

ESTTA Tracking number: **ESTTA757513**

Filing date: **07/11/2016**

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

Proceeding	91227186
Party	Defendant Mad Dogg Athletics, Inc.
Correspondence Address	KONRAD GATIEN Stubbs Alderton & Markiles Llp 15260 Ventura Blvd Fl 20 Sherman Oaks, CA 91403-5307 uspto@stubbsalderton.com
Submission	Answer
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Date	07/11/2016
Attachments	Answer - PRO.pdf(37311 bytes)

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

In the Matter of Application Serial No. 86/750,599

ICON Health & Fitness, Inc.,)	
)	Opposition No. 91227186
Opposer,)	
)	
v.)	
)	
Mad Dogg Athletics, Inc.)	
)	
Applicant.)	
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT’S ANSWER

Mad Dogg Athletics, Inc. (“Applicant”), answers the Notice of Opposition filed by ICON Health & Fitness, Inc. (“Opposer”), as follows:

Answering the allegations set forth in the introduction of the Notice of Opposition filed by Opposer that relate to the identity, state of incorporation and contact details for Opposer, Applicant is without sufficient knowledge or information to form a belief as to the truth and accuracy of the allegations therein, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

Answering the allegation set forth in the introduction of the Notice of Opposition that states that Opposer “believes that it will be damaged by the issuance of a registration for the alleged mark shown in Application Serial No. 86750599 for the mark PRO,” Applicant generally and specifically denies this allegation. Strict proof is demanded at trial.

Responding *in seriatim* to the numbered paragraphs of Opposer's Notice of Opposition, Applicant responds as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 1, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 2, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 3, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 4, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 5, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 6, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 7, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 8, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 9, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 10, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 11, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 12, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

13. Answering Paragraph 13 of the Notice of Opposition, Applicant denies that it has an address “at 415260 Ventura Blvd., 20th Floor, Sherman Oaks, California 91403.” Applicant may be contacted through its counsel at 15260 Ventura Blvd., 20th Floor, Sherman Oaks, California 91403. Applicant denies that it filed the application for Applicant’s mark, PRO, identified by Ser. No. 86/750,599 (“Applicant’s Mark”) for use in connection with “stationary exercise bicycles” in International Class 028 on September 4, 2015. Applicant admits that it caused to be filed the application for Applicant’s Mark on or about September 8, 2015.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 14, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 15, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 16, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 17, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 18, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 19, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

20. Applicant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 20, and, on that basis, denies each and every such allegation. Strict proof is demanded at trial.

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FIRST GROUND FOR OPPOSITION – LIKELIHOOD OF CONFUSION

21. Answering Paragraph 21 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

22. Answering Paragraph 22 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

SECOND GROUND FOR OPPOSITION - DILUTION

23. Answering Paragraph 23 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

24. Answering Paragraph 24 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

25. Answering Paragraph 25 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

26. Answering Paragraph 26 of the Notice of Opposition, Applicant generally and specifically denies each and every such allegation. Strict proof is demanded at trial.

AFFIRMATIVE DEFENSES

Without alleging that Applicant has the burden of proof on the following, Applicant states the following facts as separate and distinct affirmative defenses to Opposer’s Notice of Opposition as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim upon Which Relief May Be Granted)

1. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because each such claim does not state facts sufficient to constitute a cause of action under applicable law.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

2. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because Opposer lacks standing to bring such claims.

THIRD AFFIRMATIVE DEFENSE

(Weakness/Third Party Use)

3. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because Opposer's marks, and each of them, are weak, and, thus, entitled to limited protection because third parties have used similar marks on similar goods.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Distinctiveness)

4. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because Opposer's marks, and each of them, lack distinctiveness.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Fame)

5. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because Opposer's marks, and each of them, are not famous.

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RESERVATION

Applicant has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during discovery proceedings or prior to trial.

PRAYER

WHEREFORE, Applicant prays for the entry of judgment in its favor on all claims in Opposer's Notice of Opposition, dismissal with prejudice of Opposer's Notice of Opposition in its entirety, and such other and further relief as may be proper and just under the circumstances.

Respectfully submitted,



Dated: July 11, 2016

Konrad K. Gatien
STUBBS ALDERTON & MARKILES, LLP
Attorneys for Applicant
Mad Dogg Athletics, Inc.
15260 Ventura Blvd., 20th Floor
Sherman Oaks, CA 91403
Tel: (310) 746-9800
Fax: (310) 746-9820

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2016, I served the following document(s):

Applicant's Answer

upon counsel for Opposer named below:

LaShel Shaw
Parr Brown Gee & Loveless, P.C.
101 S. 200 E., Suite 700
Salt Lake City, UT 84111

by placing a true and correct copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail, for collection and mailing with the United States Postal Service on the same date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 11, 2016, at Los Angeles, California.

/s/

Darrell Orme Mann