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

Proceeding	91238589
Party	Plaintiff American Council on Exercise
Correspondence Address	MARK REICHENTHAL BRANFMAN MAYFIELD BUSTARDE REICHENTHAL LLP 462 STEVENS AVE. #303 SOLANA BEACH, CA 92075 UNITED STATES mark@bibr.com, rexford@bibr.com 858-793-8090
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Filer's Name	Rexford Brabson
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Signature	/Rexford Brabson/
Date	08/26/2019
Attachments	2019.08.25-Reply to MSJ.pdf(1466150 bytes)

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

In the matter of Trademark Application Ser. No. 87064536

Applicant: Health Care Fitness Integrations, LLC

Mark: MEDICAL EXERCISE TRAINERS

American Council on Exercise)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91238589
)	
Health Care Fitness Integrations, LLC)	
)	
Applicant.)	
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER AMERICAN COUNCIL ON EXERCISE'S BRIEF IN RESPONSE TO
APPLICANT HEALTH CARE FITNESS INTEGRATIONS, LLC'S MOTION FOR
SUMMARY JUDGMENT**

**a. Applicant Has Not Met Its Burden of Demonstrating the Absence of Any Genuine
Issue of Material Fact.**

A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See, e.g., Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295, 1298-99 (Fed. Cir. 1991) (moving party's conclusory statement as to intent insufficient). This burden is greater than the evidentiary burden at trial. *See, e.g., Gasser Chair Co. v. Infanti Chair*

Manufacturing Corp., 60 F.3d 770, 34 USPQ2d 1822, 1824 (Fed. Cir. 1995). The burden of the moving party may be met by showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

Here, Opposer asserts that Applicant has not met its burden of demonstrating that there are no genuine disputes of material fact, and therefore has not proven that Applicant is entitled to judgment as a matter of law. Instead, Applicant filed its Motion for Summary Judgment in an attempt to needlessly delay this Opposition proceeding.

Applicant's arguments are mere conclusory allegations that are not based on any factual evidence. For example, in Applicant's section discussing the descriptiveness issue, Applicant cites the relevant case law, but Applicant's entire argument consists of the following paragraph:

Succinctly, Applicant's mark, MEDICAL EXERCISE TRAINERS, does not forthwith – or even eventually if that were the law – convey an ingredient, quality, characteristic, feature, function, purpose or use about t-shirts. Indeed, the trademark examiner did not deem Applicant's mark under opposition to be merely descriptive. Exhibit 1. And the Notice of Opposition conspicuously provides no reasons as to why Applicant's mark under opposition is merely descriptive. As a result, the Board should grant Applicant's motion for summary judgment because there is no genuine dispute as to a material fact regarding the non-descriptiveness of Applicant's mark in relation to t-shirts. *See* TTABVUE Entry No. 20, Section A, Page 2.

Applicant's first sentence merely concludes that Applicant's Mark is not descriptive. Applicant's second sentence claims that the Examiner assigned to Applicant's Application did not find Applicant's Mark to be merely descriptive, and notes that an Exhibit is attached. Applicant did not properly make Exhibit 1 part of the record, and does not explain how the Exhibit supports Applicant's arguments. In fact, Opposer cannot even determine what Exhibit 1 consists of, because Applicant's Exhibits are not labeled. *See* TTABVUE Entry No. 20, Pages 28-149. Moreover, the opinion of the Examiner assigned to Applicant's Application has minimal persuasive value, and is not determinative of the descriptiveness issue. Applicant's third sentence asserts that Opposer does not provide any reasons why Applicant's Mark is descriptive. Opposer's Notice of Opposition is not required to prove all facts relevant to an Opposition

proceeding – those facts are to be shown and proven during Opposer’s Trial Period. Finally, Applicant’s fourth sentence concludes that the Board should grant the Motion for Summary Judgment.

Like Copelands, Applicant is asserting merely conclusory statements as to why the Motion for Summary Judgment should be granted. *Like Copelands*, the Board must find that Applicant’s conclusory statements do not meet the burden of demonstrating the absence of any genuine dispute of material fact.

