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

Proceeding	92056152
Party	Plaintiff Hayward-Yellen 100 Limited Partnership
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Submission	Motion for Summary Judgment
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Signature	/Jennifer A. Dukarski/
Date	10/24/2013
Attachments	Summary Judgment Motion and Brief.pdf(834042 bytes)

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

In the matter of Registration No. 3,306,916
Registered on October 9, 2007
For the Mark Bank of You

HAYWARD-YELLEN 100 LIMITED PARTNERSHIP,
Petitioner/Plaintiff,

vs.

Cancellation No. 92056152

LIFE TIME PARADIGM, LLC,
Registrant/Defendant.

LIFE TIME PARADIGM, LLC,
Counter-Claimant,

vs.

HAYWARD-YELLEN 100 LIMITED PARTNERSHIP,
Registrant/Counter-Defendant.

PETITIONER / COUNTER DEFENDANT HAYWARD-YELLEN 100 LIMITED PARTNERSHIP'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56

Petitioner / Counter Defendant Hayward-Yellen 100 Limited Partnership, by its attorneys Butzel Long, moves for summary judgment pursuant to Fed. R. Civ. P. 56(a), on grounds that no genuine issue of material fact exists and that the registration of BANK OF YOU must fail as a matter of law. In further support of its motion, Petitioner relies upon the facts and arguments set forth in the accompanying brief.

WHEREFORE, Petitioner / Counter Defendant requests that an order be entered granting summary judgment in its favor, dismissing Life Time Paradigm, LLC's Counter

Claim with prejudice, and awarding Petitioner/Counter Defendant relief as appropriate under the T.B.M.P.

By: /s/Claudia Rast /

Claudia Rast (P40165)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 3,306,916
Registered on October 9, 2007
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LIFE TIME PARADIGM, LLC,
Counter-Claimant,
vs.
HAYWARD-YELLEN 100 LIMITED PARTNERSHIP,
Registrant/Counter-Defendant.

PETITIONER / COUNTER DEFENDANT HAYWARD-YELLEN 100 LIMITED PARTNERSHIP'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. Introduction

Hayward-Yellen 100 Limited Partnership ("Hayward-Yellen") has registered BANK ON YOURSELF with a prior use date that precedes Life Time Paradigm, LLC's ("Life Time") BANK OF YOU registration by two years. The two Marks, BANK ON YOURSELF and BANK OF YOU are extremely similar visually and as spoken words. This level of confusion is deemed admitted by Life Time by its failure to reply to validly issued Requests for Admission. Along with the admission of confusion, Life Time has also acknowledged abandonment by its failure to reply to the validly issued Requests

for Admission. Therefore, the Board should cancel the registration of BANK OF YOU (Registration 3,306,916) and all related Marks held by Life Time.

II. Question Presented

Under §2(d) of the Lanham Act, a Mark may be cancelled at any time if it demonstrates a likelihood of confusion with another Mark that has confirmed its prior use in commerce. Hawyard-Yellen's Mark (BANK ON YOURSELF) was first used in commerce in January 2004 while Life Time's Mark (BANK OF YOU) was first used in February 2006. Further, Life Time, by failing to respond to validly issued Requests for Admission, has admitted that the two Marks are similarly confusing. Should the Life Time Paradigm BANK OF YOU Mark be cancelled?

III. Statement of Facts

A. The BANK ON YOURSELF Mark

The Prospecting & Marketing Institute, Inc., a predecessor entity of the current owner, Hayward-Yellen filed the Mark, BANK ON YOURSELF, ,on February 18, 2008. **EXHIBIT A**. The first use in commerce date for International Class 36 (financial planning and consulting services in the field of personal finance and insurance) and International Class 35 referral services in the field of personal finance and insurance) was January 23, 2004. *Id.* The mark was registered on November 11, 2008, as Registration No. 3,530,300. *Id.*

This first use date is supported by a 2004 filing with the United States Copyright Office ("Bank on Yourself: how to pocket every penny of interest you now pay to banks, credit card and finance companies and turn it into personal wealth and a tax-free

income for life"), individual testimonials (including Rose Hillbrand of Columbus, OH), and other copyright protected publications. **EXHIBIT B**.

