

ESTTA Tracking number: **ESTTA490395**

Filing date: **08/22/2012**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Beachbody, LLC
Granted to Date of previous extension	08/22/2012
Address	3301 Exposition Blvd.Third Floor Santa Monica, CA 90404 UNITED STATES

Attorney information	Camille M. Miller Cozen O'Connor 1900 Market StreetIP Department Philadelphia, PA 19103 UNITED STATES cmiller@cozen.com, efeatherman@cozen.com, hdiamond@cozen.com, cbranka@cozen.com
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Applicant Information

Application No	85482656	Publication date	04/24/2012
Opposition Filing Date	08/22/2012	Opposition Period Ends	08/22/2012
Applicant	RockIt Body Pilates, LLC 1834 N. Sepulveda Blvd. Manhattan Beach, CA 90266 UNITED STATES		

Goods/Services Affected by Opposition


Class 041. First Use: 2009/01/01 First Use In Commerce: 2009/01/01 All goods and services in the class are opposed, namely: Physical fitness and exercise instruction; instruction services, namely, instruction in the field of health and physical fitness; educational services, namely, instruction and training in the fields of fitness and nutrition; instruction programs, namely, providing exercise classes for groups of individuals
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Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3406325	Application Date	04/03/2007
Registration Date	04/01/2008	Foreign Priority Date	NONE

Word Mark	ROCKIN' BODY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction Class 041. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 educational services, namely, instruction in the use of exercise equipment; providing instruction in the field of nutrition, exercise, fitness and health; providing instruction in the field of physical exercise; providing on-line computer database featuring information in exercise and physical fitness

U.S. Application No.	85569628	Application Date	03/14/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ROCKIN' BODY
Design Mark	
Description of Mark	The mark consists of the word "ROCKIN'" on top of the word "BODY" with a line underneath. The "l" in "ROCKIN'" is formed by the "D" in "BODY". The wording is blue and silver over a black background.
Goods/Services	Class 009. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction Class 041. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 educational services, namely, instruction in the use of exercise equipment; providing instruction in the field of nutrition, exercise, fitness and health; providing instruction in the field of physical exercise; providing on-line computer database featuring information in exercise and physical fitness

Attachments	77147122#TMSN.jpeg (1 page)(bytes) 85569628#TMSN.jpeg (1 page)(bytes) Notice_of_Opposition.pdf (8 pages)(47280 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Camille M. Miller/
Name	Camille M. Miller
Date	08/22/2012

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

BEACHBODY, LLC,	:	Opposition No.
		Serial No. 85/482,656
v.		
Opposer,		Filed: November 29, 2011
		Published: April 24, 2012
ROCKIT BODY PILATES, LLC		
		Mark: ROCKIT BODY
Applicant.		

NOTICE OF OPPOSITION

Beachbody, LLC, a California limited liability company, with a place of business at 3301 Exposition Blvd., 3rd Floor, Santa Monica, CA 90404 (“Beachbody” or “Opposer”), believes that it will be damaged by registration of the mark ROCKIT BODY, which is the subject of application Serial No. 85/482,656, published in the April 24, 2012 *Official Gazette*, and hereby opposes the same.

As grounds of opposition, it is alleged that:

**APPLICANT, ITS APPLICATION
AND PROCEDURAL HISTORY**

1. Upon information and belief, the Applicant, RockIt Body Pilates, LLC (“Applicant”), is a limited liability company with a principal address of 1834 N. Sepulveda Blvd., Manhattan Beach, California 90266.
2. Applicant filed an application to register the ROCKIT BODY mark for “physical fitness and exercise instruction; instruction services, namely, instruction in the field of health and physical fitness; educational services, namely, instruction and training in the fields of fitness and nutrition; instruction programs, namely, providing exercise classes for groups of individuals” in International Class 41 in the United States Patent and Trademark Office on November 29, 2011.

The application was assigned Serial No. 85/482,656.

3. Applicant's application for registration of ROCKIT BODY is based on actual use of the mark, in which Applicant claimed its date of first use is January 1, 2009.

