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Filing date: **02/27/2016**

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

Proceeding	91226202
Party	Plaintiff ICON Health & Fitness, Inc.
Correspondence Address	GREGORY M HESS PARR BROWN GEE & LOVELESS PC 101 S 200 E STE 700 SALT LAKE CITY, UT 84111 UNITED STATES ghess@parrbrown.com, lshaw@parrbrown.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	LaShel Shaw
Filer's e-mail	lshaw@parrbrown.com
Signature	/LaShel Shaw/
Date	02/27/2016
Attachments	Amended Notice of Opposition Pro-Form PF2 w Attachments.pdf(1071697 bytes)

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

In the Matter of Application Serial No. 86729827 (PRO-FORM PF2)

Filed: August 19, 2015

Published for Opposition: December 8, 2015

ICON HEALTH & FITNESS, INC.,)	
)	
Opposer,)	
)	
v.)	<u>AMENDED</u>
)	<u>NOTICE OF</u>
)	<u>OPPOSITION</u>
)	
MYCONE DENTAL SUPPLY CO., INC.,)	
)	
Applicant.)	

ICON Health and Fitness, Inc. (“ICON”), a corporation organized and existing under the laws of Delaware with a place of business at 1500 South 1000 West, Logan, Utah 84321, believes that it will be damaged by the issuance of a registration for the alleged mark shown in Application Serial No. 86729827 for the mark PRO-FORM PF2 in international classes 010 and 028. ICON hereby opposes the same pursuant to Section 13(a) of the Lanham Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1046(1).

As grounds for opposition, ICON alleges as follows:

1. ICON is one of the world’s largest manufacturers of exercise and fitness equipment and sells exercise and fitness products and services throughout Asia, Europe, and North and South America, including throughout the United States.

2. Since at least as early as 1982, ICON’s predecessor in interest began using the trademark PROFORM in connection with clothing. Since at least as early as 1988, ICON’s predecessor in interest began using the trademark PROFORM in connection with exercise

equipment, including stepping machines, treadmills, striding machines, stationary cycles, rowing machines, and other exercise-related equipment.

3. ICON owns the following five relevant valid and subsisting U.S. Trademark Registrations on the Principal Register in the U.S. Patent and Trademark Office (“PTO”):

Mark	No.	Date Issued	Goods & Services
PRO FORM	1,346,441	7/2/1985	Exercising Apparatus-Namely, Rowing Machines and Multiple Purpose Exercising Machines.
PRO FORM	1,525,754	2/21/1989	Clothing, namely shorts, pants, shirts, tops, sweat pants and jackets.
PRO FORM	1,718,385	9/22/1992	Exercising apparatus; namely, stepping machines, striding machines, and stationary cycles.
PRO FORM	2,944,885	4/26/2005	Clothing, namely, t-shirts, long sleeve t-shirts, tank tops, jackets, shorts, sport tops.
PRO-FORM	4,665,905	1/6/2015	Elliptical exercise machines; Exercise balls; Exercise doorway gym bars; Exercise machines; Exercise weights; Manually-operated exercise equipment; Physical fitness equipment, namely, treadmills, ellipticals, stationary exercise bicycles, stepping machines; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Wrist and ankle weights for exercise; Yoga mats.

Collectively these five marks shall be referred to herein as the “PRO-FORM Marks” and the associated registrations shall be referred to herein as the “PRO-FORM Registrations.”

4. ICON and its predecessors in interest first used the mark protected by U.S. Trademark Registration No. 1,346,441 in the United States at least as early as December 22, 1982 and first used the mark in interstate commerce in the United States at least as early as January 10, 1983 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of exercising equipment, namely, rowing machines and multiple purpose exercise machines. Attached as Exhibit A is a true and correct printout of the PTO’s information about U.S. Trademark Registration No. 1,346,441, which was issued by the PTO on

July 2, 1985. ICON and its predecessors in interest have used the mark continually in interstate commerce in the United States since that time.

5. ICON and its predecessors in interest have used the mark protected by U.S. Trademark Registration No. 1,525,754 in interstate commerce in the United States continuously since at least November 26, 1984 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of clothing. Attached as Exhibit B is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 1,525,754, which was issued by the PTO on February 21, 1989.