B. The BANK OF YOU Mark

Life Time filed its BANK OF YOU Mark on May 2, 2006. **EXHIBIT C**. Life Time states its first use in commerce for its Mark in both International Class 36 (financial services, namely, consulting services in the field of finance, mortgage banking, real estate investment, financial planning in the nature of mortgage planning, and financial planning; mortgage banking services, namely, origination, acquisition, servicing and brokerage of mortgage loans) and International Class 41 (seminars, training and classes in the fields of finance, mortgage banking, real estate investment, financial planning in the nature of mortgage planning and financial planning) as February 2006. *Id.* The Mark was registered as Registration No. 3,306,916 on October 9, 2007. *Id.*

C. The Present Matter

On September 11, 2012, less than five years after registration of BANK OF YOU, Hayward-Yellen initiated cancellation proceedings. Parties entered into in-depth settlement negotiations but failed to reach an accord. Both parties served upon one another a variety of discovery requests including interrogatories, requests for documents and requests for admission. To date, Life Time has failed to respond to any of Hayward-Yellen's discovery requests, including requests for admission, sent on September 3, 2013. **EXHIBIT D**.

IV. Standard of Review

Summary judgment is appropriate in cases in which "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby*, 477 U.S. 242, 251-52 (1986). "[T]he plain language of rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 332; 106 S.Ct. 2548 (1986).

V. Hayward-Yellen Has Standing in this Matter Because It Is and Will Continue to Be Harmed by Registration of BANK OF YOU.

A petitioner must demonstrate standing in a cancellation to prevent a "mere meddler" from initiating matters that do not raise a real controversy. *Ritchie v. Simpson*, 170 F.3d 1092, 1095; 50 U.S.P.Q. 1023 (Fed. Cir. 1999). This requirement is construed broadly as the public interest is best served by "broadly interpreting the class of persons Congress intended to be allowed to institute cancellation proceedings." *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1030; 213 U.S.P.Q. 185 (C.C.P.A. 1982). To meet this threshold, a petitioner need only plead facts that support a reasonable belief that there is a likelihood of damage caused by the continuing registration of the mark. T.B.M.B. §309.03(b). *See also* T.B.M.B. §309.03(a)(2).

A petitioner has standing if the allegation of a likelihood of confusion between its mark and the registered mark is 'not wholly without merit." *Lipton*, 670 F.2d at 1029. In its complaint and presently, Hayward-Yellen (owner of the Mark BANK ON YOURSELF)

alleges it has been harmed and will continue to be harmed by the similarly confusing registration BANK OF YOU. The similarity of the marks, BANK OF YOU and BANK ON YOURSELF, which flow through the same channel of trade are plausibly and confusingly similar under this standard. *See Selva & Sons, Inc. v. Nina Footwear, Inc.*, 705 F.2d 1316, 1326; 217 U.S.P.Q. 641 (Fed. Cir. 1983) (showing a real interest in the proceedings by alleging a potential likelihood of confusion between NINO and NINA in the same channel of trade). Thus, Hayward-Yellen has standing to proceed in this action.

VI. Life Time Paradigm's BANK OF YOU Mark Should Be Cancelled Because It Has Been Abandoned and Is Likely to Be Confused with Hayward-Yellen's BANK ON YOURSELF Mark.

A. Life Time Paradigm's Failure to Respond to Hayward-Yellen's Requests For Admission Conclusively Establishes the Facts As Stated in the Requests

The facts as stated in the Requests for Admission must be accepted as true as Life Time Paradigm failed to respond. Fed. R. Civ. P. 36 provides relief for a party when its opposition fails to respond to requests for admission. Under the rule, "[a] matter is admitted unless, with 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). This is further supported under 37 CFR § 2.120(j)(3)(i), unless the party upon which the requests were served is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Rule 36(b), and granted by the Board. See also TBMP § 527.01(d)(2d

ed. rev. 2004). Once admitted, the matter is "conclusively established." Fed. R. Civ. P. 36(b). The admission is then incontrovertible "unless the court, on motion, permits the admission to be withdrawn or amended," which can happen when "it would promote the presentation of the merits of the action." *Id.*

Additionally, this Board may not allow an admission to be withdrawn or amended if doing so "would prejudice the requesting party in maintaining or defending the action on the merits." *Id.* Accordingly, this Board "should be cautious in exercising discretion to permit withdrawal or amendment of admissions." *O'Neill v. Medad*, 166 F.R.D. 19, 22 (E.D. Mich. 1996). Moreover, the Board "is not required to permit withdrawal of an admission 'even if both the merits and prejudice issues cut in favor of the party seeking the withdrawal.'" *Id.* (Citations omitted).

Petitioner/Counter Defendant filed its Requests for Admission on September 3, 2013, via first class mail and email with Lee Chen, attorney representing Life Time Paradigm, LLC. **EXHIBIT D.** The Respondent / Counter Claimant did not respond to the Requests for Admission within 30 days after being served. In fact, to date, there has been no response from the opposing party on any of Hayward-Yellen's submitted discovery requests. There is no evidence of excusable neglect, and no motion to withdraw or amend is before the Board. Therefore, the following Requests for Admission should be deemed admitted:

> Admit that you had not enforced the mark BANK OF YOU prior to communications with the Petitioner.
>
> Admit that you had not issued any cease and desist letters for the BANK OF YOU mark prior to communications from Petitioner.
>
> Admit that you had no documented plans to issue cease and desists letter or engage in any policing or enforcing of the BANK OF YOU mark against Bank of America prior to communications from Petitioner.

