20, 2015 issue of the *Official Gazette*, and pursuant to 37 CFR 2.101 hereby files this notice of opposition against Applicant, Shaklee Corporation (“Applicant”) on the following grounds:

1. Applicant is a Delaware corporation with a principal place of business at 4747 Willow Road Pleasanton, CA 94588.
2. On November 7, 2014, Applicant filed an intent-to-use application with the U.S. Patent and Trademark Office to register the mark PX3 COMPLEX in connection with “[d]ietary and nutritional supplements” in International Class 5.
3. This application was afforded U.S. Trademark Application No. 86/448,775 (the “775 Application”) and Applicant’s PX3 COMPLEX mark published on the Trademark Official Gazette on October 20, 2015.
4. On October 30, 2015, Beachbody filed with the Trademark Trial and Appeal

Board (“TTAB” or “Board”) a First 90 Day Request for Extension of Time to Oppose for Good Cause.

5. On October 30, 2015, the Board granted Beachbody’s First 90 Day Request for Extension of Time to Oppose for Good Cause, allowing Beachbody until February 17, 2016 to oppose the ‘775 Application.

6. Beachbody is a leader in the exercise, fitness and nutrition industry and has offered in-home fitness, health, wellness and weight loss solutions, DVD-based workout kits, fitness gear and apparel and supplement products for many years.

7. Beachbody’s well-known P90X® mark and product lines, including Beachbody’s P90X® dietary supplements (including its P90X® RESULTS AND RECOVERY FORMULA and P90X® PEAK PERFORMANCE PROTEIN BARS), have achieved much success since their introduction.

8. Indeed, Beachbody’s P90X® products and services have been so successful that Beachbody has spawned a family of “P90X” products and services, including its P90X3® DVD-based in-home exercise kit, apparel and related services.

9. Beachbody has spent a substantial amount of time and money advertising and promoting its P90X® and P90X3® products and services. These efforts include advertising and promotion through Beachbody’s website, print and other internet-based advertising, infomercials, and televised promotional appearances by its trainers.

10. As a result of Beachbody’s market success, consumers and the public have come to rely upon and recognize Beachbody and its products and services by the P90X and P90X3 marks. Beachbody has acquired a valuable reputation and substantial goodwill among the consuming public as a result of such association.

11. Beachbody is the owner of U.S. Trademark Registration No. 2869491 for P90X for nutritional and dietary supplements, the application for which was filed on May 30, 2003. Beachbody has used this mark since at least as early as July 21, 2003. This registration has become incontestable pursuant to 15 U.S.C. §§ 1065 and 1115.

12. Beachbody is the owner of U.S. Trademark Registration No. 2869490 for P90X (stylized) for meal replacement bars, nutritional and dietary supplements, the application for which was filed on May 30, 2003. Beachbody has used this mark since at least as early as July 21, 2003. This registration has become incontestable pursuant to 15 U.S.C. §§ 1065 and 1115.

13. Beachbody is the owner of U.S. Trademark Registration No. 4503107 for P90X3 for pre-recorded video tapes, audio and video cassettes, DVDs and CDs featuring exercise, fitness and dietary information and instruction and instructional materials distributed in connection therewith sold as a unit; computer application software for mobile phones, portable media players, handheld computers, namely, software for use in database management and use in electronic storage of data; and Educational services, namely, providing web-based, classroom and other training in the field of exercise equipment, physical fitness, diet and nutritional programs for certification of instructors and continuing education for instructors and distribution of training material in connection therewith; educational services, namely, conducting classes, seminars, conferences, workshops, and field trips in the field of exercise equipment, diet and nutritional programs, and sales techniques and distribution of training material in connection therewith; membership club services, namely, providing training to members in the field of exercise equipment, diet and nutritional programs, and sales techniques; educational services, namely, offering of assessments and surveys in the field of educator training and performance for the purpose of improving teaching procedures; physical fitness training services and consultancy;

providing information in the field of exercise training; providing a web site featuring on-line instruction in the field of physical exercise and nutrition and tracking progress of workouts; educational services and on-line educational services, namely, providing instruction in the fields of exercise equipment, physical exercise and nutrition, and instructional materials distributed in connection therewith; entertainment services, namely, conducting contests; physical fitness training services, namely, instruction in the field of tracking progress of workouts for others; entertainment services, namely, providing a website featuring non-downloadable content, namely, audio clips, video clips, musical performances, musical videos, film clips, photographs, other multimedia materials in the field of physical exercise and fitness. The application for this registration was filed on March 8, 2013. Beachbody has used this mark since at least as early as December 10, 2013.