Opposer does not wish to waste the Board’s time by extensively analyzing each argument asserted in Applicant’s Motion for Summary Judgment (although Opposer does wish to note that Applicant’s argument regarding genericness consists of one (1) conclusory statement with no Exhibit – *See* TTABVUE Entry No. 20, Pages 7-8 (labeled 3-4)). Each argument made by Applicant is equally conclusory, and do not meet the burden demonstrating the absence of a genuine issue of material fact.

b. There are Numerous Material Facts In Dispute.

A party moving for summary judgment should specify, in its brief in support of the motion, the material facts that are undisputed. The nonmoving party, in turn, should specify, in its brief in opposition to the motion, the material facts that are in dispute. Fed. R. Civ. P. 56(c)(1).

A factual dispute is genuine if sufficient evidence is presented such that a reasonable fact finder could decide the question in favor of the nonmoving party. *See Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) (nonmovant not required to present entire case but just sufficient evidence to show an evidentiary conflict as to the material fact in dispute). A fact is material if it "may affect the decision,

whereby the finding of that fact is relevant and necessary to the proceedings." *Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) (dispute is genuine if evidence could lead reasonable finder of fact to decide question in favor of nonmovant); *Institut National Des Appellations d'Origine v. Brown-Forman Corp.*, 47 USPQ2d 1875, 1879 (TTAB 1998) (fact is material when its resolution would affect the outcome of the case).

Here, Opposer timely served extensive Discovery Requests on Applicant on July 24, 2019 ("Opposer's Discovery Requests"). Opposer's Discovery Requests consist of twenty two (22) Requests for Admission, thirty eight (38) Interrogatories, and forty one (41) Requests for Production of Documents. Applicant then served on Opposer Requests for Production of Documents on July 24, 2019, and then amended and supplemental Discovery Requests on July 25, 2019 ("Applicant's Discovery Requests"). Applicant's Discovery Requests consist of fifty nine (59) Requests for Admission, twenty two Interrogatories (22), and fifty four (54) Requests for Production of Documents. Attached as **Exhibit A** is the Declaration of Mark Reichenthal attesting to these facts.

Clearly, both Parties believe that genuine disputes of material fact exist, because both Parties served extensive Discovery Requests. Both Parties' Discovery Requests address the issues in the Notice of Opposition, including genericness, descriptiveness, ornamental use of Applicant's Mark, and likelihood of confusion. Without the facts to be obtained by those Discovery Requests, neither Party can prove their case.

In addition to the foregoing arguments, Opposer feels it is necessary to list the material facts at issue for each claim:

Descriptiveness and Genericness. Opposer has not been given the opportunity to obtain

from Applicant or assert: 1) The number of other users of each word in Applicant's Mark; 2) Dictionary definitions for each word in Applicant's Mark; 3) the relation and context in which Applicant's Mark is used; 4) how related Applicant's goods are to the fitness industry; 5) whether consumers view Applicant's Mark as a trademark; 6) the genus of goods at issue; 7) trade journals, newspaper, or other publications showing the commonality of the terms used in Applicant's Mark.

Ornamental. Opposer has not been given the opportunity to obtain from Applicant or assert: 1) The nature of Applicant's use of Applicant's Mark, i.e. whether the Mark is used only as printed on clothing; 2) how consumers would perceive Applicant's Mark; 3) the size, location, and dominance of Applicant's Mark on Applicant's goods; 4) any specimens of use of Applicant's Mark or screenshots of Applicant's goods sold on Applicant's website; 5) Applicant's correct/incorrect use of the "TM" or "®" symbols.