4. Applicant's ROCKIT BODY application was published in the *Official Gazette* on April 24, 2012.

5. Beachbody filed a ninety-day request for an extension of time on May 9, 2012, thereby granting Beachbody until August 22, 2012 to file its Notice of Opposition against the ROCKIT BODY application.

**BEACHBODY'S ROCKIN' BODY
TRADEMARK REGISTRATION**

6. To advertise and market its products and services, Beachbody has adopted and used its ROCKIN' BODY mark since at least as early as 2007. The date precedes Applicant's claimed date of first use. Beachbody has filed for and attained a registration protecting its ROCKIN' BODY mark, and has filed an application for ROCKIN' BODY & Design, which are set forth below.

7. On April 3, 2007, Beachbody filed an application for registration of the mark ROCKIN' BODY in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 77/147,122 and covers the use of this mark in conjunction with "pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction" in Int. Class 9 and "educational services, namely, instruction in the use of exercise equipment; providing instruction in the field of nutrition, exercise, fitness and health; providing instruction in the field of physical exercise; providing on-line computer database featuring information in exercise and physical fitness" in Int. Class 41. The date of first use is at least as early as June 1,

2007. The Patent and Trademark Office issued Registration No. 3,406,325 on April 1, 2008.

8. On March 14, 2012, Beachbody filed an application for registration of the mark ROCKIN' BODY & Design in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. This application was assigned Serial No. 85/569,628 and covers the use of this mark in conjunction with “pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction” in Int. Class 9 and “educational services, namely, instruction in the use of exercise equipment; providing instruction in the field of nutrition, exercise, fitness and health; providing instruction in the field of physical exercise; providing on-line computer database featuring information in exercise and physical fitness” in Int. Class 41. The date of first use is at least as early as June 1, 2007. The application was published in the *Official Gazette* on July 17, 2012.

**THE WELL-KNOWN NATURE OF BEACHBODY'S
ROCKIN' BODY MARK**

9. Beachbody's well-known ROCKIN' BODY mark and products and services have achieved great success since their introduction in 2007.

10. Beachbody also owns the registrations for the marks P90X, P90X2, INSANITY, INSANITY THE ASYLUM, BEACHBODY, TURBO JAM, TURBOFIRE, POWER 90, HIP HOP ABS, SLIM IN 6, REVABS, TAI CHENG and 10-MINUTE TRAINER, which are associated with fitness DVDs, fitness and exercise instructions, and nutrition, health and fitness counseling. As such, Beachbody is a leader in the fitness industry as a provider of fitness instruction and is readily recognized as such by consumers.

11. Beachbody has a strong presence in the fitness industry as a provider of fitness DVDs and exercise, fitness and nutritional instruction since 1998. One of the main components of Beachbody's business encompasses the development, production, sale and distribution of its

line of health, wellness, weight loss and fitness products and services, including its popular in-home fitness DVDs and kits such as the P90X, P90X2, INSANITY, INSANITY THE ASYLUM, BEACHBODY, TURBO JAM, TURBOFIRE, POWER 90, HIP HOP ABS, ROCKIN' BODY, SLIM IN 6, REVABS, TAI CHENG and 10-MINUTE TRAINER fitness videos, DVDs, kits and related services. Beachbody's well-known fitness videos, DVDs, kits and other products and services have achieved great success since their introduction.

12. Beachbody has spent a substantial amount of time and money advertising and promoting its line of fitness products and services including under the ROCKIN' BODY mark, and the great success of these Beachbody marks, and products and services is due in part to these very significant marketing and promotional efforts. These efforts include advertising and promotion through Beachbody's websites, print and other internet-based advertising, in-person and televised promotional appearances by its trainers, and its infomercials, among other many, many other efforts. For example, the trainer of Beachbody's ROCKIN' BODY fitness videos, Shaun T, has appeared on The Ellen DeGeneres Show, among other notable appearances. Since 2008, Beachbody's annual worldwide advertising expenditures have been many millions of U.S. dollars.

13. Beachbody's infomercials for its line of fitness products and services including the ROCKIN' BODY fitness DVDs are regularly featured on YouTube, on television, and other media. In fact, Response Magazine, a prominent publication in the direct response industry, named several of Beachbody's infomercials among the top infomercials of 2009, 2010 and 2011.