Admit that you have abandoned the mark BANK OF YOU.

Admit that you have abandoned all marks related to BANK OF YOU.

Admit that you had contemplated abandonment of the mark BANK OF YOU.

Admit that, prior to contact from Bank on Yourself, you were unaware of the number of companies that were infringing on your mark.

Admit that you did not police or enforce your mark against Asset Protectors Advisors Group, The Elevation Group and related entities, The Empower Network and related entities, and credit.org prior to communication from Bank on Yourself on or around September 20, 2012.

Admit that BANK-OF-YOU is confusingly similar to BANK OF YOU.

EXHIBIT D.

B. Life Time's BANK OF YOU Mark Should Be Cancelled Because It Is Likely to Cause Confusion with Hayward-Yellen's BANK OF YOURSELF.

1. Hayward-Yellen has prior use of the Mark in trade.

A petitioner is entitled to cancellation of a confusingly similar mark if it has prior use. *See Russell Chemical Co. v. Wyandotte Chemicals Corp.*, 337 F.2d 660; 143 U.S.P.Q. 252 (1964) (holding a likelihood of confusion resulted from the use of the registered mark SENTOL for detergent where petitioner established prior use of SEN-TROL for detergent and cancellation was warranted).

Life Time established a first use in commerce date of February 2006 for its International Class 36 and 41 through its filings. **EXHIBIT C.** In contrast, Petitioner Hayward-Yellen established a first use in commerce date of January 23, 2004. **EXHIBIT A**. This first use date is supported by a 2004 filing with the United States Copyright Office ("Bank on Yourself: how to pocket every penny of interest you now pay to banks, credit card and finance companies and turn it into personal wealth and a tax-free income for life"), individual testimonials (including Rose Hillbrand of Columbus,

OH), and other copyright protected publications. **EXHIBIT B**. Hayward-Yellen's use of the BANK ON YOURSELF Mark precedes Life Time's use by two years, clearly demonstrating prior use.

2. Life Time Paradigm admitted that the BANK OF YOU Mark is confusingly similar to Hayward-Yellen's BANK ON YOURSELF Mark.

The question of whether the two Marks are confusing has a simple answer: Life Time has admitted the Marks are similarly confusing. As noted above, Life Time failed to respond within the allotted timeframe for Requests for Admission. *Supra.* In Request for Admission #9, Life Time was asked to admit that its Mark was confusingly similar to any of the marks in question. **EXHIBIT D**. By failing to respond, the statement is deemed admitted and Life Time is precluded from asserting that the Marks are confusing. Becuase Hayward-Yellen's Mark preceded Life Time's Mark by two years and Life Time's Mark is confusingly similar to Hayward-Yellen's Mark, Life Time's Mark BANK OF YOU must be cancelled under §2(d).

3. Even without Life Time's Admission, the BANK OF YOU Mark is confusingly similar to Hayward-Yellen's BANK ON YOURSELF Mark.

To assess the likelihood of confusion under §2(d), the test used in an infringement analysis is employed. *Otto International Inc. v. Otto Kern GmbH*, 83 U.S.P.Q. 1861; 2007 WL 1577524 (T.T.A.B. 2007). Under this test, one employs the eight *Frisch's* factors: a) the strength of the prior owner's mark; b) the relatedness of the goods; c) the similarity of the marks; d) actual confusion; e) marketing channels used; f) the degree of purchaser care; g) the intent in selecting the new mark; and h) the likelihood of expansion of the product lines. *See Frisch's Restaurant, Inc. v. Shoney's Inc.*, 759 F.2d 1261 (6th Cir. 1985).

Although not all factors are critical in an opposition, it is evident that the two Marks will lead to a likelihood of confusion. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1365 (Fed. Cir. 2012). The relevant factors are:

a. Relatedness of the Goods

The services offered under the two Marks are virtually identical. "First, if the parties compete directly by offering their goods or services, confusion is likely if the marks are sufficiently similar; second, if the goods or services are somewhat related but not competitive, the likelihood of confusion will turn on other factors; third, if the goods or services are totally unrelated, confusion is unlikely." *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Center,* 109 F.3d 275, 282 (6th Cir. 1997). To be related, goods and services are "similarly marketed and appeal to common customers" who believe they arise from the same source. *Therma-Scan, Inc. v. Thermoscan, Inc.*, 295 F.3d 623, 633 (6th Cir. 2002) (holding two companies dealing with thermology and the measurement of heat "offer goods and services that utilize similar technology in very different ways. Moreover, because they market their goods and services to different segments of the population, TSI and Thermoscan do not compete in the marketplace").

