

TTAB

Our Reference: MAT-126-TM

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

In the matter of Application Serial No. 76/083594  
Published in the Official Gazette on April 22, 2003  
For the mark EVERYDAY LIVING



Martha Stewart Living Omnimedia, Inc.,

Opposer,

11-10-2003

U.S. Patent & TMO/™ Mail Rcpt Dt. #78

v

Opposition No. 91157919

American Publishing, LLC,

Applicant.

---

**ANSWER TO NOTICE OF OPPOSITION**

**MS TTAB**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

Applicant, American Publishing, LLC, by and through its attorneys of record, Young & Basile, P.C., hereby submits its Answer to Opposer's Notice of Opposition as follows:

**GENERAL ALLEGATIONS**

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 1, and based thereon denies each and every such averment.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 2, and based thereon denies each and every such averment.
3. The averments of paragraph 3, section a, are admitted. The averments in paragraph 3, section b, are admitted.
4. The averments of paragraph 4 are admitted.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 5, and based thereon denies each and every such averment.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 6, and based thereon denies each and every such averment.
7. The averments of paragraph 7 are admitted.
8. The averments of paragraph 8 are admitted except "purportedly assigned." The U.S. Application Serial No. 76/083594 was assigned to "owner."
9. The averments of paragraph 9 are admitted.
10. The averments of paragraph 10 are denied.
11. The averments of paragraph 11 are denied.
12. The averments of paragraph 12 are denied.
13. The averments of paragraph 13 are denied.
14. The averments of paragraph 14 are denied.
15. The averments of paragraph 15 are denied.

16. The averments of paragraph 16 are denied.
17. The averments of paragraph 17 are denied.
18. The averments of paragraph 18 are denied.
19. The averments of paragraph 19 are admitted.

Wherefore, Applicant requests that this Opposition be denied and that Applicant's mark be passed to registration.

#### **AFFIRMATIVE DEFENSES**

1. The Opposer fails to state a claim upon which the requested relief can be granted.
2. The trademark as shown in the application opposed herein is not likely to be confused with any trademark asserted by the Opposer.
3. Opposer's alleged rights in the mark "MARTHA STEWART LIVING" are narrow in scope due to the large and extensive third party use of the term "living".
4. Opposer's alleged rights in the mark "MARTHA STEWART EVERYDAY" are narrow in scope due to Applicant's use and extensive third party use of the term "everyday."
5. Applicant and Applicant's Assignee filed the subject application for the mark shown and have a bona fide intent to adopt the mark shown.

6. Applicant reserves the right to bring such other affirmative defenses as may become known during discovery in this proceeding.

Respectfully submitted,



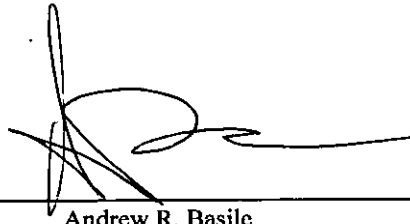
Andrew R. Basile, Registration No. 24,753  
Attorney and Authorized Agent for Applicant

YOUNG & BASILE, P.C.  
3001 W. Big Beaver Rd., Ste. 624  
Troy, MI 48084-3107  
Telephone: 248-649-3333  
Facsimile: 248-649-3338  
Date: November 7, 2003  
ARB/MBM/rm

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a correct copy of Defendant American Publishing, LLC's Answer To Notice of Opposition was served via first class U.S. Mail on this 7<sup>th</sup> day of November, 2003 to:

Howard J. Shire  
Kenyon & Kenyon  
One Broadway  
New York, NY 10004  
Attorney for Opposer



Andrew R. Basile