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

Proceeding	91226202
Party	Defendant Mycone Dental Supply Co., Inc. DBA Keystone Industries
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ICON HEALTH & FITNESS, INC.,	) Opposition No. 91226202
	)
Opposer,	) Application No.: 86729827
	)
v.	) Mark: PF2
	)
	) Published in the Official Gazette
MYCONE DENTAL SUPPLY CO., INC.	) on December 8, 2015
	)
	) APPLICANT'S ANSWER TO
Applicant.	) AMENDED NOTICE OF OPPOSITION

Mycone Dental Supply Co., Inc. d/b/a Keystone Industries ("Applicant") answers ICON Health and Fitness, Inc.'s ("Opposer") Amended Notice of Opposition (the "Notice" or the "Opposition") as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice and therefore denies same and demands strict proof of same at trial.

2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice and therefore denies same and demands strict proof of same at trial.

3. Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and demands strict proof of same at trial.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice and therefore denies same and demands strict proof of same at trial. In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and

demands strict proof of same at trial.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice and therefore denies same and demands strict proof of same at trial. In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and demands strict proof of same at trial.

6. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice and therefore denies same and demands strict proof of same at trial. In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and demands strict proof of same at trial.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice and therefore denies same and demands strict proof of same at trial. In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and demands strict proof of same at trial.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice and therefore denies same and demands strict proof of same at trial. In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies same and demands strict proof of same at trial.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are

in any way associated with dental devices.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

11. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice and therefore denies same and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

12. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice and therefore denies same and demands strict proof of same at trial. Applicant further denies that Opposer's marks are famous and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

13. Applicant admits only that on August 19, 2015, it filed an application for registration of the following mark:

(the "PF2 Logo"). In addition, Opposer cites U.S. Trademark applications of record, which are the best evidence of their content. Applicant, therefore, denies Opposer's characterization of the content of the documents.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice and demands strict proof of same at trial. By way of further response, contrary to Opposer's contentions, Applicant's marks have priority over Opposer's marks. In addition, none of Opposer's marks are in any way associated with dental devices.

15. Applicant denies the allegations contained in Paragraph 15 of the Notice and demands strict proof of same at trial. By way of further response, Applicant's PF2 Logo, on its face, is not confusingly similar to any of Opposer's marks. By way of further response, none of Opposer's marks are in any way associated with dental devices.

16. Applicant denies the allegations contained in Paragraph 16 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

17. Applicant admits only that its products are sold, among other places, online. Applicant denies the remaining allegations contained in Paragraph 17 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

18. Applicant denies the allegations contained in Paragraph 18 of the Notice and demands strict proof of same at trial. The remaining allegations of this paragraph are denied. By way of further response, none of Opposer's marks are in any way associated with dental devices.

19. Applicant denies the allegations contained in Paragraph 19 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

20. Applicant denies the allegations contained in Paragraph 20 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

21. Applicant denies the allegations contained in Paragraph 21 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

22. Applicant denies the allegations contained in Paragraph 22 of the Notice and demands strict proof of same at trial. By way of further response, none of Opposer's marks are in any way associated with dental devices.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses:

First Affirmative Defense

As a first, separate and distinct affirmative defense, the Notice is barred by Applicant's prior use of PRO-FORM.

Second Affirmative Defense

As a second, separate and distinct affirmative defense, Applicant is the owner of U.S. Reg. Nos. 4175588 and 4182551 for PRO-FORM, in International Classes 1 and 7, and Applicant has been using PRO-FORM in interstate commerce, in connection with, among other things, mouth guards, since prior to December 31, 1982 and prior to Opposer's use of its marks. Applicant's prior FRO-FORM marks bar Applicant's Notice, and render Applicant's Notice frivolous.

Third Affirmative Defense

As a third, separate and distinct affirmative defense, Opposer has not been and will not be damaged by the registration of the Applicant's PF2 Logo Mark, which is the subject of application Serial No. 86729827.

Fourth Affirmative Defense

As a fourth, separate and distinct affirmative defense, the Notice is barred by laches.

Fifth Affirmative Defense

As a fifth, separate and distinct affirmative defense, the Notice is barred by estoppel.

Sixth Affirmative Defense

As a sixth, separate and distinct affirmative defense, the Notice is barred by acquiescence

Seventh Affirmative Defense

As a seventh, separate and district affirmative defense, Applicant asserts that no likelihood of confusion exists between the Applicant's PF2 Logo Mark and any mark asserted by Opposer in the Notice. Opposer does not own any marks related to dental devices. Accordingly, there is no likelihood of confusion between Applicant's marks and Opposer's marks.

Eighth Affirmative Defense

As an eighth, separate and district affirmative defense, Applicant asserts that there is no likelihood of confusion because Applicant's PF2 Logo Mark and any mark asserted by Opposer in the Notice, in their entireties, are dissimilar in sight, appearance, connotation, or commercial impression.

Ninth Affirmative Defense

As a ninth, separate and district affirmative defense, Applicant asserts that Opposer has no exclusive rights in and to the words PRO FORM for use in connection with Opposer's stated goods.

Tenth Affirmative Defense

As a tenth, separate and district affirmative defense, Applicant asserts that the geographic distance between the services offered by Applicant and Opposer renders confusion unlikely.

Eleventh Affirmative Defense

As an eleventh, separate and district affirmative defense, Applicant asserts that any mark asserted by Opposer in the Notice has not acquired secondary meaning.

Twelfth Affirmative Defense

As a twelfth, separate and district affirmative defense, Applicant asserts that any mark asserted by Opposer in the Notice is not inherently distinctive.

Thirteenth Affirmative Defense

As a thirteenth, separate and district affirmative defense, Applicant reserves the right to seek cancellation of Opposer's marks in the event that it is determined that likelihood of confusion exists between Opposer's marks and Applicant's marks.

WHEREFORE, Applicant requests that this Notice be dismissed and Applicant's applications proceed to registration.

Respectfully submitted,

KLEHR HARRISON
HARVEY BRANZBURG LLP

/s/ Lisa A. Lori

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Attorneys for Applicant
Mycone Dental Supply Co., Inc.

Dated: April 4, 2016

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2016, I caused a true and correct copy of the foregoing Applicant's Answer to Notice of Opposition to be served by e-mail and United States First Class Mail, postage prepaid, upon the following attorney of record for Opposer:

Gregory M. Hess, Esquire
LaShel Shaw, Esquire
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Attorneys for ICON Health & Fitness, Inc.

/s/ Lisa A. Lori