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

Proceeding	91229110
Party	Defendant IFI, Inc
Correspondence Address	RUSSELL KHAIMOV IFI, INC 17 ROCKSPRAY CT. HOWELL, NJ 07731 UNITED STATES russell@khaimov.com
Submission	Answer
Filer's Name	Michael Krigsfeld
Filer's e-mail	michael@mkesq.com
Signature	/Michael Krigsfeld/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86842587 (IFI, Inc.)

Filed: December 8, 2015

Published for Opposition: May 24, 2016

ICON HEALTH & FITNESS, INC.	)	
Opposer,	)	
v.	)	<u><b>ANSWER and AFFIRMATIVE</b></u>
IFI, Inc.,	)	<u><b>DEFENSES</b></u>
Applicant.	)	Opposition No.: 91229110

**PLEASE TAKE NOTICE**, that the Applicant, IFI, Inc., (hereinafter “IFI”) by its attorney, Michael Krigsfeld, Esq. answering the Notice of Opposition of the Opposer (hereinafter “ICON”) herein, respectfully alleges upon information and belief, as follows:

1. Denies any knowledge or information contained in paragraph 1, sufficient to form a belief as to the truth of the allegations contained therein, that ICON is one of the world’s largest manufacturers of exercise and fitness equipment and its sales in the geographic area outlined in the Notice of Opposition.

2. Denies any knowledge or information contained in paragraph 2, sufficient to form a belief as to the truth of the allegations contained therein, that ICON is the owner of five relevant valid and subsisting U.S. Trademark Registrations as outlined in the Notice of Opposition.

3. Denies any knowledge or information contained in paragraph 3, sufficient to form a

belief as to the truth of the allegations contained therein, that ICON has used the mark protected by U.S. Trademark Registration No. 4,604,633 in interstate commerce in the United States continuously since at least June 6, 2010 in connection with the services outlined therein.

4. Denies any knowledge or information contained in paragraph 4, sufficient to form a belief as to the truth of the allegations contained therein, that ICON has used the mark protected by U.S. Trademark Registration No. 4,500,591 in interstate commerce in the United States continuously since at least June 4, 2010 in connection with the services outlined therein.

5. Denies any knowledge or information contained in paragraph 5, sufficient to form a belief as to the truth of the allegations contained therein, that ICON has used the mark protected by U.S. Trademark Registration No. 4,450,213 in interstate commerce in the United States continuously since at least October 1, 2010 in connection with the services outlined therein.

6. Denies any knowledge or information contained in paragraph 6, sufficient to form a belief as to the truth of the allegations contained therein, that ICON has used the mark protected by U.S. Trademark Registration No. 2,466,474 in interstate commerce in the United States continuously since at least February 1999 in connection with the services outlined therein.

7. Denies any knowledge or information contained in paragraph 7, sufficient to form a belief as to the truth of the allegations contained therein, that ICON has used the mark protected by U.S. Trademark Registration No. 2,618,509 in interstate commerce in the United States continuously since at least February 1999 in connection with the services outlined therein.

8. Denies any knowledge or information contained in paragraph 8, sufficient to form a belief as to the truth of the allegations contained therein, that ICON used its ICON marks in a widespread, continuous and exclusive use so as to grant itself a valid and subsisting federal statutory and common law right to use said marks.

9. Denies any knowledge or information contained in paragraph 9, sufficient to form a belief as to the truth of the allegations contained therein, that the ICON marks are distinctive to both the consuming public and within the exercise and fitness community.

10. Denies any knowledge or information contained in paragraph 10, sufficient to form a belief as to the truth of the allegations contained therein, that ICON has expended substantial time, money, and resources in marketing, advertising, and promoting the goods and services offered under the ICON marks.

11. Denies any knowledge or information contained in paragraph 11, sufficient to form a belief as to the truth of the allegations contained therein, that the alleged promotional efforts have led to ICON's patrons, potential patrons, and the general public coming to know and recognize the ICON marks and associate them with its goods and services or that ICON has built up extensive, valuable goodwill in its marks.

12. Denies any knowledge or information contained in paragraph 12, sufficient to form a belief as to the truth of the allegations contained therein, that the ICON marks, through alleged distinctiveness and widespread use and promotion throughout the United States, are famous trademarks within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. 1125(c).

