

ESTTA Tracking number: **ESTTA502952**

Filing date: **10/31/2012**

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

Proceeding	91206653
Party	Defendant RockIt Body Pilates, LLC
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Date	10/31/2012
Attachments	Answer to Notice of Opposition - ROCKIT BODY.pdf (8 pages)(325649 bytes)

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

In the Matter of Application Serial No. 85/482,656

Mark: ROCKIT BODY

Filed: November 29, 2011

Published: April 24, 2012

BEACHBODY, LLC,)	
)	Opposition No. 91206653
Opposer,)	
)	
v.)	ANSWER TO NOTICE OF
)	OPPOSITION
ROCKIT BODY PILATES, LLC,)	
)	
Applicant.)	
_____)	

ANSWER TO NOTICE OF OPPOSITION

Applicant, ROCKIT BODY PILATES, LLC, a California limited liability company (“Applicant”), owner of Federal Trademark Application Serial No. 85/482,656 for the stylized word mark ROCKIT BODY (hereinafter “Applicant’s Mark” or “ROCKIT BODY Mark”), in answering the Notice of Opposition filed by BEACHBODY, LLC (“Opposer”) on August 22, 2012, admits, denies and alleges as follows:

In answering the Notice of Opposition preamble, Applicant alleges and pleads as follows:

Applicant admits that Application Serial No. 85/482,656 was published in the *Official Gazette* on April 24, 2012. Applicant denies that Opposer would be damaged by registration of Applicant’s Mark. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

In answering each paragraph set forth as the grounds of Opposition, Applicant alleges and pleads as follows:

APPLICANT, ITS APPLICATION AND PROCEDURAL HISTORY

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits to the allegations made in this paragraph.

2. Answering paragraph 2 of the Notice of Opposition, Applicant admits to the allegations made in this paragraph.

3. Answering paragraph 3 of the Notice of Opposition, Applicant admits to the allegations made in this paragraph.

4. Answering paragraph 4 of the Notice of Opposition, Applicant admits to the allegations made in this paragraph.

5. Answering paragraph 5 of the Notice of Opposition, Applicant admits to the allegations made in this paragraph.

BEACHBODY'S ROCKIN' BODY TRADEMARK REGISTRATION

6. Answering paragraph 6 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

7. Answering paragraph 7 of the Notice of Opposition, Applicant admits that Registration No. 3,406,325 (Serial No. 77/147,122) for the ROCKIN' BODY mark, issued on April 1, 2008, covers "pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction" in International 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 International Class 41. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant admits that Serial No. 85/569,628 for the ROCKIN’ BODY & Design mark, published in the *Official Gazette* on July 17, 2012, covers “pre-recorded video tapes, cassettes, DVDs, and CDs, featuring exercise, fitness and dietary information and instruction” in International 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 International Class 41. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

THE WELL-KNOWN NATURE OF BEACHBODY’S ROCKIN’ BODY MARK

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies that Opposer’s ROCKIN’ BODY mark is well-known. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

10. Answering paragraph 10 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

11. Answering paragraph 11 of the Notice of Opposition, Applicant is without knowledge

or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

12. Answering paragraph 12 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

13. Answering paragraph 13 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

14. Answering paragraph 14 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

15. Answering paragraph 15 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

16. Answering paragraph 16 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

17. Answering paragraph 17 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the opposition and therefore Applicant denies those allegations.

18. Answering paragraph 18 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the

opposition and therefore Applicant denies those allegations.

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

19. Answering paragraph 19 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

20. Answering paragraph 20 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

21. Answering paragraph 21 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

22. Answering paragraph 22 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

23. Answering paragraph 23 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

24. Answering paragraph 24 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

AFFIRMATIVE DEFENSES

Without allegation that Applicant has the burden of proof on the following, Applicant states the following facts as separate and distinct affirmative defenses to Opposer's Notice of Opposition:

FIRST AFFIRMATIVE DEFENSE

1. Each of the purported claims for relief that Opposer alleges in its Notice of Opposition is barred or limited, in whole or in part, because each such claim does not state facts

sufficient to constitute a cause of action under applicable law.

SECOND AFFIRMATIVE DEFENSE

2. Applicant alleges that there is no likelihood of confusion, mistake or deception between the respective marks of Opposer and Applicant because, *inter alia*, the respective goods and services with which the marks are used are divergent and distinct and are sold through unrelated channels of trade to different purchasers and users.

THIRD AFFIRMATIVE DEFENSE

3. Applicant's Mark in its entirety is sufficiently distinctively different from Opposer's cited marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's services.

RESERVATION

4. Applicant has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during discovery proceedings or prior to trial.

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PRAYER

WHEREFORE, Applicant prays that this Opposition be dismissed with prejudice and that Application Serial No. 85/482,656 be passed through to allowance on the Principal Register.

Please address all communications to David K. Caplan at the address listed below.

Dated:

10/31/12

Respectfully submitted,



David K. Caplan
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Attorneys for Applicant
RockIt Body Pilates, LLC

CERTIFICATE OF SERVICE

I, Kim Tyson, hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served upon:

Camille M. Miller
Cozen O'Conner
IP Department
1900 Market Street
Philadelphia, PA 19103

by First Class Mail on October 31, 2012.



Kim Tyson