

TTAB

Atty Docket: 2444.001

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

FITNESS DYNAMICS)
) Opposition No. 91160863
 Opposer,) ESTTA Tracking Number ESTTA10134
)
 v.)
)
 BETSY STEINER DRESSAGE, LLC)
)
 Applicant,)

In the matter of the application for registration of:

Applicant's Mark: EQUILATES
Serial No: 76/506,717

Commissioner for Trademarks
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER TO NOTICE OF OPPOSITION

Fed. R. Civ. P. 10(b) and TBMP § 309.03(a)(2) provide that all averments [in a Notice of Opposition] should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances.

Whereas the Notice of Opposition filed herein does not conform to the required form, it is not possible to correspondingly answer using numbered paragraphs. The Applicant therefore interprets an un-numbered narrative attached to the Notice of Opposition to be Opposer's statement and hereby Answers same as follows:

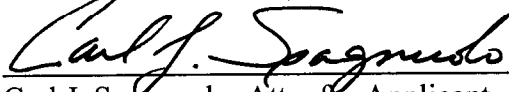
1. As best understood, the Applicant denies all allegations contained in Opposer's Notice of Opposition and attached statement.



07-19-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Wherefor applicant requests that this opposition be dismissed and application Serial Number 76/506,717 be allowed for registration.

Respectfully submitted,
McHALE & SLAVIN, P.A.



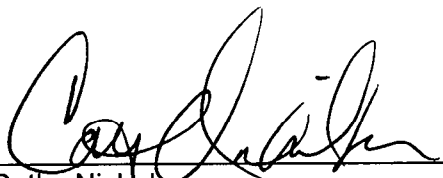
Carl J. Spagnuolo, Atty. for Applicant
MCHALE & SLAVIN, P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410
PH# 561-625-6575
FAX# 561-625-6572

CERTIFICATE OF SERVICE and FIRST CLASS MAILING

I HEREBY CERTIFY that the following correspondence: **ANSWER TO OPPOSITION; and Certificate of Service to Brenda McDermott; Fitness Dynamics, LLC., 14435 N. Scottsdale Rd. Suite 400, Scottsdale, AZ 85254; Certificate of First Class Mail; and return-receipt postcard;** regarding the TRADEMARK OPPOSITION NO.: 91160863 is being deposited with the United States Postal Service as FIRST CLASS MAIL in an envelope addressed to:

Commissioner of Trademarks
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

on July 14, 2004



Cathy Nicholson
Legal Assistant

McHALE & SLAVIN, P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410
(561) 625-6575 voice
(561) 625-6572 fax

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

FITNESS DYNAMICS)
) Opposition No. 91160863
 Opposer,) ESTTA Tracking Number ESTTA10134
)
 v.)
)
 BETSY STEINER DRESSAGE, LLC)
)
 Applicant,)

In the matter of the application for registration of:

Applicant's Mark: EQUILATES
Serial No: 76/506,717

Commissioner for Trademarks
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

MOTION TO DISMISS NOTICE OF OPPOSITION

The Applicant, BETSY STEINER DRESSAGE, LLC, respectfully moves to dismiss the Notice of Opposition in this case, pursuant to Fed.R.Civ.P. 12(b)(6) and TBMP § 500, and as grounds therefore would state as follows:

1. Fed. R. Civ. P. 10(b) and TBMP § 309.03(a)(2) provide that all averments [in a Notice of Opposition] should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances. The Notice of Opposition filed herein does not conform to this requirement.



07-19-2004

2. Pursuant to TBMP § 309.03(a)(2) and 37 CFR § 2.104(a), a notice of opposition must include (1) a short and plain statement of the reason(s) why opposer believes it would be damaged by the registration of the opposed mark and (2) a short and plain statement of one or more grounds for opposition. The Notice of Opposition filed herein does not include either a reason why opposer believes it would be damaged by the registration nor does it include a statement demonstrating grounds for the Opposition.

3. Pursuant to TBMP § 309.03(a)(2) "Evidentiary matters should not be pleaded in a complaint. They are matters for proof, not for pleading." Here, the Notice of Opposition included statements of matters for proof which are improper for a pleading.

4. Based on the Notice of Opposition and attached statement, Opposer lacks standing to file a complaint. Pursuant to TBMP § 309.03(b), at the pleading stage, it is required that a plaintiff allege facts sufficient to show a "real interest" in the proceeding, and a "reasonable basis for its belief of damage." Here, the Opposer entirely failed to allege it would be damaged by the registration of Applicant's mark much less to allege a "reasonable basis for its belief." Therefore, the Opposer lacks standing to file the complaint.