14. Beachbody is the owner of U.S. Trademark Registration No. 4508267 for P90X3 for shirts, T-shirts, golf shirts, jackets, wind resistant jackets, sweat shirts, sweat pants, running suits, shorts, caps and hats, the application for which was filed on August 1, 2013. Beachbody has used this mark since at least as early as December 10, 2013.

15. Beachbody's aforementioned registrations referenced in paragraphs 11-14 (collectively, the "Beachbody Registrations") have filing and first use dates that predate the November 7, 2014 filing of the '775 Application and, thus, the marks cited in the Beachbody Registrations have priority over Applicant's PX3 COMPLEX mark.

COUNT 1- LIKELIHOOD OF CONFUSION

16. Beachbody's P90X and P90X3 marks are inherently distinctive and represent the exceedingly valuable goodwill of Beachbody and its exercise, fitness and nutrition-related goods and services.

17. Beachbody's P90X and P90X3 marks, and Applicant's PX3 COMPLEX mark are similar in sound, appearance and commercial impression. Specifically, all contain the elements P, X, and a number as the dominant portion of the mark and each such dominant portion commences with the letter "P". Moreover, the first and dominant portion of Applicant's Mark encompasses the entirety of Beachbody's P90X3 mark, with the exception that the term "90" has been deleted from Applicant's Mark.

18. While Applicant's PX3 COMPLEX mark contains the additional term COMPLEX, this term is entitled to little or no weight as a source identifier as this term is descriptive or generic and has been disclaimed by Applicant.

19. Applicant's PX3 COMPLEX mark is intended to be used in connection with goods that are identical to those offered under Beachbody's P90X mark, namely, dietary and nutritional supplements.

20. Applicant's PX3 COMPLEX mark is intended to be used in connection with goods that are highly related to those offered under Beachbody's P90X3 mark, as such goods are of a type that would originate from the same source as the goods and services identified in Beachbody's P90X3 registrations and the circumstances surrounding the marketing of such goods are such that consumers would encounter the respective goods and services under circumstances that would give rise to the mistaken belief that they originate from the same source.

21. The customer base for the goods and services bearing Beachbody's P90X and P90X3 marks and Applicant's PX3 COMPLEX mark will be similar, if not identical.

22. Applicant's PX3 COMPLEX mark so resembles Beachbody's P90X and P90X3 marks that if Applicant is permitted to register its mark, consumer confusion is likely as

consumers will believe that Applicant and its goods offered under the PX3 COMPLEX mark are associated or affiliated with, or otherwise sponsored or endorsed by, Beachbody when that, in fact, is not the case. Beachbody will therefore be damaged by the registration of Applicant's PX3 COMPLEX mark.

23. Registration of Applicant's PX3 COMPLEX mark on the Principal or Supplemental Register in connection with the goods identified in the '775 Application would restrict and impair Beachbody's right to use, develop and expand its use of its P90X and P90X3 marks, and would otherwise cause injury and damage to Beachbody and its P90X and P90X3 marks, as well as Beachbody's goodwill and reputation.

WHEREFORE, Beachbody requests that the opposition be granted and that U.S. Trademark Application No. 86/448,775 be refused registration or allowance.

Respectfully submitted,



Date: January 25, 2016

Camille M. Miller
Melanie A. Miller
J. Trevor Cloak
COZEN O'CONNOR
One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215) 665-2000
Attorneys for Opposer, Beachbody, LLC

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing document was electronically filed with the Trademark Trial and Appeal Board and served via First Class Mail, postage pre-paid to the Attorney of record for the Applicant:

Lisa M. Caldwell
Klarquist Sparkman
121 SW Salmon St.
Ste. 1600
Portland, OR 97204

Date: January 25, 2016



J. Trevor Cloak
Attorney