

ESTTA Tracking number: **ESTTA744826**

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

Proceeding	91227109
Party	Defendant Bandier Holdings LLC
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Date	05/06/2016
Attachments	FASHION FITNESS MUSIC - 35.pdf(42980 bytes )



5. Applicant admits the allegations set forth in paragraph 5 of the Opposition to the extent that the records of the U.S. Patent and Trademark Office show that the services in Opposer's application are as listed in paragraph 5 of the Opposition.

6. Applicant denies each and every allegation set forth in paragraph 6 of the Opposition.

7. Applicant admits that Opposer's alleged mark is FASHION MUSIC and that Applicant's Mark is FASHION FITNESS MUSIC, but denies each and every other allegation set forth in paragraph 7 of the Opposition.

8. Applicant denies each and every allegation set forth in paragraph 8 of the Opposition.

9. Applicant admits that the Mark is FASHION FITNESS MUSIC, but denies each and every other allegation set forth in paragraph 9 of the Opposition.

10. Applicant denies each and every allegation set forth in paragraph 10 of the Opposition.

11. Applicant denies each and every allegation set forth in paragraph 11 of the Opposition.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

12. The Opposition fails to state any claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

13. Opposer's allegations are barred by the equitable doctrines of waiver, estoppel, laches, acquiescence and/or unclean hands.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

14. Opposer lacks standing to assert its claims.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

15. Applicant's use and/or registration of the Mark will not create any likelihood of confusion, false connection, dilution, mistake or deception because, inter alia, the Mark and Opposer's pleaded mark are not "confusingly similar" as alleged by Opposer.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

16. There is no likelihood of confusion, false connection, dilution, mistake or deception because, inter alia, the terms "FASHION" and "MUSIC" are weak and cannot be distinctive to Opposer.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

17. Opposer has no proprietary right to the terms "FASHION" or "MUSIC".

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

18. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Applicant reserves the right to assert additional affirmative defenses for which it has developed factual support pending the outcome of discovery or otherwise.

**WHEREFORE**, Applicant respectfully requests that Opposition No. 91227109 be dismissed in its entirety and that the Application Serial No. 86/736,678 be allowed to proceed to registration.

Dated: New York, New York  
May 6, 2016

Respectfully submitted,

By:           /tee/          

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**CERTIFICATE OF SERVICE BY FIRST CLASS MAIL**

I hereby certify that a true and correct copy of Applicant's ANSWER is being sent by First Class Mail by depositing the same with the United States Postal Service and addressed to counsel for Opposer, on May 6, 2016 at the following address:

JONATHAN MORTON  
246 WEST BROADWAY 4TH FLOOR  
NEW YORK, NY 10013

  
JONATHAN ALBRINK

**CERTIFICATE OF MAILING BY ESTTA**

I hereby certify that on May 6, 2016, this correspondence was filed electronically by ESTTA.

  
JONATHAN ALBRINK