13. Admits the information contained in paragraph 13.

14. Denies any knowledge or information contained in paragraph 14, sufficient to form a belief as to the truth of the allegations contained therein, that the ICON marks have priority over IFI's mark because ICON's first-use and registration dates for its marks predate the filing date of IFI's application or any other date which IFI may rely on for purposes of priority.

15. Denies the information contained in paragraph 15 that IFI's mark is confusingly similar to the ICON marks in sound, spelling, appearance and connotation.

16. Denies the information contained in paragraph 16 that there is any likelihood of confusion simply because the goods of both IFI and ICON include software and online software.

**ANSWERING THE FIRST GROUND FOR OPPOSITION – LIKELIHOOD OF  
CONFUSION**

17. Answering paragraph 17 of the Notice of Opposition set forth in paragraphs “1” through “16”, repeats, reiterates, and realleges each and every allegation, admission and denial contained in the preceding paragraphs of this Answer, with the same force and effect as though here again set forth. Furthermore, IFI denies the information contained in paragraph 17 that IFI’s mark consists of or compromises a mark which so resembles ICON’s alleged previously used and registered marks as to be likely, when used in connection with the alleged goods and services of IFI, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

**ANSWERING THE SECOND GROUND FOR OPPOSITION – DILUTION**

18. Answering paragraph 18 the Notice of Opposition set forth in paragraphs “1” through “17”, repeats, reiterates, and realleges each and every allegation, admission and denial contained in the preceding paragraphs of this Answer, with the same force and effect as though here again set forth. Furthermore, IFI denies any knowledge or information contained in paragraph 18, sufficient to form a belief as to the truth of the allegations contained therein, that the ICON marks are distinctive and a “famous mark” within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1052(d).

19. Denies any knowledge or information contained in paragraph 19, sufficient to form a

belief as to the truth of the allegations contained therein, that the ICON marks became distinctive and famous prior to the filing date of IFI's application or any other date on which IFI may rely on for purposes of priority.

20. Denies the information contained in paragraph 20 that IFI's Application Serial No. 86842587 impairs the distinctiveness and causes dilution by blurring of, and thereby damages, ICON's alleged famous marks in violation of 15 U.S.C. § 1125(c).

#### **AFFIRMATIVE DEFENSES**

21. The ICON marks and the IFI mark do not convey a similar commercial impression because neither the consuming public nor the consumers in the exercise and fitness market are aware that ICON provides its goods and services to the service professional industry.

22. The ICON marks are not famous for confusion purposes because a significant portion of the relevant consuming public, not the general public, namely exercise and fitness consumers would not recognize the ICON marks as source indicators for a software application for service professionals.

23. The goods and services of ICON are not marketed in the same channels of trade to the same consumers for there to be a likelihood, when used in connection with the alleged good and services of IFI, of confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

24. IFI had not at the time it registered its mark and does not currently intend to deceive the general public nor the relevant consuming public of ICON consumers or potential consumers into believing that ICON is the source of IFI's goods and services in order to profit off of its goodwill, if any.

25. The IFI mark does not sound or look like the ICON marks and does not have the same connotation so as to cause a likelihood of confusion among the general public nor the relevant consuming public of ICON consumers or potential consumers.

26. The ICON goods and services are not related at all to the IFI goods and services, except that both have a downloadable app, and are sufficiently different to avoid a finding of likely confusion.

27. The IFI mark does not impair the distinctiveness and does not cause dilution by blurring, thereby damaging ICON's marks, because IFI did not intend to create an association, and has not created any actual association, between its mark and the ICON marks.

WHEREFORE, Applicant respectfully prays that Petitioner's opposition be denied in its entirety and that registration of Applicant's Application Serial No. 86842587 be granted.

DATED: August 29, 2016

Respectfully submitted,

KRIGSFELD & ASSOCIATES, P.C.

/Michael Krigsfeld/

Michael Krigsfeld, Esq.  
KRIGSFELD & ASSOCIATES, P.C.  
Attorneys for IFI, Inc.  
1641 East 13<sup>th</sup> Street, 1<sup>st</sup> Floor  
Brooklyn, New York 11229  
347-702-4133  
Michael@mkesq.com

**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2016, I caused a true and correct copy of the foregoing Answer with Affirmative Defenses to be served by first-class mail, postage prepaid on the following correspondent of record for Petitioner:

LaShel Shaw  
PARR BROWN GEE & LOVELESS  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111

/Michael Krigsfeld/