Likelihood of Confusion. Opposer has not been given the opportunity to obtain from Applicant or assert: 1) commercial impression of Applicant's Mark or Opposer's Marks, as well as comprehensive analysis of the similarity between each of Opposer's Marks and Applicant's Marks; 2) goods/services sold in association with Opposer's Marks; 3) trade channels of Applicant's Mark or Opposer's Marks; 4) purchaser habits, i.e. sophisticated or impulse purchasing; 5) any fame of Opposer's Marks; 6) number and nature of similar marks; 7) any actual confusion; 8) the variety of goods sold by Opposer under Opposer's Marks; and 9) other factors probative of use.

Other Issues. Finally, Opposer has served numerous Discovery Requests regarding the United States District Court Southern District of Texas case entitled *Jones v. American Council on Exercise*. Opposer believes that its pending Discovery Requests will produce

information relative to other claims and defenses, including but not limited to the fact that the *Jones v. ACE* case is subject to a Court Protective Order.

Opposer respectfully asserts that each of the above facts is still at issue. Opposer has not been given an opportunity to obtain some of the information from Applicant, or to assert facts that Opposer already has in its possession that support Opposer's claims. *Like Opryland*, there are numerous material facts that are missing, and if obtained and/or asserted by Opposer, a reasonable fact finder could decide the question in favor of the nonmoving party (Opposer).

c. Nonmoving Party Must Be Given Benefit of All Reasonable Doubt.

Finally, Opposer must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029-30 (Fed. Cir. 1993) (all inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party).

d. Conclusion.

Pursuant to the foregoing, Opposer respectfully requests that the Board dismiss Applicant's Motion for Summary Judgment.

Opposer also requests that Responses to Discovery Requests be due **twenty seven** days after the issuance of the Board Order.

Respectfully submitted,

Mark Reichenthal, Esq.

Mark Reichenthal
Branfman Mayfield Bustarde Reichenthal LLP
Attorneys for Opposer American Council on Exercise
462 Stevens Ave. #303
Solana Beach, CA 92075

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer American Council On Exercise's Brief In Response To Applicant Health Care Fitness Integrations, LLC's Motion For Summary Judgment, is being electronically mailed to Applicant's attorney at the following address:

ERIK OSTERRIEDER
RAO DEBOER OSTERRIEDER PLLC
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Phone: 281-372-6114

/s/ Rexford Brabson
Rexford Brabson

August 26, 2019

EXHIBIT A

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

In the matter of Trademark Application Ser. No. 87064536

Applicant: Health Care Fitness Integrations, LLC

Mark: MEDICAL EXERCISE TRAINERS

American Council on Exercise)	
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UNITED STATES PATENT AND TRADEMARK OFFICE
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**DECLARATION OF MARK REICHENTHAL IN SUPPORT OF OPPOSER
AMERICAN COUNCIL ON EXERCISE’S BRIEF IN RESPONSE TO APPLICANT
HEALTH CARE FITNESS INTEGRATIONS, LLC’S MOTION FOR SUMMARY
JUDGMENT**

I, Mark Reichenthal, as Attorney of Record for Opposer American Council on Exercise in this Opposition proceeding, declare as follows:

- 1) I am over the age of eighteen (18) and am otherwise competent to make this Declaration. I am Attorney of Record for Opposer American Council on Exercise (“Opposer”). I have intimate knowledge of this Opposition proceeding filed against Applicant Health Care Fitness Integrations, LLC’s (“Applicant”) U.S. trademark application MEDICAL EXERCISE TRAINERS. If called upon and sworn as a witness, I could and would

competently testify as set forth below.

