

ESTTA Tracking number: **ESTTA540292**

Filing date: **05/28/2013**

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	05/29/2013
Address	3301 Exposition Blvd. Santa Monica, CA 90404 UNITED STATES

Attorney information	Camille M. Miller Cozen O'Connor, PC 1900 Market Street Philadelphia, PA 19103 UNITED STATES cmiller@cozen.com, cbranka@cozen.com, efeatherman@cozen.com, tmdocketing@cozen.com, hdiamond@cozen.com Phone:2156657273
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**Applicant Information**

Application No	85708284	Publication date	01/29/2013
Opposition Filing Date	05/28/2013	Opposition Period Ends	05/29/2013
Applicant	Revolution Laboratories, LLC 5052 S. Jones #155 Las Vegas, NV 89118 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Dietary supplements; Nutritional supplements; Protein supplements; Vitamin supplements
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**Grounds for Opposition**

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

U.S. Registration No.	3755540	Application Date	07/09/2008
Registration Date	03/02/2010	Foreign Priority Date	NONE
Word Mark	REVABS		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2009/07/00 First Use In Commerce: 2009/07/00 Pre-recorded video cassettes, CDs and DVD's featuring exercise, fitness and dietary information and instruction, and related written materials, all sold as a unit</p> <p>Class 041. First use: First Use: 2009/07/00 First Use In Commerce: 2009/07/00 Providing a web site featuring on-line instruction in the field of physical exercise and nutrition and tracking progress of exercise workouts; educational services and on-line educational services, namely, providing instruction and training in the fields of exercise equipment, physical exercise and diet and nutrition, and instructional materials distributed in connection therewith; educational services, namely, tracking progress of exercise workouts for others</p>

Attachments	Notice of Opposition re REVLABS by Beachbody.pdf(1218537 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	05/28/2013

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

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BEACHBODY, LLC,	:	Opposition No.
	:	Serial No. 85/708,284
	:	
Opposer,	:	
v.	:	Filed: August 20, 2012
	:	Published: January 29, 2013
REVOLUTION LABORATORIES, LLC	:	
	:	Mark: REVLABS
	:	
Applicant.	:	
<hr/>	:	

**NOTICE OF OPPOSITION**

Beachbody, LLC, a Delaware limited liability company, with a place of business at 3301 Exposition Blvd., 3<sup>rd</sup> Floor, Santa Monica, CA 90404, believes that it will be damaged by registration of the mark REVLABS, which is the subject of application Serial No. 85/708,284, published in the January 29, 2013 *Official Gazette*, and hereby opposes the same.

As grounds of opposition, it is alleged that:

**PARTIES**

1. Opposer, Beachbody LLC, (“Opposer”) is a Delaware limited liability company, with a mailing address of 3301 Exposition Blvd., 3<sup>rd</sup> Floor, Santa Monica, CA 90404.
2. Applicant, Revolution Laboratories, LLC (“Applicant”), is a Nevada limited liability company, with a mailing address of 5052 S. Jones #155, Las Vegas, NV 89118.

**BACKGROUND REGARDING OPPOSER AND OPPOSER’S MARK**

3. Opposer is a well-known creator and seller of in-home fitness, health, wellness and weight loss solutions, including different in-home exercise and fitness DVD-based workout kits, exercise gear and supplement products. One of the main components of Opposer’s business encompasses the development, production, sale and distribution of its line of health, wellness,

weight loss and fitness products and service, including its popular in-home fitness DVDs and kits such as REVABS® Advanced Workouts, P90X®, P90X2®, INSANITY®, and INSANITY THE ASYLUM® VOLS. 1 and 2.

4. Beachbody has a strong presence in the fitness industry as a leading provider of exercise and fitness instruction, exercise, health and nutrition goods and services since 1998. Its line of health, wellness, weight loss and fitness products and service has achieved great success since 1998.