6. ICON and its predecessors in interest have used the mark protected by U.S. Trademark Registration No. 1,718,385 in interstate commerce in the United States continuously since at least February, 1988 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of exercising apparatus. Attached as Exhibit C is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 1,718,385, which was issued by the PTO on September 22, 1992.

7. ICON has used the mark protected by U.S. Trademark Registration No. 2,944,885 in interstate commerce in the United States continuously since at least January 2, 2003 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of clothing. Attached as Exhibit D is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 2,944,885, which was issued by the PTO on April 26, 2005.

8. ICON has used the mark protected by U.S. Trademark Registration No. 4,665,905 in interstate commerce in the United States continuously since at least February 7, 2004 in connection with the provision, sale, marketing, advertising, and promotion of exercise equipment, machines,

balls, bars, apparatus, weights, and mats. Attached as Exhibit E is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 4,665,905, which was issued by the PTO on January 6, 2015.

9. As a result of its widespread, continuous, and exclusive use of the PRO-FORM Marks to identify its goods and services with ICON as their source, ICON owns valid and subsisting federal statutory and common law rights to the PRO-FORM Marks.

10. The PRO-FORM Marks are distinctive to both the consuming public and within the exercise and fitness industry.

11. ICON has expended substantial time, money, and resources in marketing, advertising, and promoting the goods and services offered under the PRO-FORM Marks, including, among other things, television, radio, newspaper, magazine, internet, social media, and other media.

12. ICON's promotional efforts have led to ICON's patrons, potential patrons, and the general public coming to know and recognize the PRO-FORM Marks and associate them with ICON and its goods and services. ICON has therefore built up extensive, valuable goodwill in the PRO-FORM Marks. As a result of their distinctiveness and widespread use and promotion throughout the United States, the PRO-FORM Marks are famous trademarks within the meaning of 15 U.S.C. 1125(c).

13. Applicant Mycone Dental Supply Co., Inc. ("Mycone"), with an address at 480 South Democrat Road, Gibbstown, New Jersey, 08027, on August 19, 2015 filed trademark Application Serial No. 86729827 to register the proposed mark PRO-FORM PF2 for the following goods and services:

International Class 001	Plastic molding compounds for use in the manufacture of molded plastic articles.
-------------------------	--

International Class 010	Dental instruments for use in protection of mouth and teeth.
International Class 028	Athletic equipment, namely, mouth guards; Mouth guards for athletic use.

14. The PRO-FORM Registrations have priority over Applicant’s application because Petitioner’s first-use and registration dates for the PRO-FORM Marks predate the filing date of Applicant’s application and any other date on which Mycone may rely for purposes of priority for use of its mark in international classes 010 and 028.

15. Applicant’s mark PRO-FORM PF2 is confusingly similar to the PRO-FORM Marks, as it wholly incorporates all four of the PRO-FORM MARKS, distinguished only by the Applicant’s addition of the characters “PF2” at the end of the mark. As a result, Applicant’s mark is strikingly similar to the PRO-FORM Marks in appearance, sound, and connotation, and creates a similar commercial impression.

16. The likelihood of confusion is heightened because the goods covered by Applicant’s Application Serial No. 86729827 are sports and fitness-related products, including without limitation mouth guards and athletic mouth guards, while the goods and services promoted by ICON under the PRO-FORM Marks include, in addition to the items previously listed above, wearable fitness-related accessories, such as wrist and ankle weights, heart-rate monitor watches and chest straps, and waist wraps, as well as protective gear for use in athletic activities, such as training gloves and weightlifting belts.

17. Also, on information and belief, Applicant’s PRO-FORM PF2 branded goods are sold in some of the same channels of trade that ICON sells its PRO-FORM goods. For example, Applicant’s PRO-FORM PF2 athletic mouth guards are sold online. See Exhibit F attached hereto, which is a printout from a website offering Applicant’s PRO-FORM PF2 branded goods for sale.

ICON also markets and sells its PRO-FORM branded goods directly to consumers through major online retailers such as www.walmart.com, www.shopko.com, www.overstock.com, and www.khols.com. See Exhibit G, which are sample printouts showing various PRO-FORM branded goods being sold on such websites.

