

ESTTA Tracking number: **ESTTA735884**

Filing date: **03/25/2016**

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

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| Name | Anytime Health, LLC |
| Granted to Date of previous extension | 03/27/2016 |
| Address | 12181 Margo Avenue South Hastings, MN 55033 UNITED STATES |
| Party who filed Extension of time to oppose | PumpOne, LLC PUMPONE, LLC |
| Relationship to party who filed Extension of time to oppose | Anytime Health, LLC is the successor in interest to a CLASSPASS mark formerly owned by PumpOne, LLC. See Application Serial No. 86534830 and the assignment records therefor. |

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| Attorney information | Molly T. Eichten Larkin Hoffman Daly & Lindgren Ltd. 8300 Norman Center Drive Suite 1000 Minneapolis, MN 55437-1060 UNITED STATES ipgroup@larkinhoffman.com, meichten@larkinhoffman.com Phone:9528961545 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 86374584 | Publication date | 09/29/2015 |
| Opposition Filing Date | 03/25/2016 | Opposition Period Ends | 03/27/2016 |
| Applicant | ClassPass, Inc. 121 West 27th Street #701 New York, NY 10001 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 035. First Use: 2014/02/12 First Use In Commerce: 2014/02/12 All goods and services in the class are opposed, namely: Online retail store services featuring fitness, health and wellness services, namely, sessions at yoga studios, fitnessstudios, gyms and health clubs |
| Class 041. First Use: 2014/02/12 First Use In Commerce: 2014/02/12 All goods and services in the class are opposed, namely: Online reservation and booking servicesfor recreational and leisure events, namely, sessions at yoga studios, fitness studios, gyms and health clubs |

Grounds for Opposition

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| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Mark Cited by Opposer as Basis for Opposition

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|----------------------|--|-----------------------|------------|
| U.S. Application No. | 86534830 | Application Date | 02/13/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | CLASSPASS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 035. First use: First Use: 2010/12/21 First Use In Commerce: 2010/12/21 SUBSCRIPTIONS TO AUDIO/VISUAL WORKS AND INTERACTIVE MULTIMEDIA, NAMELY TO THE ONLINE VIDEOS OF OTHERS IN THE FIELD OF FITNESS INSTRUCTION AND PERSONAL TRAINING, ACCESSIBLE VIA AN ONLINE MOBILE MARKETPLACE Class 042. First use: First Use: 2010/12/21 First Use In Commerce: 2010/12/21 PROVIDING A WEBSITE FEATURING AUDIO/VISUAL WORKS AND INTERACTIVE MULTIMEDIA, namely, DOWNLOADABLE VIDEOS, IN THE FIELD OF FITNESS INSTRUCTION AND PERSONAL TRAINING, ACCESSIBLE VIA AN ONLINE MOBILE MARKETPLACE | | |

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| Attachments | 86534830#TMSN.png(bytes) Notice of Opposition.pdf(207069 bytes) |
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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.

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| Signature | /Molly Eichten/ |
| Name | Molly T. Eichten |
| Date | 03/25/2016 |

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

In the Matter of: Trademark Serial No. 86374584
For the Mark: CLASSPASS
Filed: August 22, 2014
Published: September 29, 2015

Anytime Health, LLC,

Opposer,

v.

Opposition No. _____

ClassPass, Inc.,

Applicant.

NOTICE OF OPPOSITION

This opposition is made to the application of Applicant, ClassPass, Inc., for registration of the mark CLASSPASS, Application Serial No. 86374584, published on September 29, 2015. Opposer, Anytime Health, LLC, through its predecessor-in-interest, PumpOne, LLC, obtained an extension of time to oppose the application to January 27, 2016. Anytime Health, LLC obtained another extension of time to oppose the application to March 27, 2016.

Opposer believes it will be damaged by the registration of the mark shown in the application above, and hereby opposes the same. As grounds for its opposition, Opposer states and alleges as follows:

1. Opposer is a limited liability company organized under the laws of Minnesota, with its principal place of business located at 12181 Margo Avenue South, Hastings, Minnesota 55033.

2. On information and belief, Applicant is a corporation organized under the laws of New York, with its principal place of business located at 121 West 27th Street, #701, New York, New York 10001.