14. The popularity of Beachbody's fitness products and services is further evidenced by its continued use in pop culture. For example, the popularity of the Beachbody line of fitness products and services have been featured in the New York Times, the Ellen DeGeneres Show,

ABC, NBC and Fox Business news programs. Particularly, Shaun T, the creator and trainer of the ROCKIN' BODY fitness program was featured on the Ellen DeGeneres Show.

15. The success and well-known nature of the ROCKIN' BODY mark, products and services is not due to Beachbody's promotional efforts alone. Rather, Beachbody owes a substantial amount of the success of the ROCKIN' BODY fitness, health and wellness products and services to its consumers and the word of mouth buzz they have generated. Success stories of countless individuals who have utilized the ROCKIN' BODY products and services are far too numerous to recount, but many can easily be accessed by simply conducting internet searches relating to the ROCKIN' BODY mark.

16. The market success of Beachbody's line of fitness products and services including the ROCKIN' BODY products and services has been extraordinary, and the relevant public has come to rely upon and recognize Beachbody's products and related services by the ROCKIN' BODY marks. Not only is the ROCKIN' BODY mark inherently distinctive, but, consumers, purchasers and the members of the public have become extremely familiar with Beachbody's ROCKIN' BODY mark, products and services and associate them exclusively with Beachbody – Beachbody has acquired a valuable reputation and substantial goodwill among the public as a result of such association.

17. As a result of long and extensive use of the ROCKIN' BODY marks by Beachbody, Beachbody's substantial marketing and promotional efforts, the quality of the ROCKIN' BODY products and services, the promotion and word of mouth buzz surrounding the ROCKIN' BODY mark, products and services, and the market success of the ROCKIN' BODY mark, products and services, the ROCKIN' BODY marks have been prominently placed in the minds of the public.

18. Beachbody has vigorously defended Beachbody's ROCKIN' BODY mark against infringers and potential infringers.

**LIKELIHOOD OF CONFUSION PURSUANT TO
SECTION 2(d) OF THE LANHAM ACT**

19. Beachbody's ROCKIN' BODY mark and Applicant's ROCKIT BODY mark are similar, if not identical, in sound, appearance, and meaning. Specifically, Applicant's ROCKIT BODY mark includes the prefix "ROCKI" and BODY and differs only by one letter from Beachbody's ROCKIN' BODY mark, which creates the same commercial impression and is confusingly similar thereto.

20. Upon information and belief, the channels of trade of both Beachbody's fitness products and services and Applicant's fitness services are closely related.

21. Upon information and belief, the customer base of both Beachbody's products and services and Applicant's services are similar, if not identical, which are directed to instruction and training in the fields of fitness and nutrition and fitness instructional programs.


22. Upon information and belief, if Applicant is permitted to register its mark, and, thereby, obtain the *prima facie* exclusive right to use ROCKIT BODY in the marketplace, confusion is likely to result, and Beachbody will be damaged thereby.

23. Applicant's use of ROCKIT BODY is likely to cause confusion or mistake or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

24. Allowance of Applicant's application and registration of ROCKIT BODY would restrict and impair Beachbody's right to use, as well as its right to continue to develop and expand its use of its ROCKIN' BODY mark, and would otherwise cause injury and damage to Beachbody's ROCKIN' BODY mark, as well as the goodwill and reputation built up and acquired in such mark.

WHEREFORE, Beachbody prays that allowance of Serial No. 85/482,656 be refused and that this Opposition be sustained.

Respectfully submitted,



Date: August 22, 2012

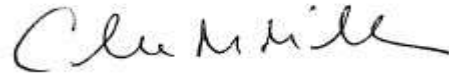
Camille M. Miller
Elizabeth Lai Featherman
COZEN O'CONNOR, P.C.
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-7273
Facsimile: (215) 701-2273

Attorneys for Beachbody

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Notice of Opposition to be served via e-mail and First Class Mail, postage pre-paid to counsel for Applicant:

David Caplan
Keats Mcfarland & Wilson LLP
9720 Wilshire Blvd
Beverly Hills, CA 90212-2018
dcaplan@kmwlaw.com



Camille M. Miller

Date: August 22, 2012