

ESTTA Tracking number: **ESTTA275406**

Filing date: **03/31/2009**

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

Proceeding	91188915
Party	Defendant Lifembraced Inc.
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Date	03/31/2009
Attachments	Answer Life Embraced TTAB PDF.pdf (5 pages)(106793 bytes)

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

CONVATEC, INC., a Delaware corporation,

Opposer

v.

LIFEMBRACED, INC., a California corporation,

Applicant

OPPOSITION NO. 91188915

**ANSWER AND AFFIRMATIVE
DEFENSES**

Mark: LIFEMBRACE
Filing Date: September 1, 2008
Serial No. 77/559,837

LIFEMBRACED, INC., a California corporation (“Applicant/Defendant”), is the holder of all right, title and interest in the United States Trademark Application No. 77/559,837 for LIFEMBRACE, and hereby responds to the allegations set forth in the Notice of Opposition filed by Opposer CONVATEC, INC. (“Opposer”). The paragraphs numbered below correspond to the numbered paragraphs in Opposer’s Notice of Opposition.

1. The portion of the statement in the preamble un-numbered paragraph referring to Opposer’s belief that it will be damaged by registration” of Applicant/Defendant’s mark is an assertion of law regarding standing that Applicant/Defendant is challenging in its Affirmative Defenses. Applicant/Defendant admits the allegation referring to its name change and lacks knowledge or information sufficient to form a belief as to the truth of the remaining statements contained in the preamble un-numbered paragraph.

2. Applicant/Defendant lacks knowledge or information sufficient to form a belief as to the truth of the statement contained in paragraph 1 of the Notice of Opposition and therefore

1 denies the same.

2 3. Applicant/Defendant lacks knowledge or information sufficient to form a belief as
3 to the truth of the statement contained in paragraph 2 of the Notice of Opposition and therefore
4 denies the same.

5 4. Applicant/Defendant lacks knowledge or information sufficient to form a belief as
6 to the truth of the statement contained in paragraph 3 of the Notice of Opposition and therefore
7 denies the same.

8 5. Applicant/Defendant lacks knowledge or information sufficient to form a belief as
9 to the truth of the statement contained in paragraph 4 of the Notice of Opposition and therefore
10 denies the same.

11 6. Applicant/Defendant admits that the Opposer/Plaintiff filed U.S. Application No.
12 77/559,837 on September 1, 2008. The contents of the Application speak for themselves. All
13 remaining allegations of paragraph 5 are denied.

14 7. Applicant/Defendant denies all allegations alleged in paragraph 6 of the Notice of
15 Opposition and demands strict proof thereof.

16 8. Applicant/Defendant denies all allegations alleged in paragraph 7 of the Notice of
17 Opposition and demands strict proof thereof.

18 9. Applicant/Defendant denies all allegations alleged in paragraph 8 of the Notice of
19 Opposition and demands strict proof thereof.

20 10. Applicant/Defendant denies all allegations alleged in paragraph 9 of the Notice of
21 Opposition and demands strict proof thereof.

22 11. Applicant/Defendant denies all allegations alleged in paragraph 10 specifically of
23 the Notice of Opposition and demands strict proof thereof. Applicant/Defendant upon
24 information and belief, asserts that its mark, when applied to the services of the
25 Applicant/Defendant does not and is not likely to cause confusion, mistake, or deception in the
26 relevant class of customers and in relevant channels of trade, and accordingly no likelihood of
27 confusion between the Applicant/Defendant's marks and the Opposer's mark exists.

28 12. Applicant/Defendant denies that the Opposer is entitled to the relief set forth in

1 the prayer for relief in paragraph 11, or to any relief whatsoever.

2 13. Applicant/Defendant denies each and every allegation not previously specifically,
3 actually, or constructively admitted or otherwise qualified.

4 **AFFIRMATIVE DEFENSES**

5 In addition to the above responses, Applicant/Defendant also asserts the following affirmative
6 defenses:

7 14. Opposer lacks standing to pursue this Opposition. The applications on which
8 Opposer seeks to bring this Opposition were rendered void or voidable upon Opposer's
9 assignment of the applications in violation of _____

10 15. Opposer's Notice of Opposition fails to state a claim upon which relief can be
11 granted.

12 16. Opposer is not entitled to relief because there is no likelihood of confusion
13 because Opposer's mark and Applicant/Defendant's mark are not similar in sight, sound, or
14 meaning to one another; because Opposer's mark and Applicant/Defendant's mark create
15 separate and distinct commercial impressions; because the applications are merely intent to use
16 applications based on putative use and there are no allegations of use upon which to base or
17 assess the alleged likelihood of confusion; because the Opposer's and Applicant/Defendant's
18 marks are not sufficiently related to the goods or services of the other in any manner; because the
19 manner and/or conditions surrounding the marketing of the respective goods and services of
20 Opposer's mark and Applicant/Defendant's mark are not such that they would or could be
21 encountered by the same person under circumstances that could give rise to the mistaken belief
22 that the respective goods originate from the same provider; because potential customers looking
23 at goods or services marketed under Opposer's mark and Applicant/Defendant's mark are
24 sophisticated purchasers who make a careful decision in the buying process; because the goods or
25 services sold or to be sold under Opposer's mark and Applicant/Defendant's mark are marketed
26 to different consumers through different channels of trade; and because there is no evidence of
27 confusion.

28 17. Opposer has acquiesced to the use and registration of Applicant's mark.

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CERTIFICATE OF TRANSMISSION

I hereby certify that on March 31, 2009 this correspondence is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at <http://esta.uspto.gov>.

 /s/ Ellen W. Stiefler

Attorney for Applicant, Life Embraced, Inc.