- 2) My Associate Rexford Brabson, on behalf of Opposer, timely served extensive Discovery Requests on counsel for Applicant on July 24, 2019 (“Opposer’s Discovery Requests”). Opposer’s Discovery Requests consist of twenty two (22) Requests for Admission, thirty eight (38) Interrogatories, and forty one (41) Requests for Production of Documents.
- 3) Applicant served on me, as Attorney of Record for this Opposition proceeding, Requests for Production of Documents on July 24, 2019, and then amended and supplemental Discovery Requests on July 25, 2019 (“Applicant’s Discovery Requests”). Applicant’s Discovery Requests consist of fifty nine (59) Requests for Admission, twenty two Interrogatories (22), and fifty four (54) Requests for Production of Documents.
- 4) A true and correct copy of Opposer’s Discovery Requests is attached hereto as **Exhibit B**. A true and correct copy of Applicant’s Discovery Requests is attached hereto as **Exhibit C**.
- 5) Service of Discovery Requests by both Parties clearly indicates that there are genuine disputes of material fact.
- 6) I am aware that willful false statements are punishable by fine or imprisonment or both, under 18 U.S.C. § 1001, and that such statements may jeopardize the outcome of this Opposition proceeding. I declare under penalty of perjury that the foregoing is true and correct.

/// Signature Page Follows

August 23, 2019

Respectfully submitted,

Mark Reichenthal, Esq.

Mark Reichenthal
Branfman Mayfield Bustarde Reichenthal LLP
Attorneys for Opposer American Council on Exercise
462 Stevens Ave. #303
Solana Beach, CA 92075

EXHIBIT B

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

In the matter of Trademark Application Ser. No. 87064536

Applicant: Health Care Fitness Integrations, LLC

Mark: MEDICAL EXERCISE TRAINERS

American Council on Exercise)	
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vs.)	Opposition No. 91238589
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Applicant.)	
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UNITED STATES PATENT AND TRADEMARK OFFICE
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**OPPOSER AMERICAN COUNCIL ON EXERCISE’S FIRST SET OF
INTERROGATORIES TO APPLICANT**

Opposer American Council on Exercise (“Opposer”) hereby requests that Applicant Health Care Fitness Integrations, LLC (“Applicant”) answer under oath, in accordance with 37 C.F.R. §§ 2.116(a) and 2.120 and Rule 33 of the Federal Rules of Civil Procedure, the Interrogatories propounded herein fully and separately in writing within thirty (30) days of service hereof as provided in said Rules.

INSTRUCTIONS

- 1) When answering these Interrogatories, Applicant must furnish all information, including information contained in any document that is known or available to Applicant and all information possessed by Applicant's attorneys or other persons acting on Applicant's behalf or under Applicant's employment or direction.
- 2) Applicant must exercise due diligence to make inquiries and secure information necessary to answer these Interrogatories. If Applicant cannot answer an interrogatory fully and completely after exercising due diligence, Applicant must answer that interrogatory to the full extent possible, specify the portion of the interrogatory Applicant claims it is unable to answer fully and completely, state the facts on which it relied to support Applicant's contention that it is unable to answer such interrogatory fully and completely, state what knowledge, information, and/or belief Applicant has concerning the unanswered portion of each interrogatory, and state any persons or entities that may have full and knowledgeable access to such information.
- 3) With respect to each document which Applicant contends is privileged or otherwise exempt from discovery, state the basis for the privilege or other grounds for exclusion, the name and address of the author and the addressee, the date, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy and the identification and location of the files where the original and each copy are normally kept.
- 4) If Applicant objects to any interrogatory on the basis of being burdensome, Applicant shall: (a) provide such information as can be ascertained without undue burden; and (b) state with particularity the basis for each objection, including any descriptions, processes, or methods required to obtain any fact responsive to the interrogatory, and the estimated time and cost required to obtain any fact responsive to the interrogatory.
- 5) If any of these interrogatories ask Applicant to identify a document, state the name and present address of each person who prepared and/or signed the document, the date the document bears, the date upon which each person who signed the document did so, the total number of pages comprising the document (including exhibits or addenda), the name and present address of each custodian of the document or any copy thereof, and the substance of the document.