Here, both Marks are registered in areas with substantial, if not identical overlap. Both parties provide significant discussion regarding financial matters, including insurance products and personal financial decisions made by consumers. These consumers, those seeking financial advice, are targeted through websites and other financial information sources such as print media and radio. Like the analysis in *Daddy's Junky Music*, the two services are competing in the same market for the same

consumers with similar assessments and services. This factor would weigh ***in favor*** of a likelihood of confusion.

b. Similarity of the Marks

Similarity of marks is, along with relatedness of goods, the most important *Frisch's* factor. *Daddy's Junky Music*, 109 F.3d at 283. When analyzing similarity, the Board "should examine the pronunciation, appearance, and verbal translation of conflicting marks." Id. This is often referred to as the "sight, sound, and meaning" test. The question is not whether the marks are distinguishable when compared side-by-side, because "[t]he appearance of the litigated marks side by side in the courtroom does not portray market conditions." *Homeowners Group*, 931 F.2d at 1106. Rather, courts must determine whether a given mark would confuse the public when viewed alone, in order to account for the possibility that sufficiently similar marks "may confuse consumers who do not have both marks before them but who may have a 'general, vague, or even hazy impression or recollection' of the other party's mark." *Daddy's Junky Music*, 109 F.3d at 283, quoting *Wynn Oil Co. v. Thomas*, 839 F.2d 1183, 1188 (6th Cir. 1988).

It is apparent that BANK OF YOU and BANK ON YOURSELF share an extreme similarity that would allow a consumer to be confused. The two sound and appear visually similar. Also, just as the Federal Circuit found in *Selva & Sons*, similar but not identical Marks can support potential likelihood of confusion. *Selva & Sons*, 705 F.2d 1316. In light of the fact that the services are essentially identical and the respective marks are extraordinarily similar based on sound, appearance and connotation, this *Frisch* factor weighs ***in favor*** of a likelihood of confusion.

c. Actual Confusion

At this point, instances of actual confusion have been brought to the attention of Hayward-Yellen. Indeed, confused consumers contacted Hayward-Yellen, which ultimately led to Hayward-Yellen's contact of Life Time and the subsequent initiation of this action. This factor would lean ***in favor*** of a likelihood of confusion.

d. Marketing Channels Used

This factor requires the consideration of the similarities or differences between the predominant customers of the parties' respective goods or services. *Homeowners Group*, 931 F.2d at 1110. In addition, the Board should consider whether the marketing approaches used by the parties resemble each other. Id. Here, similar services would be sold in a similar manner to the same population and target market. It is difficult to imagine that their target customers, or their basic marketing approaches, will be significantly different. This factor weighs ***in favor*** of a likelihood of confusion.

As the other factors bear little relevance in the analysis and would not lean against a finding of a likelihood of confusion, Life Time's BANK OF YOU is similarly confusing to the Mark with established prior use, the Hayward-Yellen BANK OF YOURSELF Mark. Because the Marks are similarly confusing, Life Time's BANK OF YOU Mark must be cancelled under §2(d) based on Hayward-Yellen's prior use of BANK ON YOURSELF.

C. Life Time Paradigm Abandoned the Mark BANK OF YOU and any Mark Related to BANK OF YOU.

As a final matter, Life Time has abandoned the BANK OF YOU Mark. Under the statements deemed admitted in accordance with Fed. R. Civ. P. 36, Life Time states

that it has abandoned the Mark, supporting Hawyard-Yellen's contention that BANK OF YOU should be cancelled. **EXHIBIT D**.

VII. Conclusion

Hayward-Yellen's BANK ON YOURSELF was first used in commerce in January 2004. Filings with the United States Copyright Office support this prior use date. Life Time's BANK OF YOU was first used in February 2006. Not only is the BANK OF YOU Mark actually confusing, but Life Time admits this confusion. An analysis of the likelihood of confusion factors further supports the contention that the two Marks are indeed confusing. Finally, Life Time admits that it has abandoned its Mark. In conclusion, therefore, and following the application and dictates of the Lanham Act, it is appropriate to cancel the Life Time Mark, BANK OF YOU and to dismiss Life Time's Counter Claim.