5. The Opposer entirely fails to state any grounds for opposition as defined by TBMP § 309.03(c).

6. Opposer states: "In December, 2002, I filed my original Trademark application wherein I clearly stated my intention to use the term Equilates in conjunction with my business." This statement should be stricken as it pertains to an unrelated application and mark. The mark to which Opposer refers in this statement is "FITNESS DYNAMICS," *not* "EQUILATES." Therefore, this statement should be stricken from the pleading and disregarded as irrelevant.

WHEREFORE, for the reasons stated herein, the Applicant respectfully requests that this opposition be dismissed with prejudice and application Serial Number 76/506,717 be allowed for registration.

Respectfully submitted,
McHALE & SLAVIN, P.A.




Carl J. Spagnuolo, Atty. for Applicant
MCHALE & SLAVIN, P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410
PH# 561-625-6575
FAX# 561-625-6572

CERTIFICATE OF SERVICE and FIRST CLASS MAILING

I HEREBY CERTIFY that the following correspondence: **MOTION TO DISMISS NOTICE OF OPPOSITION; and Certificate of Service to Brenda McDermott; Fitness Dynamics, LLC., 14435 N. Scottsdale Rd. Suite 400, Scottsdale, AZ 85254; Certificate of First Class Mail; and return-receipt postcard;** regarding the TRADEMARK OPPOSITION NO.: 91160863 is being deposited with the United States Postal Service as FIRST CLASS MAIL in an envelope addressed to:

Commissioner of Trademarks
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

on July 14, 2004



Cathy Nicholson
Legal Assistant

McHALE & SLAVIN, P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410
(561) 625-6575 voice
(561) 625-6572 fax

COPY

Atty Docket: 2444.001

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

FITNESS DYNAMICS)
) Opposition No. 91160863
Opposer,) ESTTA Tracking Number ESTTA10134
)
v.)
)
BETSY STEINER DRESSAGE, LLC)
)
Applicant,)

In the matter of the application for registration of:

Applicant's Mark: EQUILATES
Serial No: 76/506,717

Commissioner for Trademarks
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S FIRST SET OF INTERROGATORIES
TO OPPOSER, FITNESS DYNAMICS, LLC

Applicant, Betsy Steiner Dressage, LLC, through counsel, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, hereby request that Opposer, Fitness Dynamics, LLC, answer the following Interrogatories, under oath and in writing, within thirty (30) days after service hereof:

DEFINITIONS AND INSTRUCTIONS

1. The terms "Opposer," "Brenda Rubin," "Brenda McDermott," "Brenda Rubin McDermott," "Fitness Dynamics, LLC," "you," shall mean the Opposer herein, (Fitness Dynamics, LLC), and its officers, partners, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors in interest and any other person or entity acting on its behalf or subject to its control.



07-19-2004

2. "EQUILATES" shall mean the mark which is the subject of United States Trademark Application, Serial Number 76/506,717 for "physical fitness instruction services, educational services, namely conducting seminars and workshops in the field of physical fitness exercise, body building and health" in International Class 041 for which Opposer presently seeks to oppose registration.

3. These interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information that enlarges, diminishes, or otherwise modifies such answers, which becomes known to Opposer at a later date, shall be furnished to Applicant immediately after such information is acquired or becomes known.

4. As used herein, the term "person" as well as pronouns referring thereto, shall include juristic persons as well as natural persons, including but not limited to individuals, associations, companies, divisions, corporations, partnerships, and all business entities. Whenever an Interrogatory requests identification of persons, state the association to Opposer, the person's title or position, duties, dates of employment and present residence and business addresses of each person. As to those "persons" that have previously been but are not now in the employ of or associated with Opposer, state the periods of employment or association with Opposer, the person's title or positions during each such period, and the last known residence of such persons.

5. The term "document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means regardless of technology or form, including but not limited to any written, printed, typed, recorded, or other graphic matter of any kind or nature, and all mechanical and electrical sound recordings and any transcripts thereof, all copies of any document by any means, and computer files in the possession, custody, and/or control of Opposer, its officers, directors, servants, agents, and counsel, or known by Opposer to have existed or exist. A draft or non- identical copy is a separate document within the meaning of this term.

6. As used herein, the term "Fitness Dynamics, LLC" shall include itself and each of its predecessors, subsidiaries, divisions, organizations, franchisees, licensees, and affiliates, and each of its directors, partners, officers, employees, trustees, consultants, representatives, agents and attorneys, and each

person acting on its behalf or under its control. Where a response to an Interrogatory calls for information from or identification of persons other than "Fitness Dynamics, LLC," identify each other person even if within the group of persons making up the definition of "Fitness Dynamics, LLC" herein.