- 6) If any of these interrogatories ask Applicant to identify an oral communication, or in each case wherein your response to an interrogatory refers to an oral communication, please state with respect to each such oral communication whether it was uttered over the telephone, at a meeting, etc., the name of the person who uttered such oral communication, the name of the person to whom such oral communication was uttered, the name(s) and address(es) of all persons present and able to hear the communication at the time the oral communication was uttered, the nature, subject matter and substance of such oral communication with sufficient particularity to enable the same to be identified, the date on which such oral communication was uttered, the place where the oral communication was made; and whether any written record, note memorandum, or other writing was made regarding the substance of any oral communication, and, if so, please identify such writing.
- 7) Applicant has a duty to supplement its responses until the time of the hearing or trial, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

- 1) "Applicant", "you" and "your" means Applicant Health Care Fitness Integrations, LLC and each of its predecessors, partners, members, directors, officers, employees, agents, attorneys and all other persons acting on or purporting to act on behalf of it.
- 2) "Opposer" means Opposer American Council on Exercise.
- 3) The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.
- 4) The term "person" means and includes, without limitation, every natural person, association, firm, partnership, corporation, board, committee, agency, commission, legal entity of any form or type, and every other organization or entity, whether public or private.
- 5) Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any request.
- 6) "And" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be

construed to be outside its scope.

- 7) The terms "all" and "each" shall be construed to include the other.
- 8) The words "identify", "identity", and "describe" with respect to a person means that a full name and present business address and home address and telephone number or last known address and telephone number of that person and a last known address of the employer of that person should be stated.
- 9) The word "fact" or "facts" means and includes without limitation, knowledge or information or pieces of information based on real occurrences.
- 10) Reference to "Applicant's Mark" shall mean the U.S. trademark application MEDICAL EXERCISE TRAINERS (Ser. No. 87064536) T-shirts in Class 025.
- 11) Reference to "Opposer's Marks" shall mean the following trademark registrations and all common law or other trademark rights associated therewith:
 - a. ACE MEDICAL EXERCISE SPECIALIST (Reg. No. 5588801) for Printed matter, namely, paper signs, books, manuals, curricula, newsletters, informational cards and brochures in the field of health and fitness in Class 016;
 - b. MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
 - c. ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
 - d. PERSONAL TRAINER as used in association with a wide variety of goods/services;
 - e. ACE CERTIFIED PERSONAL TRAINER as used in association with a wide variety of goods/services;
 - f. ACE PERSONAL TRAINER as used in association with a wide variety of goods/services; and
 - g. PEER FITNESS TRAINER as used in association with a wide variety of goods/services.

INTERROGATORIES

REQUEST NO. 1: If Applicant's response to Request for Admission No. 1, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 2: If Applicant's response to Request for Admission No. 2, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 3: If Applicant's response to Request for Admission No. 3, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 4: If Applicant's response to Request for Admission No. 4, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 5: If Applicant's response to Request for Admission No. 5, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 6: If Applicant's response to Request for Admission No. 6, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 7: If Applicant's response to Request for Admission No. 7, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 8: If Applicant's response to Request for Admission No. 8, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 9: If Applicant's response to Request for Admission No. 9, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 10: If Applicant's response to Request for Admission No. 10, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 11: If Applicant's response to Request for Admission No. 11, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 12: If Applicant's response to Request for Admission No. 12, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 13: If Applicant's response to Request for Admission No. 13, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 14: If Applicant's response to Request for Admission No. 14, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 15: If Applicant's response to Request for Admission No. 15, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 16: If Applicant's response to Request for Admission No. 16, served

concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 17: If Applicant's response to Request for Admission No. 17, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 18: If Applicant's response to Request for Admission No. 18, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 19: If Applicant's response to Request for Admission No. 19, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 20: If Applicant's response to Request for Admission No. 20, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 21: If Applicant's response to Request for Admission No. 21, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 22: If Applicant's response to Request for Admission No. 22, served concurrently herewith, is anything other than an unqualified admission, identify and describe all facts and circumstances supporting Applicant's response.

REQUEST NO. 23: Identify all goods and services sold or distributed by Applicant bearing, or used in connection with Applicant's Mark, and the dates and locations when the Applicant first started selling each of such goods and services.

