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

Proceeding	91251582
Party	Defendant Sweat Equity Technologies
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Submission	Answer
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Date	12/22/2019
Attachments	Answer.pdf(159879 bytes)

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

UnitedHealth Group Incorporated)	
)	
Opposer)	
)	
v.)	Opposition No. 91251582
)	
Sweat Equity Technologies)	
)	
Applicant)	

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF
OPPOSITION**

Pursuant to 37 C.F.R. §§ 2.114 and 2.116(a), and Federal Rule of Civil Procedure 8, for its Answer to the Notice of Opposition (the “Notice”), applicant Sweat Equity Technologies (“Applicant”), hereby answers and pleads as follows:

With respect to Opposer’s unnumbered, introductory paragraph in the Notice, Applicant states that no admission or denial is necessary with regard to the first unnumbered paragraph of Opposer’s Notice, but that to the extent that such is necessary, Applicant admits that it applied for registration of the trademark SWEAT EQUITY which is the subject of Application Serial No. 88/257,422, but denies that Opposer will be damaged thereby.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice, and on that basis denies these allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice, and on that basis denies these allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice, and on that basis denies these allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice, and on that basis denies these allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice, and on that basis denies these allegations.

6. Admitted.

7. Applicant admits that Application Serial No. 88/257,017 has been filed by Opposer, based on the electronic record viewable at the Trademark Electronic Search System provided by the USPTO. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 of the Notice, and on that basis denies these allegations.

8. Admitted.

9. Applicant admits that Opposer initiated TTAB Opposition No. 91246970. Applicant otherwise denies the allegations of Paragraph 9 of the Notice.

10. Admitted.

11. Applicant denies the allegations of Paragraph 11 of the Notice.

12. Admitted.

13. Admitted.

14. Admitted.

15. Applicant admits that Application Serial No. 88/257,422 was published for opposition by the USPTO on July 16, 2019. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 15 of the Notice, and on that basis denies these allegations.

16. Applicant denies the allegations of Paragraph 16 of the Notice.

17. Applicant denies the allegations of Paragraph 17 of the Notice.

18. Applicant denies the allegations of Paragraph 18 of the Notice.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Notice, and on that basis denies these allegations.

20. Applicant admits that Exhibit A of the Notice is a screenshot of a website owned by Applicant. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Notice, and on that basis denies these allegations.

21. Applicant denies the allegations of Paragraph 21 of the Notice.

22. Applicant incorporated by reference its responses to Paragraph 1 through Paragraph 21 set forth above.

23. Admitted.

24. Applicant denies the allegations of Paragraph 24 of the Notice.

25. Applicant denies the allegations of Paragraph 25 of the Notice.

26. Applicant denies the allegations of Paragraph 26 of the Notice.

27. Applicant admits that Application Serial No. 88/257,422 was published for opposition by the USPTO. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 27 of the Notice, and on that basis denies these allegations.

28. Applicant denies the allegations of Paragraph 28 of the Notice.

29. Applicant incorporates by reference its responses to Paragraph 1 through Paragraph 28 set forth above.

30. Applicant denies the allegations of Paragraph 30 of the Notice.

31. Applicant denies the allegations of Paragraph 31 of the Notice.

32. Applicant denies the allegations of Paragraph 32 of the Notice.

33. Applicant denies the allegations of Paragraph 33 of the Notice.

34. Applicant denies the allegations of Paragraph 34 of the Notice.

35. Applicant denies the allegations of Paragraph 35 of the Notice.

Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Pursuant to Fed. R. Civ. P. 12(b)(6), the Notice fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Fraud)

2. Opposer submits in its Notice blatant misrepresentations about Opposer's alleged prior use of the mark SWEAT EQUITY in an effort to needlessly delay, distract, and conflate the truth to this Panel. Paragraph 2 of the Notice states that Opposer's "programs incorporate mobile applications with geolocation software that allow users to 'check in' to fitness centers in order to obtain certain financial incentives." However, in its Application Serial No. 88/257,017, Opposer's specimen, attached as Exhibit 1, provides specific manual instructions on how its health insurance members, in only the states of New Jersey, New York, and Connecticut, can receive reimbursements for performing a workout, without the mention of any electronic means, much less any downloadable mobile phone application software. In addition, Opposer's specimen clearly indicates that its health insurance members obtain or print a physical "copy of the brochure or flier" related to a workout program, a "receipt [or] automatic bank withdrawal statement", and a "completed Sweat Equity Program Reimbursement Form", all of which are **physically mailed** to "Oxford Sweat Equity Program, P.O. Box 29130, Hot Spring, AR 71903".

Clearly, Opposer's paper-based reimbursement program is not digital, and is not facilitated through the use of a downloadable mobile phone application software. Opposer's allegations to the contrary in the Notice is misleading, fraudulent, and unethical.

THIRD AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

3. There is no likelihood of confusion, mistake, or deception between Opposer's mark and Applicant's SWEAT EQUITY trademark.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

4. Opposer's claims are barred in whole or in part due to their unclean hands, including without limitation, attempting to prevent lawful competition in the marketplace, failure to perform reasonable pre-suit investigation, and assertion of a mark that is fundamentally dissimilar from Applicant's trademark such that no likelihood of confusion can be established.

FIFTH AFFIRMATIVE DEFENSE

(Third Party Marks)

5. Numerous third parties use marks similar to Opposer's mark on goods and services that are the same as or related to Opposer's goods and services, such that Opposer's mark is weak and entitled only to a narrow scope of protection, if any, thereby precluding Opposer's likelihood of confusion claims.

Applicant hereby gives notice that it may rely on additional defenses that may become available or appear proper during discovery, and hereby reserves its right to amend its Answer and Affirmative Defenses to assert any such defenses.

WHEREFORE, Applicant respectfully requests that the Notice be dismissed with prejudice, and that a Notice of Allowance issue for Applicant's Serial No. 88/257,422 in due course.

Respectfully Submitted,



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Dated: December 22, 2019

CERTIFICATE OF SERVICE (Electronic Mailing)

I hereby certify that a true and complete copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPOSITION was served on counsel for Applicant via email to lgregory@seyfarth.com, tmatlanta@seyfarth.com, ipdocketatlanta@seyfarth.com, and ttabdocket@seyfarth.com on this 22nd day of December, 2019.



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