FIRST GROUND FOR OPPOSITION – LIKELIHOOD OF CONFUSION

18. The proposed mark is barred from registration in international classes 010 and 028 because it consists of or compromises a mark which so resembles ICON's previously used and registered PRO-FORM Marks as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

SECOND GROUND FOR OPPOSITION - DILUTION

19. Petitioner's PRO-FORM Marks are distinctive and a "famous mark" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

20. The PRO-FORM Marks became distinctive and famous prior to the filing date of Applicant's application or any other date on which the Respondent may rely for purposes priority.

21. Applicant's Application Serial No. 86729827 impairs the distinctiveness and causes dilution by blurring of, and thereby damages, Petitioner's famous PRO-FORM Marks in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed PRO-FORM PF2 mark is not entitled to registration.

22. Furthermore, if and to the extent that Mycone sells substandard products using the PRO-FORM PF2 mark, Applicant's Application Serial No. 86729827 will also likely harm the reputation and cause dilution by tarnishment of, and thereby damage, Petitioner's PRO-FORM Marks in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed PRO-FORM PF2 mark is not entitled to registration.

WHEREFORE, Petitioner respectfully prays that its opposition be sustained and that registration to the pursuant to Applicant's Application Serial No. 86729827 be refused in international classes 10 and 28.

Dated: February 26, 2016

Respectfully submitted,
PARR BROWN GEE & LOVELESS

/LaShel Shaw/

Gregory M. Hess
LaShel Shaw
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
801-532-7840
gness@parrbrown.com
lshaw@parrbrown.com
Attorneys for ICON Health and Fitness, Inc.

EXHIBIT A



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Typed Drawing

Word Mark PRO FORM
Goods and Services IC 028. US 022. G & S: Exercising Apparatus-Namely, Rowing Machines and Multiple Purpose Exercising Machines. FIRST USE: 19821222. FIRST USE IN COMMERCE: 19830110
Mark Drawing Code (1) TYPED DRAWING
Serial Number 73440886
Filing Date August 25, 1983
Current Basis 1A
Original Filing Basis 1A
Published for Opposition April 23, 1985
Registration Number 1346441
Registration Date July 2, 1985
Owner (REGISTRANT) Pro Form Industries, Inc. CORPORATION OREGON 459 SW. 9th St. Dundee OREGON 97115

(LAST LISTED OWNER) **ICON** Health & Fitness, Inc. CORPORATION DELAWARE 1500 SOUTH 1000 WEST LOGAN UTAH 84321
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Richard K.C. Chang II
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150819.
Renewal 2ND RENEWAL 20150819

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ProForm

Word Mark PRO FORM
Goods and Services IC 025. US 039. G & S: CLOTHING, NAMELY SHORTS, PANTS, SHIRTS, TOPS, SWEAT PANTS AND JACKETS. FIRST USE: 19841126. FIRST USE IN COMMERCE: 19841126
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
Serial Number 73517585
Filing Date January 14, 1985
Current Basis 1A
Original Filing Basis 1A
Published for Opposition August 27, 1985
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 1525754
Registration Date February 21, 1989
Owner (REGISTRANT) PRO FORM FITNESS PRODUCTS, INC. CORPORATION UTAH P.O. BOX 10 875 SOUTH MAIN LOGAN UTAH 843210270

(LAST LISTED OWNER) **ICON** HEALTH & FITNESS, INC. CORPORATION BY MERGER WITH DELAWARE 1500 SOUTH 1000 WEST LOGAN UTAH 84321

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Richard K.C. Chang II
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090224.
Renewal 1ST RENEWAL 20090224
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Typed Drawing

Word Mark PRO FORM
Goods and Services IC 028. US 022 023 038 050. G & S: exercising apparatus; namely, stepping machines, treadmills, striding machines, [multigyms] and stationary cycles. FIRST USE: 19880200. FIRST USE IN COMMERCE: 19880200
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74239191
Filing Date January 21, 1992
Current Basis 1A
Original Filing Basis 1A
Published for Opposition June 30, 1992
Registration Number 1718385
Registration Date September 22, 1992
Owner (REGISTRANT) PROFORM FITNESS PRODUCTS, INC. CORPORATION UTAH 1550 South 1000 West Logan UTAH 84321
 (LAST LISTED OWNER) **ICON** HEALTH & FITNESS, INC. CORPORATION By merger with DELAWARE 1500 South 1000 West Logan UTAH 84321
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Richard K.C. Chang II

Prior 1346441

Registrations

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130208.