REQUEST NO. 24: Identify yearly expenditures, from the date of first use until the present, for the advertising or promotion of each good/service bearing Applicant's Mark, including without limitation, advertisements, promotional materials, sales materials, catalogues, brochures, mailing, and price lists, whether distributed publicly or not.

REQUEST NO. 25: Describe, in detail, all actions taken by Applicant to establish and protect Applicant's rights in Applicant's Mark.

REQUEST NO. 26: Describe, in detail, for each good or service distributed by Applicant bearing, or used in connection with Applicant's Mark, the annual amount of actual or projected sales in dollars in the United States on a yearly basis from the date of first use until the present.

REQUEST NO. 27: Describe, in detail, any common law trademark use by Applicant of Applicant's Mark.

REQUEST NO. 28: Describe, in detail, any alleged use in commerce by Applicant of Applicant's Mark that resulted in goods/services being provided at no cost to any member of the public.

REQUEST NO. 29: Identify and describe all facts and circumstances supporting Applicant's first affirmative defense in Applicant's Answer, specifically that there is no likelihood of confusion between Applicant's Mark and Opposer's Marks.

REQUEST NO. 30: Identify and describe all facts and circumstances supporting Applicant's second affirmative defense in Applicant's Answer, specifically that Applicant began use of Applicant's Mark prior to Opposer's use of Opposer's Marks.

REQUEST NO. 31: Identify and describe all facts and circumstances supporting Applicant's third affirmative defense in Applicant's Answer, specifically that Applicant's Mark is inherently distinctive or has acquired distinctiveness.

REQUEST NO. 32: Identify and describe all facts and circumstances supporting Applicant's fourth affirmative defense in Applicant's Answer, specifically that Applicant has failed to use ACE MEDICAL EXERCISE SPECIALIST as a trademark.

REQUEST NO. 33: Identify and describe all facts and circumstances supporting Applicant's fifth affirmative defense in Applicant's Answer, specifically that Opposer does not own trademark rights in and to Opposer's MEDICAL EXERCISE SPECIALIST trademark.

REQUEST NO. 34: Identify and describe all facts and circumstances supporting Applicant's sixth affirmative defense in Applicant's Answer, specifically that Opposer's claims may be barred by estoppel.

REQUEST NO. 35: Identify and describe all facts and circumstances supporting Applicant's claim of estoppel, including but not limited to what type of estoppel is being asserted.

REQUEST NO. 36: Identify and describe all facts and circumstances supporting any claim of privity between Michael Jones and Applicant.

REQUEST NO. 37: Identify and describe all facts and circumstances involving the relationship between Michael Jones and Applicant.

REQUEST NO. 38: Identify and describe all facts and circumstances involving how Applicant came into possession of documents from the case entitled *Michael Jones v. American Council on Exercise*.

Respectfully submitted,

Mark Reichenthal, Esq.

Mark Reichenthal
Branfman Mayfield Bustarde Reichenthal LLP
462 Stevens Ave. #303
Solana Beach, CA 92075

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's First Set of Interrogatories is being electronically mailed to Applicant's attorney at the following address:

[ERIK OSTERRIEDER](#)
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Phone: 281-372-6114

/s/ Rexford Brabson
Rexford Brabson

July 24, 2019

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

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Applicant: Health Care Fitness Integrations, LLC

Mark: MEDICAL EXERCISE TRAINERS

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**OPPOSER AMERICAN COUNCIL ON EXERCISE'S FIRST REQUESTS FOR
ADMISSION TO APPLICANT**

Pursuant to 37 C.F.R. § 2.120(a) and Rule 36(a) of the Federal Rules of Civil Procedure, Opposer American Council on Exercise (“Opposer”) requests that Applicant Health Care Fitness Integrations, LLC (“Applicant”) answer the following Request for Admissions in writing under oath within thirty (30) days of service hereof as provided in said Rules.

