

ESTTA Tracking number: **ESTTA817691**

Filing date: **04/28/2017**

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

Proceeding	91233514
Party	Defendant LeVeque, Kelly
Correspondence Address	MICHAEL MARTIN FISCHBACH, PERLSTEIN, LIEBERMAN & ALMOND 1925 CENTURY PARK EAST, SUITE 2050 LOS ANGELES, CA 90067  mmartin@fpllaw.com
Submission	Answer
Filer's Name	Michael P. Martin
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Signature	/Michael P. Martin/
Date	04/28/2017
Attachments	Answer Notice of Opposition.pdf(31354 bytes )

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

In the Matter of Trademark Application

Mark: BE WELL BY KELLY

Serial No.: 87/064690

Filed: June 8, 2016

Published: November 22, 2016

Be Well Health & Wellness, LLC

Opposer,

v.

Kelly LeVeque

Applicant.

Opposition No.: 91233514

ANSWER TO NOTICE OF  
OPPOSITION

## ANSWER TO NOTICE OF OPPOSITION

Applicant, Kelly LeVeque through its attorneys, hereby answers the Notice of

Opposition as follows:

1. Applicant denies the allegations contained in Paragraph 1.
  
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and, therefore, denies all allegations contained therein.
  
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and, therefore, denies all allegations contained therein.
  
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and, therefore, denies all allegations contained therein.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and, therefore, denies all allegations contained therein.

6. Applicant admits the allegations contained in Paragraph 6. However, the wrong mark for these proceedings is identified here.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and, therefore, denies all allegations contained therein.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 and, therefore, denies all allegations contained therein.

9. Applicant denies the allegations contained in Paragraph 9.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and, therefore, denies all allegations contained therein.

11. Applicant denies the allegations contained in Paragraph 11.

#### AFFIRMATIVE DEFENSES

1. Opposer lacks standing to bring this opposition.

2. Opposer has failed to state a claim for which relief may be granted.

3. Opposer cannot show how it reasonably believes that it will be damaged by registration of Applicant's mark.

4. Opposer is barred from opposing Applicant's registration under the doctrine of laches.

5. Opposer is barred from opposing Applicant's registration under the doctrine of unclean hands.

6. Opposer is barred from opposing Applicant's registration under the doctrine of estoppel.

7. Opposer is barred from opposing Applicant's registration under the doctrine of acquiescence.

8. Opposer identifies the incorrect mark throughout its Opposition papers as BE WELL BY KELLY instead of BE WELL SMOOTHIES.

9. Opposer has failed to sign the Opposition, nor the Certificate of Service.

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WHEREFORE, Applicant respectfully requests that the notice of opposition be dismissed with prejudice.

Respectfully submitted,

FISCHBACH PERLSTEIN LIEBERMAN & ALMOND

Dated: April 28, 2017

By:     /Michael P. Martin/    

Michael P. Martin

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Attorneys for Applicant

*CERTIFICATE OF SERVICE*

I hereby certify that on the 28th day of April, 2017, I served a true and correct copy of the above and foregoing ANSWER TO NOTICE OF OPPOSITION on:

J. Noah Hagey  
BraunHagey & Borden LLP  
220 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

Attorneys for Applicant, by depositing a copy thereof in the United States Mail, first class, postage prepaid.

          /Michael P. Martin/          

Michael P. Martin

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