

ESTTA Tracking number: **ESTTA773641**

Filing date: **09/29/2016**

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

Name	Powerhouse Marks, LLC
Granted to Date of previous extension	10/05/2016
Address	44125 West 12 Mile Road, Suite E118 Novi, MI 48377 UNITED STATES
Attorney information	Corey M. Beaubien Reising Ethington PC 755 West Big Beaver Rd., Suite 1850 Troy, MI 48084 UNITED STATES beaubien@reising.com Phone:248-689-3500

Applicant Information

Application No	86776764	Publication date	06/07/2016
Opposition Filing Date	09/29/2016	Opposition Period Ends	10/05/2016
Applicant	Jacobs, Elijah 49 Summer Street Natick, MA 01760 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2012/11/30 First Use In Commerce: 2013/03/31 All goods and services in the class are opposed, namely: clothing, namely, pants, shorts, shirts, sweatshirts and jackets, footwear and headgear, namely, sports caps and hats
Class 041. First Use: 2010/10/01 First Use In Commerce: 2010/10/01 All goods and services in the class are opposed, namely: Entertainment services, namely, producing live musical productions, and producing recorded audio and video musical productions

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1255385	Application Date	02/18/1982
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Registration Date	10/25/1983	Foreign Priority Date	NONE
Word Mark	POWERHOUSE GYM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1977/01/02 First Use In Commerce: 1979/06/01 Athletic Training Attire-Namely, T-Shirts, Sweatshirts, Tank Tops, Warm Up Suits, Jogging Suits, Shorts, Caps		

U.S. Registration No.	1840536	Application Date	09/24/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	POWERHOUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1987/07/00 First Use In Commerce: 1987/07/00 publications; namely, health and fitness magazines Class 025. First use: First Use: 1977/01/00 First Use In Commerce: 1979/06/00 clothing and related products and accessories; namely, shirts, pants, sweat suits, shorts, leotards, gloves, tank tops and sweat bands Class 041. First use: First Use: 1974/01/00 First Use In Commerce: 1977/01/00 body building, fitness and health facility services		

Attachments	73350790#TMSN.png(bytes) Notice_of_Opposition.pdf(132661 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.

Signature	/Corey M. Beaubien/
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Name	Corey M. Beaubien
Date	09/29/2016

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

POWERHOUSE MARKS, LLC,)	
)	
Opposer,)	Opposition No. _____
)	Application Serial No. 86/776,764
v.)	Mark: POWERHOUSE PH MOVEMENT
)	
Jacobs, Elijah)	
)	
Applicant.)	
_____)	

Notice of Opposition

Opposer, Powerhouse Marks, LLC, a limited liability company legally organized under the laws of the State of Michigan, having an address of 44125 W. 12 Mile Road, Suite E 118, Novi, Michigan 48377, concludes that it will be damaged by registration of Application Serial No. 86/776,764 for the mark POWERHOUSE PH MOVEMENT by Elijah Jacobs. Opposer hereby opposes the Application Serial No. 86/776,764 on the grounds that (1) the mark is likely to cause confusion, to cause mistake, to deceive, or a combination thereof with respect to (a) Opposer’s prior adoption and use of various trademarks and trade names formed solely by, predominated by, or including the term “POWERHOUSE”; and (b) registrations for Opposer’s POWERHOUSE Marks, as identified below (collectively, “Opposer’s POWERHOUSE Marks”); and (2) registration of the mark of Application Serial No. 86/776,764 will dilute the distinctiveness of Opposer’s POWERHOUSE Marks that are famous, by tarnishing them and by blurring their distinctiveness.

1. Opposer is in the business of marketing and providing goods and services in the field of health and fitness, including gyms, health club and fitness facilities, training services, health club and fitness clothing, health club and fitness exercise equipment, health club and fitness publications such as magazines, health club and fitness nutritional and dietary products, and other health and fitness related goods and services (“Opposer’s Goods and Services”).

2. Opposer owns and uses the domain name powerhousegym.com, and owns and uses several common law trademarks and trade names with the term POWERHOUSE alone or in combination with another term or logo.

3. Opposer’s Goods and Services are promoted, marketed, and attracted to, among other consumers, clothing consumers. Opposer's clothing good include, but are not limited to, sweatshirts, T-shirts, tank tops, shorts, sports caps and hats, and pants. Opposer's clothing goods are for men and women. Opposer's clothing goods are available for purchase by consumers via Opposer's website powerhousegym.com and via stores in many of its 300-plus gym and health club and fitness facilities across 39 states.

4. In the above activities, Opposer has used Opposer’s POWERHOUSE Marks in commerce since at least as early as the mid-1970s, and continues to use Opposer’s POWERHOUSE Marks today. In particular, Opposer has been using the trademarks POWERHOUSE and POWERHOUSE GYM with clothing goods since at least as early as 1979.

