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

Proceeding	91225975
Party	Defendant Shaklee Corporation
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Date	03/01/2016
Attachments	ANSWER AND AFFIRMATIVE DEFENSES.pdf(246227 bytes)

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

Beachbody, LLC,)	
)	
Opposer,)	ANSWER AND AFFIRMATIVE
)	DEFENSES
v.)	
)	Opposition No. 91225975
Shaklee Corporation,)	
)	Application Ser. No. 86/448,775
Applicant.)	Mark: PX3 COMPLEX
)	

ANSWER

Applicant, Shaklee Corporation (“Applicant”), by its undersigned counsel, answers the Notice of Opposition of Beachbody, LLC (“Opposer”), as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Shaklee admits that, though the initial time to file an opposition did not expire until November 19, 2015, Beachbody claimed on October 30, 2015, that it had good cause to seek a 90-day extension because it claimed that it needed “additional time to investigate the claim.”
5. Shaklee admits that the Board appears to have granted Beachbody’s requested extension without consideration of Beachbody’s statement of good cause as the grant issued the within several minutes of the request being made.
6. Applicant lacks sufficient information to admit or deny.

7. Applicant lacks sufficient information to admit or deny.
8. Applicant lacks sufficient information to admit or deny that Beachbody's P90X has been "so successful that [it] spawned a family of 'p90X' products and services."
9. Applicant lacks sufficient information to admit or deny.
10. Applicant lacks sufficient information to admit or deny.
11. Applicant lacks sufficient information to admit or deny.
12. Applicant lacks sufficient information to admit or deny.
13. Applicant lacks sufficient information to admit or deny.
14. Applicant lacks sufficient information to admit or deny.
15. Applicant denies that dates predating the filing date of an application create priority of use.
16. Applicant lacks sufficient information to admit or deny.
17. Applicant admits that PX3 COMPLEX contains P and X and a number and begins with the letter "P". Applicant denies the remainder of this allegation.
18. Denied.
19. Applicant admits that the mark of its application for PX3 COMPLEX is intended to be used with dietary and nutritional supplements. Applicant lacks sufficient information to admit or deny that its intended goods are identical to those offered under Beachbody's alleged P90X mark.
20. Applicant lacks sufficient information to know if Beachbody actually offers goods under its alleged P90X3 mark. Accordingly, Applicant lacks sufficient information to admit or deny this allegation.

21. Applicant admits that the customer base for dietary and nutritional supplements may be similar in some cases. Applicant lacks sufficient information to admit or deny the remainder of this allegation.

22. Denied.

23. Denied.

Any allegation in the Notice of Opposition not specifically answered above is denied.

FIRST AFFIRMATIVE DEFENSE

Lack of Subject Matter Jurisdiction

1. Though the initial time to file an opposition did not expire until November 19, 2015, Beachbody claimed on October 30, 2015, that it had good cause to seek a 90-day extension because it claimed that it needed “additional time to investigate the claim.”

2. It is believed that Beachbody knew it would oppose Shaklee’s application by October 30, 2015.

3. Of the 23 Paragraphs of allegations in the Notice of Opposition, only 8 (Paragraphs 15, 17, 18, 19, 20, 21, 22, and 23) contain allegations concerning Applicant’s mark and these can be summed up as: Applicant’s mark allegedly has similarities to Opposer’s alleged marks, was filed after Opposer’s registrations, the goods are allegedly related, and the consumers allegedly overlap.

4. None of the allegations concerning Applicant’s mark required even the 20 remaining days in the Opposition period to investigate.

5. Opposer did not need additional time to investigate the claim and it is believed that Opposer knew that did not need additional time to investigate the claim when it sought the 90-day extension 20 days before the opposition deadline.

6. As Opposer did not need additional time to investigate its claim, it lacked the good faith required to obtain a 90-day extension of time to oppose and the extension was improvidently granted.

7. Without the extension, Opposer's Notice of Opposition was due November 19, 2015. Because Opposer did not file its Notice of Opposition until January 25, 2016, it is untimely and, because the Trademark Trial and Appeal Board can only hear timely oppositions, the Trademark Trial and Appeal Board lacks subject matter jurisdiction to decide this untimely Opposition.

SECOND AFFIRMATIVE DEFENSE
Lack of Standing

8. Though the initial time to file an opposition did not expire until November 19, 2015, Beachbody claimed on October 30, 2015, that it had good cause to seek a 90-day extension because it claimed that it needed "additional time to investigate the claim."

9. It is believed that Beachbody knew it would oppose Shaklee's application by October 30, 2015.

10. Of the 23 Paragraphs of allegations in the Notice of Opposition, only 8 (Paragraphs 15, 17, 18, 19, 20, 21, 22, and 23) contain allegations concerning Applicant's mark and these can be summed up as: Applicant's mark allegedly has similarities to Opposer's alleged marks, was filed after Opposer's registrations, the goods are allegedly related, and the consumers allegedly overlap.

11. None of the allegations concerning Applicant's mark required even the 20 remaining days in the Opposition period to investigate.

12. Opposer did not need additional time to investigate the claim and it is believed that Opposer knew that did not need additional time to investigate the claim when it sought the 90-day extension 20 days before the opposition deadline.

13. As Opposer did not need additional time to investigate its claim, it lacked the good faith required to obtain a 90-day extension of time to oppose and the extension was improvidently granted.

14. Without the extension, Opposer's Notice of Opposition was due November 19, 2015. Because Opposer did not file its Notice of Opposition until January 25, 2016, it is untimely. Because the Trademark Trial and Appeal Board can only hear timely oppositions, Opposer lacks standing to bring this untimely Opposition.

DATED: March 1, 2016.

Respectfully submitted,

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KLARQUIST SPARKMAN, LLP

By


Kevin M. Hayes
Oregon State Bar No. 01280

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 1, 2016, a true copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** was served on the Attorney of record for Opposer, by mailing said copy via first class mail, postage prepaid, to:

Camille M. Miller
Cozen O'Connor
One Liberty Place
1650 Market Street
Philadelphia, PA 19103

A handwritten signature in black ink, appearing to read "Kevin M. Hayes", written over a horizontal line.

Kevin M. Hayes