

ESTTA Tracking number: **ESTTA423870**

Filing date: **08/08/2011**

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

Proceeding	91200449
Party	Defendant Fatlace, LLC
Correspondence Address	MARK C. ARCENAL FATLACE, LLC 1630 POST ST SAN FRANCISCO, CA 94115  markfatlace@gmail.com
Submission	Answer
Filer's Name	Mark Arcenal
Filer's e-mail	markfatlace@gmail.com
Signature	/Mark Arcenal/
Date	08/08/2011
Attachments	illest_answer_91200449_final.pdf ( 5 pages )(178031 bytes )

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

Acushnet Company	)	
	)	
	)	
Opposer,	)	
	)	Opposition No. 91200449
	)	Serial No. 77846283
vs.	)	
	)	
Fatlace, LLC	)	
	)	
	)	
Applicant.	)	
_____	)	

**ANSWER TO NOTICE OF OPPOSITION**

Fatlace, LLC (“Applicant”), by and through the owner Mark Arcenal, hereby files its Answer to Acushnet Company (“Opposer”) Opposition and state the following:

**(Any allegation of Opposer’s Opposition not specifically admitted herein is hereby denied).**

1. Applicants are without sufficient knowledge of the allegations contained in paragraphs 1-6 respectively of Opposer’s Notice of Opposition; therefore, those paragraphs are denied herein.

2. Paragraphs 7-8 respectively are hereby Denied as pled.

3. Paragraph 9 is hereby Agreed as pled.
  
4. Paragraphs 10-12 respectively are hereby Denied as pled.
  
5. Paragraphs 13-14 respectively are hereby Agreed as pled.
  
6. Paragraphs 15-19 respectively are hereby Denied as pled.

## AFFIRMATIVE DEFENSES

### FIRST AFFIRMATIVE DEFENSE

The so-called "unique script" in which Opposer uses its TITLEIST mark, is not unique. The script used by the Opposer should be considered Public Domain. The non-unique script used in the TITLEIST mark is the standard script taught in schools throughout the United States. The non-unique script used in the TITLEIST mark is universally known as cursive. The standard cursive script is the D'Nealian style of writing (see **fig. 1**) and teaching cursive handwriting for English. This method of teaching cursive stems from the Palmer Method (see **fig. 2**) which was developed around 1888, and was in common use prior. It is, and has been standard practice to teach this style of cursive in United States classrooms for decades.

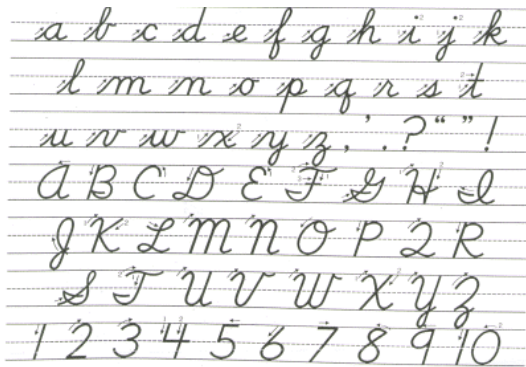


fig 1

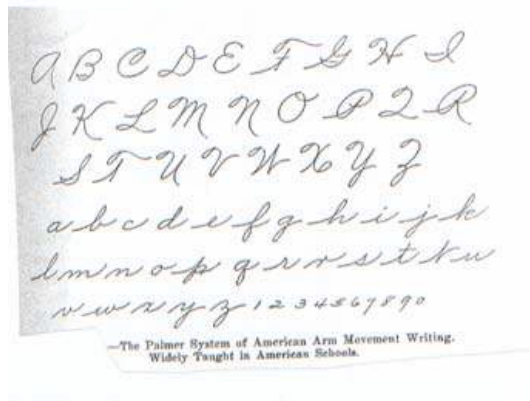


fig. 2

### SECOND AFFIRMATIVE DEFENSE

Applicant cannot speak to the topic of the TITLEIST mark representing a valuable goodwill and business. The Opposer's TITLEIST mark is not proven to be "famous" to all demographics or markets, specifically the Hip Hop culture and marketplace. The Opposer's TITLEIST mark is not a famous mark.

### **THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, Applicant's goods are not likely to be marketed, promoted and sold to the same kinds of customers as Opposer's golf accessories, golf equipment and golf apparel. The demographics of the customers of the Applicant and the Opposer are so dissimilar there would be no confusion of the Opposer's TITLEIST mark. The Applicant believes the Opposer markets and sells to high income, older clientele. The Applicant markets and sells to quite the opposite demographic, lower income, youthful and style based shoppers. The Applicant did make a good will offer to limit the trademark scope to exclude items associated with golf. The Opposer rejected the offer. It is the Applicant's belief that the Opposer refused the good will offer to limit the scope of the Applicant's trademark, because doing so would remove any potential marketplace overlap and lead to the granting of the Applicant's ILLEST mark.

### **FOURTH AFFIRMATIVE DEFENSE**

The Applicant denies the fact that the Opposer has used the TITLEST mark on and in connection with goods. The Applicant denies the fact that the Opposer had products that were promoted, advertised, shipped, distributed and sold in interstate commerce marked as TITLEST

### **FIFTH AFFIRMATIVE DEFENSE**

The fact that the Applicant's designation of the mark uses the same letters is merely coincidence. According to Oxford Dictionaries, the most commonly used letter of the alphabet is "e". The rankings for the other letters in illest are as follows: "i" is ranked as the 4th most used letter, "t" is the 6th most used, "s" is the 8th most used and "l" is the 9th most used letter. The Applicant's designation ILLEST is not likely to cause confusion with the Opposer's TITLEIST. The Opposer's mark begins with a capital letter T. The capital T in the TITLEIST mark makes it significantly distinguishable from the ILLEST mark. When pronounced, the Opposer's TITLEIST mark does not sound similar to the Applicant's mark ILLEST. In addition, the Opposer's mark TITLEIST ends with the sound IST, while the Applicant's mark ILLEST ends with the sound EST. The goods of the respective parties are not "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not substantiated.

WHEREFORE, Applicant, Fatlace, LLC respectfully requests that this Notice of Opposition be dismissed, with judgment entered in their favor and against Opposer Acushnet Company, and that this Honorable Court award all other relief to Applicants, which it deems fair and reasonable under the circumstances of this case.

Dated: August 8, 2011

Respectfully submitted,

Mark Arcenal  
800 S Amphlett Blvd  
San Mateo, CA 94402

e-mail: markfatlace@gmail.com  
Tel: 415.935.3852

By: /Mark Arcenal/  
Mark Arcenal

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Applicant's Answer was served via U.S. Mail this 8<sup>th</sup> day of August 2011 to the following person(s):

David J. Ervin  
Kelley Drye & Warren, LLP  
3050 K Street NW Suite 400  
Washington, DC 20007

By: /Mark Arcenal/  
Mark Arcenal

#### **CERTIFICATE OF ONLINE SUBMISSION**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed online with the Trademark Trial and Appeal Board using ESTTA, this 8<sup>th</sup> day of August 2011.

By: /Mark Arcenal/  
Mark Arcenal