By: /s/Claudia Rast /

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Jennifer A. Dukarski (P74257)
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Ann Arbor, MI 48014
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Attorneys for Hayward-Yellen 100 Limited Partnership

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing MOTION AND BRIEF IN SUPPORT OF SUMMARY JUDGMENT was served upon Applicant by delivering true and correct copies of same to Applicant and its counsel via email on October 24, 2013 as follows:

Lee Chen
KYLER, KOHLER, OSTERMILLER & SORENSEN, LLP
7700 Irvine Center Drive, Suite 800
Irvine, CA 92618

By: /s/Claudia Rast /
Claudia Rast (P40165)
Jennifer A. Dukarski (P74257)
301 E. Liberty Street, Suite 500
Ann Arbor, MI 48014
(734) 995-3110
Attorneys for Hayward-Yellen 100 Limited Partnership

Dated: October 24, 2013

410675 v1

EXHIBIT A

Int. Cls.: 9, 16, 35, 36 and 41

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, 50, 100, 101, 102 and 107

Reg. No. 3,530,300

United States Patent and Trademark Office

Registered Nov. 11, 2008

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

Bank On Yourself

THE PROSPECTING & MARKETING INSTITUTE, INC. (ARIZONA CORPORATION)
39 VISTA ESTRELLA SOUTH
LAMY, NM 87540

FOR: DOWNLOADABLE ELECTRONIC NEWSLETTERS IN THE FIELD OF PERSONAL FINANCE AND INSURANCE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-29-2004; IN COMMERCE 7-29-2004.

FOR: NEWSLETTERS IN THE FIELD OF PERSONAL FINANCE AND INSURANCE, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-1-2006; IN COMMERCE 1-1-2006.

FOR: REFERRAL SERVICES IN THE FIELD OF PERSONAL FINANCE AND INSURANCE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2003; IN COMMERCE 1-23-2004.

FOR: FINANCIAL PLANNING AND CONSULTING SERVICES IN THE FIELD OF PERSONAL FINANCE AND INSURANCE, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2003; IN COMMERCE 1-23-2004.

FOR: PROVIDING ELECTRONIC NEWSLETTERS IN THE FIELD OF PERSONAL FINANCE AND INSURANCE VIA E-MAIL; EDUCATION SERVICES, NAMELY, PROVIDING CLASSES, SEMINARS AND WORKSHOPS IN THE FIELD OF PERSONAL FINANCE AND INSURANCE AND DISTRIBUTION OF COURSE MATERIALS IN CONJUNCTION THEREWITH FEATURING FINANCE AND INSURANCE REPORTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-1-2003; IN COMMERCE 1-23-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-399,338, FILED 2-18-2008.

DANIEL BRODY, EXAMINING ATTORNEY

EXHIBIT B

Int. Cls.: 36 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

United States Patent and Trademark Office

Reg. No. 3,306,916
Registered Oct. 9, 2007

SERVICE MARK
PRINCIPAL REGISTER

BANK OF YOU

LIFE TIME PARADIGM, LLC (CALIFORNIA LTD LIAB CO)
9TH FLOOR
2040 MAIN STREET
IRVINE, CA 92614

FOR: FINANCIAL SERVICES, NAMELY, CONSULTING SERVICES IN THE FIELD OF FINANCE, MORTGAGE BANKING, REAL ESTATE INVESTMENT, FINANCIAL PLANNING IN THE NATURE OF MORTGAGE PLANNING, AND FINANCIAL PLANNING; MORTGAGE BANKING SERVICES, NAMELY, ORIGINATION, ACQUISITION, SERVICING AND BROKERAGE OF MORTGAGE LOANS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 2-0-2006; IN COMMERCE 2-0-2006.

FOR: SEMINARS, TRAINING AND CLASSES IN THE FIELDS OF FINANCE, MORTGAGE BANKING, REAL ESTATE INVESTMENT, FINANCIAL PLANNING IN THE NATURE OF MORTGAGE PLANNING, AND FINANCIAL PLANNING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 2-0-2006; IN COMMERCE 2-0-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BANK", APART FROM THE MARK AS SHOWN.

SER. NO. 78-874,094, FILED 5-2-2006.

G. MAYERSCHOFF, EXAMINING ATTORNEY

EXHIBIT C

Copyright
United States Copyright Office

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Public Catalog

Copyright Catalog (1978 to present)
Search Request: Left Anchored Title = bank on yourself
Search Results: Displaying 1 through 14 of 14 entries.