Renewal 2ND RENEWAL 20130208

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PRO·FORM

Word Mark PRO FORM
Goods and Services IC 025. US 022 039. G & S: [Shoes and] clothing, namely, t-shirts, long sleeve t-shirts, tank tops,[sweat shirts, hooded sweat shirts,] jackets, [hooded jackets,] shorts, [pants, long pants, capri pants, sport bras,] sport tops, [socks,] [hats, caps, and gloves]. FIRST USE: 20030102. FIRST USE IN COMMERCE: 20030102
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.01.21 - Circles that are totally or partially shaded.
 27.03.01 - Geometric figures forming letters, numerals or punctuation
Serial Number 78199571
Filing Date January 2, 2003
Current Basis 1A
Original Filing Basis 1B
Published for Opposition August 26, 2003
Registration Number 2944885
Registration Date April 26, 2005
Owner (REGISTRANT) **ICON** IP, INC. CORPORATION DELAWARE 1500 South 1000 West Logan UTAH 84321
 (LAST LISTED OWNER) **ICON** Health & Fitness, INC. CORPORATION DELAWARE 1500 South 1000 West Logan UTAH 84321
Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Richard Chang

Prior Registrations 1346441;1525754;1718385

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150905.

Renewal 1ST RENEWAL 20150905

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PRO-FORM

Word Mark PRO-FORM

Goods and Services IC 028. US 022 023 038 050. G & S: Elliptical exercise machines; Exercise balls; Exercise doorway gym bars; Exercise machines; Exercise weights; Manually-operated exercise equipment; Physical fitness equipment, namely, treadmills, ellipticals, stationary exercise bicycles, stepping machines; Vibrating apparatus used in fitness and exercise programs to stimulate muscles and increase strength and physical performance; Wrist and ankle weights for exercise; Yoga mats. FIRST USE: 20040207. FIRST USE IN COMMERCE: 20040207

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86135165

Filing Date December 4, 2013

Current Basis 1A

Original Filing Basis 1A

Published for Opposition October 21, 2014

Registration Number 4665905

Registration Date January 6, 2015
Owner (REGISTRANT) **ICON** Health & Fitness, Inc. CORPORATION DELAWARE Legal Department 1500 South 1000 West Logan UTAH 84321
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Richard K. C. Chang II
Prior Registrations 1346441;1718385
Type of Mark TRADEMARK
Register PRINCIPAL
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EXHIBIT F



PRO-FORM PF2 mouthguards



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Where we've been

Dedication & Innovation

Keystone Industries' dedication to high-quality dental products, dental equipment, & customer satisfaction has always been second to none since the US dental manufacturer's inception in 1908.

Where we are

Taking Dentistry By Storm

Through the years, we have maintained a strong reputation of producing state-of-the-art dental products for both the operator and laboratory realms.

Where we're going

Expanding Exponentially

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PRODUCT DETAILS

Featuring a breathable, smooth and adjustable design, this ProForm waist trimmer belt will help you reach your fitness goals.

Limit 5 per household.

PRODUCT FEATURES

- Five different fits for comfortable wear.
- Zip closures for easy on and off.
- [Neoprene](#) construction ensures durability.