5. The REVABS® workout is created by fitness expert and celebrity trainer, Brett Hoebel. The REVABS® workout combines abdominal training, cardio interval and strength training to build a lean, strong physique, burn fat, shrink waistlines, and chisel six packs. The REVABS® products can be purchased from Opposer’s flagship website at Beachbody.com. Screenshots of the REVABS® products from Beachbody.com are shown below. The webpage is accessible at [http://www.beachbody.com/product/club/revabs\\_club.do](http://www.beachbody.com/product/club/revabs_club.do).

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# REVABS®

Your 90-day ab solution

## RevAbs® Advanced Workouts

### Upgrade your six-pack to an eight-pack.

—Brett Hoebel, creator of RevAbs

Get my RevAbs Advanced workouts, and you'll receive:

- Ultimate 8-Pack**  
Go way beyond crunches to work your abs in ways you never dreamed possible. This RevAbs workout will shred your core like nothing else. (approx. 30 min.)
- Ab Addiction**  
Get ready for three rounds of the most advanced ab exercises you've ever done. (approx. 30 min.)
- Stability Ball**  
As part of the RevAbs Advanced workouts, this is one of the best tools to increase your core balance and strength.
- 2 B-LINES® Resistance Bands plus handles\*\***  
B-LINES Resistance Bands provide varying levels of intensity so you can make your RevAbs workout as hard as you want.
- Ankle Bands with Door Attachment\*\***  
Use the power of your legs to tighten and tone your abs. These ankle bands provide a new level of intensity to your RevAbs Advanced workouts.

3 monthly payments of **\$29.95** (+\$14.95 s&h) **ADD TO CART >**

### Online Tools

Resources for max results

Track your workouts and get results on the go with these free online tools.

- ▶ [Advanced Workout Calendar](#)
- ▶ [Daily Journal pages](#)
- ▶ [Anytime, Anywhere Abs!](#)

## FITNESS GEAR



### P90X® CHIN-UP BAR

Develop and strengthen your abs and upper body with this high-grade training tool featuring multiple grip positions. (Used with RevAbs Advanced, P90X, and INSANITY: THE ASYLUM®)

\$59.85 (+\$14.95 s&h) | [learn more](#)

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### CHIN-UP MAX

Can't do chin-ups and pull-ups yet? Use the Chin-Up Max to build your strength until you can do them on your own. You'll get the right amount of adjustable support to help you maximize your results.

\$29.85 (+\$8.95 s&h) | [learn more](#)

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### HANGING AB STRAPS

Go beyond crunches and get more complete ab toning with Hanging Ab Straps. Vertical abdominal training allows you to maximize your efforts by using your body's own resistance to isolate and fire the abs like nothing else.

\$29.85 (+\$8.95 s&h)

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### POWERSTANDZ®

These premium heavy-duty push-up stands strengthen and sculpt without straining your wrists or forearms. With nonskid bases and premium foam-grip padding, they're ergonomically designed to ensure maximum comfort.

\$39.90 (+\$12.95 s&h) | [learn more](#)

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## SUPPLEMENTS



### ACTIVI® MULTIVITAMINS

Get the high-quality vitamins, minerals, and antioxidants your body needs to stay healthy while reaching your fitness and weight loss goals.\*

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### SLIMMING FORMULA

Lose more fat with our unique blend of pyruvate and green tea extract—proven to help you significantly increase weight loss and



shakeology

### SHAKEOLGY®

This ultra-premium nutritional health shake provides the widest array of superfoods, vitamins, and minerals from around the world in a nutrient-dense but low-calorie formula. One that can't be replicated anywhere. **Only \$4.00 per day!** (30-day supply)

[learn more](#)



### PERFORMANCE FORMULA

Lose weight and get toned faster from exercise! Our potent blend of ingredients increases your energy, aids in fat loss, and helps you work out

[▶ Anytime, Anywhere Abs II](#)

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## What's new?