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Resort results by: Set Search Limits

#	Title <	Full Title	Copyright Number	Date
[1]	Bank On Yourself.	Bank On Yourself.	TX0006963033	2009
[2]	Bank On Yourself Blogs 2010.	Bank On Yourself Blogs 2010.	TX0007421075	2011
[3]	Bank On Yourself Blogs 2011.	Bank On Yourself Blogs 2011.	TX0007421084	2011
[4]	Bank on yourself.com.	Bank on yourself.com.	TX0007418075	2011
[5]	Bank On Yourself, free online special report and seminar broadcast.	Bank On Yourself, free online special report and seminar broadcast.	TX0007431844	2008
[6]	Bank on Yourself : how to pocket every penny of interest you now pay to banks, credit card and finance companies and turn it into personal wealth and	Bank on Yourself : how to pocket every penny of interest you now pay to banks, credit card and finance companies and turn it into personal wealth and a tax-free income for life / by Pamela G. Yellen.	TX0006017185	2004
[7]	Bank on Yourself Newsletters ...	Bank on Yourself Newsletters.	CSN0153234	2008
[8]	Bank On Yourself Radio Scripts.	Bank On Yourself Radio Scripts.	SR0000682560	2011
[9]	Bank on Yourself Special Report.	Bank on Yourself Special Report.	TX0007515260	2011
[10]	Bank on yourself special report.	Bank on yourself special report.	V3584D699	2010
[11]	Bank On Yourself Special Report.	Bank On Yourself Special Report.	TX0007217978	2010
[12]	Bank On Yourself Special Report.	Bank On Yourself Special Report.	TX0007119677	2009
[13]	Bank On Yourself, Take the $10,000.00 Bank On Yourself Challenge!	Bank On Yourself, Take the $10,000.00 Bank On Yourself Challenge!	TX0007298132	2008
[14]	Bank on yourself. TX 6-963-033.	Bank on yourself. TX 6-963-033.	V3584D697	2010

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- Bypass banks and credit card companies by becoming your own source of financing
- Get the money you need when you need it – simply by asking for it
- Take back control of your own financial destiny

Yours for predictable wealth,

Pamela Yellen

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-Robert Chambers, Jr., Carmel, CA
Retired Naval Commander

"By far the best financial decision I've ever made."

"I started this in 2004 and it works exactly like the book says. I know my money is safe and growing at a predictable rate, even in this economy. I've used my policies to finance so many things – a car, dream vacation and to pay off some business debt. I recommend it to anyone looking for a safe place to grow their wealth, while still having access to it without penalty."

-Rose Hillbrand, Columbus, OH
Dir. of Sales and Mkt.

"I know the exact minimum guaranteed amount I'll have in my plan in 15 years." .

"I did all the right things I was taught to do since age 10 – setting goals, having a budget system, maxing out my 401(k) and having my home paid off by age 45. I had met all my goals but one – being able to retire at a specific age with a specific amount of money, so I was determined to find a better way. Bank On Yourself is everything that was promised and more."

-Derek Logan, Simpsonville, SC
Corporate Controller

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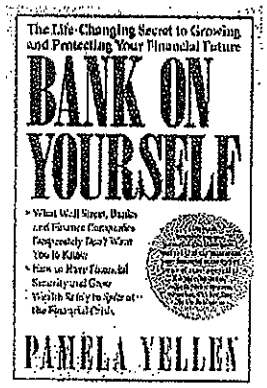
Bank On Yourself®

How to Safely Grow and Protect Your Wealth, Even When Stocks, Real Estate and Other Investments Tumble



Special Report by
Pamela Yellen, President, Bank On Yourself

Discover the secrets to taking back control of your financial future that Wall Street, banks, and credit card companies *don't* want you to know, and learn how you can:

- ✓ Have a rock-solid financial plan and a predictable retirement income that can last as long as you do – with *no* luck, skill, or guesswork required
- ✓ Turn your back on the stomach-churning twists and turns of the stock and real estate markets
- ✓ Get back *every* penny you pay for your cars, vacations, home repairs, business equipment, a college education, and other major purchases, so you can enjoy more of life's luxuries today with*out* robbing your nest-egg! (The average family could increase their lifetime wealth by $500,000 to $1,000,000 or more using this method, without the risk or volatility of stocks and real estate)
- ✓ Become your own source of financing and recapture the interest you pay to banks and finance companies – reduce or eliminate the control those institutions have over you

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EXHIBIT D

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

In the matter of Registration No. 3,306,916
Registered on October 8, 2007
For the Mark BANK OF YOU

HAYWARD-YELLEN 100 LIMITED PARTNERSHIP,

Petitioner-Counter Defendant, Cancellation No: 92056152

vs.

LIFE TIME PARADIGM, LLC.,

Registrant/Defendant.
_____/

PETITIONER/COUNTER-DEFENDANT'S FIRST REQUESTS FOR ADMISSION (Nos. 1-9); INTERROGATORIES (Nos. 1-13); AND REQUESTS FOR PRODUCTION OF DOCUMENTS (Nos. 1-12)

Petitioner/Counter-Defendant Hayward-Yellen 100 Limited Partnership, by its undersigned counsel, hereby submits its First Requests for Admission (Nos. 1-9), Interrogatories (Nos. 1-13), and Requests for Production of Documents (Nos. 1-12) to Registrant/Defendant, Life Time Paradigm, LLC, pursuant Fed. R. Civ. P. 33, 34, and 36.