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CUSTOMERS ALSO VIEWED

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My Cart 0

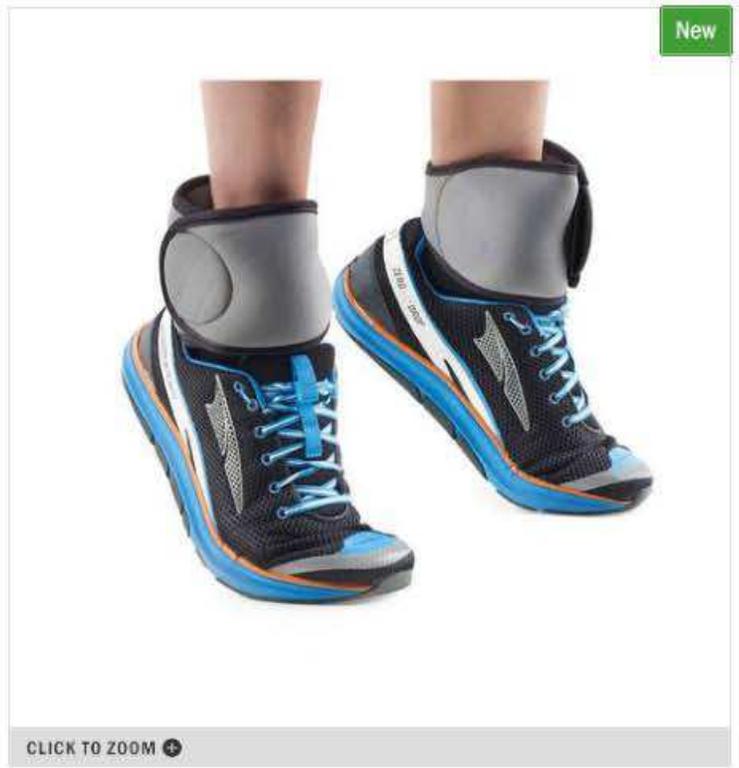
anniversary sale \$5 off \$25 with code SWEET5 see coupon for details

FREE standard shipping on orders over \$75 see details

Sports & Team Shop > Exercise & Fitness > Strength Training > Weights > Proform 4 Pound Ankle/Wrist Weights

Proform 4 Pound Ankle/Wrist Weights

Item #161951 Model PFAW414



CLICK TO ZOOM

Sale \$10.39

Reg. \$12.99

Quantity: 1

ADD TO CART

Select a store to see if this item is eligible for free shipping to your local Shopko.

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ADD TO WISH LIST

(No reviews) Be the first to Write a Review

Product Details

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Electronics > Portable Audio > MP3 Accessories > Cases, Skins & Armbands

ProForm Nano Arm Band

2 reviews Q&A By: ProForm Walmart #: 000983474



\$15.00 Only 6 left!

FREE pickup

Quantity: 1

Add to Cart

Add to Registry

Add to List

Sold by Walmart.com

Shipping See delivery options

FREE pickup Salt Lake City See more stores

Clear screen protector
Slim, lightweight design

More about this item...



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Up to 45% off >

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Save up to 45% + extra 10% >

20 *Fitness Gloves*
to choose from

[Hayneedle](#) > [Sports & Fitness](#) > [Fitness Accessories](#) > [Fitness Gloves](#)



[Be the first to write a review](#) | [Q&A](#)

\$9.99

List Price: \$12.99
You save 23%

Free Shipping on orders over \$50
[Upgrade to get it as soon as Mar. 8](#)

Earn \$0.30 in [My Reward points](#)

✓ Small/Medium - Size

1

ADD TO CART

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Registry

ProForm Weight Lifting Gloves Item # HN-ICON217



- A perfect set of essential workout gloves
- Microfiber leather palms
- Breathable design
- Velcro closure
- Ideal for serious lifting

Images
Full Description
Specifications
Delivery Options
About This Brand
Guarantee & Returns

Roll over to zoom

Click for full screen



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ProForm Adjustable Waist Trimmer Belt



2
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SALE
\$11.99

Regular \$12.99

★★★★★ 5 [1 Review](#) [Write a review](#)

Be the first to [ask a question](#)

Quantity:
- 1 +

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[FIND IN STORE](#)

SHIP **PICK UP IN STORE**

✓ Available to Ship

ADD TO BAG

PRODUCT DETAILS

Featuring a breathable, smooth and adjustable design, this ProForm waist trimmer belt will help you reach your fitness goals.

Limit 5 per household.

PRODUCT FEATURES

- Five different fits for comfortable wear.
- Zip closures for easy on and off.
- Neoprene construction ensures durability.

PRODUCT CARE

CUSTOMERS ALSO VIEWED

CUSTOMERS ALSO BOUGHT

TOP

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I caused a true and correct copy of the foregoing Amended Notice of Opposition was electronically filed with the Trademark Trial and Appeal Board, which served the following attorney of record for applicant:

Lisa A. Lori
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
trademarks@klehr.com

/LaShel Shaw/

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