5. As a result of the high quality and extensive promotion and advertising of Opposer's Goods and Services under Opposer's POWERHOUSE Marks, they have been met by consumers with highly favorable acceptance, and Opposer's POWERHOUSE Marks have become well-recognized symbols of Opposer and its goodwill nationwide and worldwide. Furthermore, Opposer has spent significant time, energy, and resources developing Opposer's POWERHOUSE Marks, and Opposer's POWERHOUSE Marks therefore constitute a "famous Mark."

6. The United States Patent and Trademark Office has granted the following trademark registrations to Opposer, among many others:

- Registration No. 1,255,385 for the mark POWERHOUSE GYM & DESIGN for *athletic training attire-namely, t-shirts, sweatshirts, tank tops, warm up suits, jogging suits, shorts, caps* in International Class 025 with a filing date of February 18, 1982; and



- Registration No. 1,840,536 for the mark POWERHOUSE for *body building, fitness and health facility activities* in International Class 041, *publications; namely, health and fitness magazines* in International Class 016, and *clothing and related products and accessories; namely shirts, pants, sweat suits, shorts, leotards, gloves, tank tops and sweat bands* in International Class 025 with a filing date of September 24, 1993.

POWERHOUSE

(the foregoing being referred to as “Opposer’s POWERHOUSE Registrations”).

7. Opposer’s POWERHOUSE Registration Nos. 1,255,385 and 1,840,536 have achieved incontestable status, thus constituting conclusive evidence of the validity of the marks, the registrations therefor, Opposer’s ownership of the marks, and Opposer’s exclusive right to use the marks in commerce.

8. On information and belief, Applicant is an individual with an address of 49 Summer Street, Natick, Massachusetts 01760. On information and belief, individual Elijah Jacobs is a manager of Power House Movement, LLC, a limited liability corporation organized under the laws of the state of Massachusetts, with an address of 1257 Worcester Road, Suite 133, Framingham, Massachusetts 01701.

9. Notwithstanding Opposer’s prior use, filing, and/or registration of Opposer’s POWERHOUSE Marks and Opposer’s POWERHOUSE Registrations, on October 2, 2015

Applicant filed Application Serial No. 86/776,764 for the mark POWERHOUSE PH MOVEMENT for *clothing, namely, pants, shorts, shirts, sweatshirts and jackets, footwear and headgear, namely, sports caps and hats* in International Class 025 on a filing basis 1(a), with an alleged first use of November 30, 2012 and an alleged first use in commerce of March 31, 2013; and for *entertainment services, namely, producing live musical productions, and producing recorded audio and video musical productions* in International Class 041 on a filing basis 1(a), with an alleged first use of October 1, 2010 and an alleged first use in commerce of October 1, 2010.

10. Opposer has used and filed for registration of Opposer's POWERHOUSE Marks and Opposer's POWERHOUSE Registrations all decades before the filing date of Application Serial No. 86/776,764, and all decades before the alleged first use and first use in commerce dates of Application Serial No. 86/776,764.

11. The mark in Application Serial No. 86/776,764 is identical or nearly identical to Opposer's POWERHOUSE Marks and Opposer's POWERHOUSE Registrations.

12. The International Classes of Application Serial No. 86/776,764 and of Opposer's POWERHOUSE Marks and Opposer's POWERHOUSE Registrations are the identical classes 025 and 041. And almost all of the goods of Application Serial No. 86/776,764 (pants, shirts, sweatshirts, sports caps and hats) are identical to the goods of Opposer's POWERHOUSE Marks and Opposer's POWERHOUSE Registrations (sweatshirts, T-shirts, pants, sports caps and hats).

The identical goods are marketed, consumed, and provided to the same overlapping classes of customers in the marketplace and in the same channels of trade.

13. In view thereof, purchasers are likely to mistakenly assume that the goods in Application Serial No. 86/776,764 originate from, are sponsored, endorsed, affiliated, or are in some way associated with Opposer. The mark in Application Serial No. 86/776,764 is identical and so resembles Opposer's POWERHOUSE Marks as to be likely to cause confusion, or to cause mistake or to deceive. The mark in Application Serial No. 86/776,764 dilutes the distinctiveness of Opposer's POWERHOUSE Marks and Opposer's POWERHOUSE Registrations. Accordingly, Opposer will be damaged by registration of the mark of Application Serial No. 86/776,764.

Wherefore, Opposer prays that Application Serial No. 86/776,764 be refused registration, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: September 29, 2016

/Corey M. Beaubien/
Corey M. Beaubien
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CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the following date:

Date: September 29, 2016

/Corey M. Beaubien/
Corey M. Beaubien

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by mailing said copy on September 29, 2016, via express courier and First Class Mail, with courtesy copy by email, to Applicant:

Mr. Elijah Jacobs
49 Summer Street
Natick, Massachusetts 01760

/Corey M. Beaubien/
Corey M. Beaubien