### Message Boards

Visit the Message Boards to meet other Brett Hoebel fans, share workout tips, and find a buddy to help you along your transformation journey.

### Chat with Brett Hoebel

Find out when you can chat live with Brett Hoebel.

## Success Stories



"RevAbs changes everything. You feel more confident. I'm looking for excuses to get my bikini on!"  
—Lindsay M.

◀ back

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## Online Support



Join the Team Beachbody® online diet and support club today!

Get Brett Hoebel's Premium Support!

- \* Exclusive Brett Hoebel content
- \* VIP chats with Brett Hoebel
- \* Custom meal plans
- \* Your own Personal Coach
- \* Additional 10% discounts
- \* Plus a FREE surprise gift!

[Click here to learn more.](#)

Already a member? Log in to [TeamBeachbody.com](#) now to access your VIP benefits!

Customer Reviews

6. Opposer's REVABS® in-home fitness kits and products include the REVABS® exercise DVDs, instructional fitness and diet guides, fitness gears such as stability ball and resistant bands. Opposer also sells nutritional and dietary supplements in connection with its REVABS® in-home fitness kits as shown in the screenshot above.

7. Opposer first introduced the REVABS® in-home fitness kits and related products at least as early as July 2009. This date significantly precedes Applicant's filing of the intent-to-use trademark application for REVLABS on August 20, 2012.

8. Opposer is the owner of Registration No. 3,755,540 for the mark REVABS, for "pre-recorded video cassettes, CDs and DVD's featuring exercise, fitness and dietary information and instruction, and related written materials, all sold as a unit" in Int. Class 9 and "providing a web site featuring on-line instruction in the field of physical exercise and nutrition and tracking progress of exercise workouts; educational services and on-line educational services, namely, providing instruction and training in the fields of exercise equipment, physical exercise and diet and nutrition, and instructional materials distributed in connection therewith; educational services, namely, tracking progress of exercise workouts for others" in Int. Class 41. The intent-to-use application was filed July 9, 2008, and was assigned Serial No. 77/518,515. The date of first use is at least as early as July 2009. The U.S. Patent and Trademark Office issued registration No. 3,755,540 on March 2, 2010.

9. Opposer's REVABS mark has become well-known throughout the health, wellness and fitness industry. Through the use of Opposer's REVABS mark, Opposer has developed an excellent reputation for REVABS® in-home fitness kits and related fitness, health and wellness products and services.

10. Opposer's well-known REVABS® in-home fitness kits, which include the REVABS® exercise DVDs, instructional fitness and diet guides, fitness gears such as stability

balls, resistant bands, and nutritional and dietary supplements, have achieved great success since their introduction in 2009. The REVABS® products and services consistently utilize Opposer’s REVABS mark.

11. The great success of the Opposer’s line of fitness and wellness products, including the REVABS® in-home fitness kits, nutritional and dietary supplements and other related products and services, is due in part to Opposer’s marketing and promotional efforts. Opposer has spent a substantial amount of time and money advertising and promoting the REVABS mark. These efforts include significant advertising and promotion of its products and services through Opposer’s websites, including its flagship website located at Beachbody.com, its many Facebook company pages as well as substantial print and other internet-based advertising, in-person and televised promotional appearances by its trainers, and its infomercials, among other efforts.

12. Opposer’s REVABS® Facebook page is liked by 17,586 Facebook users. A screenshot of the Facebook page, accessible at <https://www.facebook.com/RevAbs> is shown below:



13. Opposer's REVABS® infomercials are regularly featured on YouTube, on television, and in many social media platforms. In fact, Opposer was awarded the 2012 Telly Award for the REVABS® Infomercial and the Moxie Award for the Best Infomercial in 2012.

14. The market success of Opposer's health, wellness and fitness products and related services offered under the REVABS mark has been extraordinary, and the relevant public has come to rely upon and recognized Opposer's products and services by the REVABS mark. As a result, Opposer's REVABS mark has substantial goodwill associated therewith.