7. As used herein, the term "third party" includes all persons not within the scope of Opposer as defined above, including but not limited to vendors, suppliers, manufacturers, distributors, importers, merchants, retailers, wholesalers, customers, ultimate purchasers, and any other persons.

8. As used herein, the terms "trademark", "service mark", "mark", "name", "trade name", "slogan", "designation", "logo", and words of similar significance may be used interchangeably, the definition of each including the others, to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside of the scope.

9. As used herein, the term "commerce" or "interstate commerce" means commerce which may be lawfully regulated by Congress as provided in section § 45 of the Lanham Act, 15 U.S.C. § 1127. The term "intrastate" commerce shall mean commerce which was conducted within the confines of one state.

10. As used herein, the term "date" means the exact day, month, and year, if known, and if not known, the approximate date.

11. Any word written in the singular shall be construed as plural or visa-versa when necessary to facilitate the answer to an Interrogatory.

12. As used herein, the masculine includes both the feminine and the neuter, the feminine includes both the masculine and the neuter, and the neuter includes both the masculine and the feminine.

13. Space has been provided on the Interrogatories for your answers. Where necessary, you may continue your answers on an attached sheet.

INTERROGATORIES

1. Identify all products or services in connection with which Opposer uses, has used, or plans to use the name or mark EQUILATES, and state the period of time during which the EQUILATES mark was used in interstate commerce for each such service or product and the time during which the mark was used in intrastate commerce.

2. Identify Opposer's use and display of the words EQUILATES including a disclosure of all geographical locations, the number of signs, flyers, advertisements, mailers, etc., displayed, and the nature of same. Include the nature, and frequency of advertising which displays the words EQUILATES.

3. Describe the channels of trade through which Opposer's services or products associated with the word EQUILATES are solicited, sold and provided (distributed) to consumers.

4. Identify each expert including address and telephone number which Opposer expects to call as a witness in this proceeding and state the subject matter on which each expert is expected to testify.

Betsy Steiner Dressage, LLC
Interrogatories to Fitness Dynamics, LLC
Page 6

5. State with specificity the manner within which Opposer will be damaged by applicant's Federal registration of the EQUILATES mark. State specific money damages anticipated, if any and the factual basis for your answer.

6. State the date on which Opposer first became aware of Applicant, Applicant's services, and Applicant's use of the trademark "EQUILATES."

7. State with specificity the nature of the event or circumstances upon which Opposer first learned of Applicant's use of the mark EQUILATES.

8. State whether Opposer was ever aware of, or ever attended a seminar, workshop or other event conducted by Applicant and, if so, state the place and date of same.

9. State whether Opposer is aware of, or if Opposer ever acquired a copy of, or read the book, "Gymnastic Dressage for Horse and Rider" by Betsy Steiner.

10. State with specificity the method and circumstances surrounding Opposer's inception of the EQUILATES mark and the date of same.

11. State with specificity Opposer's history and background with horses and riders as same relates to the subject matter of Opposer's use of the mark EQUILATES. (Specifically include any information regarding Opposer's qualifications to instruct fitness and exercise with respect to riders; State where Opposer was certified in the field of fitness and exercise instruction as that instruction is applied to riders; State whether Opposer holds any specific horseback riding instructor's certification; State whether Opposer has an advisor with respect to instruction for riders and the type of fitness instruction is best suited to training horseback riders).

12. State the number of years Opposer has been teaching pilates and state where Opposer obtained her training in pilates instruction.

13. Opposer's federal trademark application, Serial Number 78/259,498 indicates a date of first use in commerce of July 1, 2002. State with specificity the manner in which Opposer used the EQUILATES mark with respect to that date.

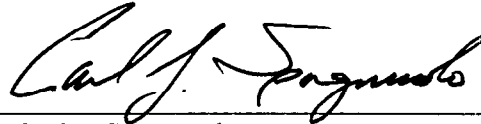
Betsy Steiner Dressage, LLC
Interrogatories to Fitness Dynamics, LLC
Page 10

CERTIFICATE OF SERVICE

I, Carl J. Spagnuolo hereby certify that on this date I served the foregoing APPLICANT's FIRST SET OF INTERROGATORIES TO OPPOSER, FITNESS DYNAMICS, LLC upon depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Brenda McDermott
Fitness Dynamics, LLC
14435 N. Scottsdale Rd., Suite 400
Scottsdale, AZ 85254

Dated this 14th day of July, 2004.



By: Carl J. Spagnuolo
McHale & Slavin, P.A.
Attorneys for Betsy Steiner Dressage, LLC
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
Telephone (561) 625-6575
Facsimile (561) 625-6572