DEFINITIONS

1. "Communications" include correspondence, notes, e-mails, faxes, memoranda, reports, and all other forms of written communication between or among two or more persons.

2. "Concerning," "pertaining to," "in connection with," or "with respect to" means in whole or in part, directly or indirectly.

3. "Document" or "documents" means the original or a copy, regardless of origin or location, of any writing or records of any type or description, including, but not limited to, the original or any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, intraoffice or interoffice communication, handwritten or other note, working paper, application, permit, chart, paper, graph, survey, index, tape, audio recording or transcription thereof, video recording or transcription thereof, disc, data sheet, or data processing

card, computer printout, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which the defendant has or has had access.

4. "Identify" with reference to a person, means to state a person's full name, title, address, and telephone number, and, for natural persons, his or her employer. "Identify" with reference to a document, means to state the name of the document, the name of the author of the document, the date of the document, the nature of the document (e.g. letter, e-mail, fax, report, memorandum, etc.), the person(s) who executed the document, and the Bates Stamp number(s) of the document if it has been produced in this fashion in this action.

5. "Mark" means a word, name, symbol, device, or combination thereof used to identify the goods or services of one person and to distinguish them from those manufactured or sold by others, and includes a trade mark, service mark, certification mark, or collective mark, whether or not registered.

6. "Person" includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

7. "Petitioner" or "Hayward-Yellen" means Hayward-Yellen 100 Limited Partnership, and/or its predecessors or successors in interest, as well as the officers, employees, agents and attorneys, parent and subsidiary organizations and entities under common ownership or control of any of them.

8. "Registrant" means Life Time Paradigm, LLC or any affiliated entities or alter egos, including but not limited to Life Time Paradigm, Inc, and/or its predecessors or successors in interest, as well as the officers, employees, agents and attorneys, parent and subsidiary organizations and entities under common ownership or control of any of them.

9. "You" and "your" includes Registrant and its agents, employees, attorneys, accountants, investigators, and anyone else acting on its behalf.

INTERROGATORIES

Interrogatory No. 1

List any and all trademarks adopted, used, registered, and/or sought to be registered by Registrant, by any of Life Time Paradigm LLC's owners or principals, or by any other entity owned by, controlled by, or otherwise associated with Registrant; and, with respect to any pending applications or registrations, the serial number and/or registration number for each.

Answer:

Interrogatory No. 2:

Describe in detail the manner and circumstances in which you conceived the idea of adopting and using BANK OF YOU as a trademark, specifically including but not limited to:

a. State the date on which you first conceived of BANK OF YOU as a possible trademark for the goods;

b. State all other names, words, terms, or other marks you considered as possible trademarks for the goods, and the reason(s) why BANK OF YOU was selected;

c. Provide a complete chronology of events and steps you took in investigating the availability of, adopting, and applying to register BANK OF YOU as a trademark;

d. Any other applications filed, cancelled or any contemplated filings of BANK OF YOU with state or United States Patent and Trademark Office registrations;

e. Identify the three persons most knowledgeable about your conception, adoption, application for registration, and use of BANK OF YOU as a trademark.

Answer:

Interrogatory No. 3:

Describe in detail the goods for which you use or intend to use BANK OF YOU as a trademark, including the nature of the goods themselves and the manner in which you do, may, or will manufacture, purchase, import, or otherwise obtain the goods; and identify all persons, including companies, corporations, or other entities, who are, will be, or may be involved in manufacturing or otherwise obtaining the goods.

Answer:

Interrogatory No. 4

Describe in detail the policing and enforcement of the marks owned by Registrant, including but not limited to the BANK OF YOU mark from the registration of the mark through the filing of this Cancellation proceeding.

Answer:

Interrogatory No. 5:

Describe in detail all facts, knowledge or information relating to when you became aware of the mark BANK ON YOURSELF.

Answer:

Interrogatory No. 6:

Describe in detail the policing and enforcement of the marks owned by Registrant, including but not limited to the BANK OF YOU mark against Bank of America.

Answer:

Interrogatory No. 7:

Describe in detail any instances of actual confusion relating to the marks BANK OF YOU and BANK ON YOURSELF.

Answer:

Interrogatory No. 8:

State the monetary value that Registrant ascribes to the Mark, and describe in detail the bases on which said valuation is based and the manner in which it was performed.

Answer:

Interrogatory No. 9:

Identify each exhibit that Registrant will or may introduce into evidence in this proceeding.