15. Opposer has vigorously defended Opposer's REVABS mark against infringers and potential infringers.

16. Opposer's REVABS mark is inherently distinctive and represents the exceedingly valuable goodwill of Opposer's health, wellness and fitness related goods and services.

#### **BACKGROUND REGARDING APPLICANT AND APPLICANT'S MARK**

17. On August 20, 2012, Applicant filed an intent-to-use application for REVLABS in connection with "dietary supplements; nutritional supplements; protein supplements; vitamin supplements" in International Class 5. The application was accorded Serial No. 85/708,284. The application is currently pending.

18. Applicant operates Revolution Laboratories, LLC, an online store that sells nutritional supplements and fitness and diet guides at revolutionlaboratories.com, founded in 2012. The domain name was registered July 28, 2012, and the website was first in use in August 2012. It offers nutritional supplement products under the names of MuscleRev, OmegaRev, EndoRev, DailyRev and ProRev. It also offers a series of fitness and diet guide e-books for purchase at its website. Screenshots of Applicant's website are shown below.




REVOLUTION LABORATORIES.COM SHOP BLOG TESTIMONIALS Search entire store here... JOIN LOG IN

FAQ


# REVOLUTIONIZE UNATTRACTIVE BODY FAT INTO SEXY, LEAN MUSCLE

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The revolutionary whey protein blend.




**All-Natural Weight Loss**  
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19. Applicant has not filed a Declaration of Use in connection with its REVLABS application.

20. Applicant's REVLABS mark was published in the *Official Gazette* on January 29, 2013.

21. Opposer filed a ninety-day request for an extension of time on February 25, 2013, thereby granting Opposer until May 29, 2013 to file its Notice of Opposition.

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

22. Opposer's REVABS mark and Applicant's REVLABS mark are similar in sound, appearance, and meaning. Specifically, Applicant's REVLABS mark incorporates Opposer's REVABS mark with an addition of the letter "L" between the terms REV and ABS, which creates the same commercial impression and is confusingly similar thereto.

23. The channels of trade of both Opposer's fitness, exercise, health, wellness and nutrition goods and services and Applicant's nutritional supplement products are closely related, and would be directed to the same or similar potential users of the respective goods and services. Specifically, Applicant and Opposer both sell their products over the Internet. Relevant consumers typically exercise a lower degree of care when purchasing or otherwise viewing the products from websites than in physical stores.

24. The customer base of both Opposer's and Applicant's health, wellness and fitness related goods and services are similar, if not identical. Specifically, the customer base is consumers who are interested in fitness, exercise and nutrition.

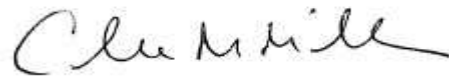
25. If Applicant is permitted to register its mark, and, thereby, obtain the *prima facie* exclusive right to use Applicant's REVLABS mark in the marketplace, confusion is likely to result, and Opposer will be damaged thereby.

26. Applicant's use of Applicant's REVLABS mark in connection with dietary supplements; nutritional supplements; protein supplements; vitamin supplements 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).

27. Allowance of Applicant's application and registration of the REVLABS mark would restrict and impair Opposer's right to use, develop and expand its use of its REVABS mark, and would otherwise cause injury and damage to Opposer's REVABS mark, as well as its goodwill and reputation.

WHEREFORE, Opposer prays that allowance of Serial No. 85/708,284 be refused and that this Opposition be sustained.

Respectfully submitted,



Date: May 28, 2013


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Philadelphia, PA 19103  
Telephone: (215) 665-7273  
Facsimile: (215) 665-2013  
Attorneys for Opposer

**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:

Revolution Laboratories, LLC  
5052 S Jones Blvd. Suite 155  
Las Vegas, NV 89118-0556



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Camille M. Miller

Date: May 28, 2013