3. Opposer's CLASSPASS™ mobile application personal training services provide access to the world's largest exercise image and video library, providing a new level of personalization, support and information on demand – via a virtual coach in their pockets – to its members inside their home, work, or wherever they may be (“Opposer's CLASSPASS mark”). With a library of over 7,000 fitness images and videos, more than 1,000 workout programs and a rich, intuitive user experience, CLASSPASS™ services connect trainers and clients, providing members with exercise programming on their phones and tablets.

4. Opposer owns U.S. Trademark Application Serial No. 86534830 for Opposer's CLASSPASS mark, filed on February 13, 2015, claiming dates of first use and first use in commerce of December 21, 2010, for use in connection with Class 035 services recited as subscriptions to audio/visual works and interactive multimedia, namely to the online videos of others in the field of fitness instruction and personal training, accessible via an online mobile marketplace, and Class 042 services recited as providing a website featuring audio/visual works and interactive multimedia, namely, downloadable videos, in the field of fitness instruction and personal training, accessible via an online mobile marketplace (“Opposer's CLASSPASS application”).

5. Opposer's CLASSPASS mark has been used continuously in advertising and promotional materials, and in other ways customary in the trade, to promote its services throughout the United States, and Opposer has developed good will through ownership and use of its mark, and by reason of such advertising, promotion and widespread use, the consuming

public recognizes Opposer's CLASSPASS mark and associates the mark with Opposer and its services.

6. Opposer's CLASSPASS mark is inherently distinctive and is a strong mark, and should be accorded the broad protection given to strong marks.

7. On or about August 22, 2014, Applicant filed an application to register the mark CLASSPASS, U.S. Trademark Application Serial No. 86374584, claiming dates of first use and first use in commerce of February 12, 2014 ("Applicant's CLASSPASS mark."). The application was published for opposition on September 29, 2015, for Class 035 services recited as online retail store services featuring fitness, health and wellness services, namely, sessions at yoga studios, fitness studios, gyms and health clubs, and Class 041 services recited as online reservation and booking services for recreational and leisure events, namely, sessions at yoga studios, fitness studios, gyms and health clubs.

8. The United States Patent and Trademark Office has refused registration of the mark in Opposer's CLASSPASS application because it believes the mark so resembles Applicant's CLASSPASS mark as to be likely to cause confusion, or cause mistake, or to deceive.

9. Use by Applicant of Applicant's CLASSPASS mark for which registration is sought in the application opposed herein is likely to cause confusion, mistake or deception as to the source of origin, sponsorship, or approval of Applicant's services in that purchasers or others are likely to believe that Applicant's services are Opposer's services or are in some way legitimately connected with, licensed by, or approved by Opposer. Use by Applicant of Applicant's CLASSPASS mark for which registration is sought in the application opposed herein has lessened, and will continue to lessen, the capacity of Opposer's CLASSPASS mark to identify and distinguish services provided by Opposer. In addition, Opposer will be damaged by the registration of Applicant's

CLASSPASS mark, in that it will be unable to obtain registration of Opposer's CLASSPASS mark, and Opposer's continued and legal use of its mark in connection with those goods will be impaired by the registration of Applicant's CLASSPASS mark.

10. Opposer's use of Opposer's CLASSPASS mark and the mark in Opposer's CLASSPASS application pre-dates any date of use or constructive date of use by Applicant of Applicant's CLASSPASS mark.

11. Use by Applicant of Applicant's CLASSPASS mark for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

12. Applicant's CLASSPASS mark is so similar to Opposer's CLASSPASS mark as to be likely to falsely suggest a connection between Applicant and Opposer.

WHEREFORE, Opposer respectfully requests that Application Serial No. 86374584 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please address all communications to Molly T. Eichten, Larkin Hoffman Daly & Lindgren Ltd., 8300 Norman Center Drive, Suite 1000, Minneapolis, Minnesota 55437-1060.

Date: March 25, 2016

Anytime Health, LLC

By its Attorneys:

/ Molly T. Eichten/

Molly T. Eichten

Glenna L. Gilbert

Larkin Hoffman Daly & Lindgren Ltd.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition was served on the correspondent of record for Applicant, James H. Donoian, McCarter & English, LLP, 245 Park Avenue, 27th Floor, New York, New York 10167, by First Class Mail, postage prepaid, this 25th day of March, 2016.

/Molly T. Eichten/_____

Molly T. Eichten