Answer:

Interrogatory No. 10:

Of the 462,000 Google results for "BANK OF YOU," state how many refer to and were created by you and identify these references (only include those which specifically refer to your business and were created by you).

Answer:

Interrogatory No. 11:

Identify each witness that Registrant will or may call to give testimony in these proceedings. For each such witness, provide a detailed description of the substance of his/her anticipated testimony.

Answer:

Interrogatory No. 12:

State whether Registrant plans to utilize the services of one or more experts, either as a witnesses or in preparation for trial in this proceeding, and for each such expert:

A. Identify said expert, giving his or her name, address and place of current employment;

B. Describe in detail each expert's qualification to act as an expert and provide each expert's curriculum vitae;

C. Describe in detail the nature of each expert's assistance to Registrant;

D. If Registrant intends to call any such expert to give testimony in this proceeding, describe in detail the nature and testimony of each such expert's proposed testimony; and

E. If any such expert has or is relying on any treatises or studies in his or her preparation of Registrant's case, identify such treatises or studies and identify the portions thereof relied upon by said expert.

Answer:

Interrogatory No. 13:

Identify all persons who participated in any way in the preparation of the answers or responses to these Interrogatories and describe the nature of each person's participation.

Answer:

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Any and all documents evidencing the ideation, creation, formulation or use of the mark, BANK OF YOU.

2. Any and all communications between or among Registrant and any other person(s) mentioning or pertaining to Petitioner.

3. Any and all documents and communications regarding the policing or enforcing of Registrant's marks, including BANK OF YOU, from the time of registration to the initiation of these Cancellation proceedings.

4. Any and all cease and desist letters sent to any party regarding Registrant's marks, including BANK OF YOU, from the time of registration to the initiation of these Cancellation proceedings.

5. Any and all documents and communications requesting the policing or enforcing of Registrant's marks, including BANK OF YOU, by any person or entity from the time of registration to the initiation of these Cancellation proceedings.

6. Any and all documents in support of the First Affirmative Defenses or Counterclaim for Cancellation.

7. Any and all documents including marketing, advertising or other documents demonstrating use of the mark BANK OF YOU in:

a. 2006
b. 2007
c. 2008
d. 2009
e. 2010
f. 2011
g. 2012
h. 2013

8. Any and all documents relating to the Bank of America use of BANK OF YOU or its use of the website www.bank-of-you.com.

9. Any documents displaying marketing plans or intent to use the mark BANK OF YOU.

10. All copies of cease and desist letters sent policing or enforcing of Registrant's marks, including BANK OF YOU, by any person or entity from the time of registration to the initiation of these Cancellation proceedings.

11. Any and all documents referred to, relied upon, or otherwise used in preparing responses to Petitioner's Requests for Admission Nos. 1-9 and Interrogatories Nos. 1-13.

12. Any and all documents that were identified in response to Petitioner's Interrogatories Nos. 1-13 or requested to be identified in those Interrogatories.

REQUESTS FOR ADMISSION

1. Admit that you had not enforced the mark BANK OF YOU prior to communications with the Petitioner.

2. Admit that you had not issued any cease and desist letters for the BANK OF YOU mark prior to communications from Petitioner.

3. Admit that you had no documented plans to issue cease and desists letter or engage in any policing or enforcing of the BANK OF YOU mark against Bank of America prior to communications from Petitioner.

4. Admit that you have abandoned the mark BANK OF YOU.

5. Admit that you have abandoned all marks related to BANK OF YOU.

6. Admit that you had contemplated abandonment of the mark BANK OF YOU.

7. Admit that, prior to contact from Bank on Yourself, you were unaware of the number of companies that were infringing on your mark.

8. Admit that you did not police or enforce your mark against Asset Protectors Advisors Group, The Elevation Group and related entities, The Empower Network and related entities, and credit.org prior to communication from Bank on Yourself on or around September 20, 2012.

9. Admit that BANK-OF-YOU is confusingly similar to BANK OF YOU.

Respectfully submitted,

Hayward-Yellen 100 Ltd. Partnership, Petitioner-Counter Defendant

Dated: 9/03/2013

By: /s/Claudia Rast

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CERTIFICATE OF SERVICE

I hereby certify that this **Initial Discovery Request** is being emailed to Attorney for Registrant, Lee Chen, on September 3, 2013 and shall be deposited with the United States Postal Service with sufficient postage as first class mail on September 3, 2013, in an envelope addressed to:

Attorney for Registrant / Counter Petitioner:
Lee Chen
KYLER, KOHLER OSTERMILLER & SORENSEN, LLP
7700 Irvine Center Drive, Suite 800
Irvine, CA 92618

Respectfully submitted,

Butzel Long, a professional corporation.

Dated: 9/03/2013

By: /Claudia Rast/

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