INSTRUCTIONS

- 1) Applicant's written response must comply with Rule 36 of the Federal Rules of Civil Procedure. Rule 36 notes that if Applicant does not admit each matter, Applicant must respond under oath to each request within thirty (30) days of service of this request by: (1) admitting as much of the matter in the request as is true; (2) denying as much of the matter in the request as is untrue; and (3) specifying as much of the matter in the request that Applicant lacks sufficient knowledge or information.

- 2) If Applicant's response to a request suggests a lack of knowledge or information Applicant shall state in the answer that Applicant made a reasonable inquiry concerning the matter, and that any information known or readily obtainable is insufficient to enable Applicant to admit that matter.
- 3) If Applicant objects to a request or part of a request, the specific ground for the objection shall be clearly set forth in the response.
- 4) If part of a request for admission is objectionable, the remainder of the request must be answered.
- 5) Applicant has a duty to supplement its responses until the time of the hearing or trial, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

- 1) "Applicant", "you" and "your" means Applicant Health Care Fitness Integrations, LLC and each of its predecessors, partners, members, directors, officers, employees, agents, attorneys and all other persons acting on or purporting to act on behalf of it.
- 2) "Opposer" means Opposer American Council on Exercise.
- 3) The term "person" means and includes, without limitation, every natural person, association, firm, partnership, corporation, board, committee, agency, commission, legal entity of any form or type, and every other organization or entity, whether public or private.
- 4) Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any request.
- 5) "And" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside its scope.
- 6) The terms "all" and "each" shall be construed to include the other.
- 7) Reference to "Applicant's Mark" shall mean the U.S. trademark application MEDICAL EXERCISE TRAINERS (Ser. No. 87064536) for T-shirts in Class 025.
- 8) Reference to "Opposer's Marks" shall mean the following trademark registrations and all common law or other trademark rights associated therewith:

- a. ACE MEDICAL EXERCISE SPECIALIST (Reg. No. 5588801) for Printed matter, namely, paper signs, books, manuals, curricula, newsletters, informational cards and brochures in the field of health and fitness in Class 016;
- b. MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
- c. ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
- d. PERSONAL TRAINER as used in association with a wide variety of goods/services;
- e. ACE CERTIFIED PERSONAL TRAINER as used in association with a wide variety of goods/services;
- f. ACE PERSONAL TRAINER as used in association with a wide variety of goods/services; and
- g. PEER FITNESS TRAINER as used in association with a wide variety of goods/services.

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that the word “medical” is commonly used in the field of personal training.

REQUEST NO. 2: Admit that the word “exercise” is commonly used in the field of personal training.

REQUEST NO. 3: Admit that the word “trainer” is commonly used in the field of personal training.

REQUEST NO. 4: Admit that there are third parties using the word “medical” in the field of

personal training.

REQUEST NO. 5: Admit that there are third parties using the word “exercise” in the field of personal training.

REQUEST NO. 6: Admit that there are third parties using the word “trainer” in the field of personal training.

REQUEST NO. 7: Admit that there are third parties using the word “medical” in the field of personal training in association with clothing.

REQUEST NO. 8: Admit that there are third parties using the word “exercise” in the field of personal training in association with clothing.

REQUEST NO. 9: Admit that there are third parties using the word “trainer” in the field of personal training in association with clothing.

REQUEST NO. 10: Admit that the word “medical” is the generic word for goods or services relating to the science of treatment of illnesses or injuries.

REQUEST NO. 11: Admit that the word “medical” is the descriptive word for goods or services relating to the science of treatment of illnesses or injuries.

REQUEST NO. 12: Admit that the word “exercise” is the generic word for goods or services relating to activity requiring physical effort, carried out to sustain or improve health and fitness.

REQUEST NO. 13: Admit that the word “exercise” is the descriptive word for goods or services relating to activity requiring physical effort, carried out to sustain or improve health and fitness.

REQUEST NO. 14: Admit that the word “trainers” is the generic word for goods or services relating to a person who trains.

REQUEST NO. 15: Admit that the word “trainers” is the descriptive word for goods or services relating to a person who trains.

REQUEST NO. 16: Admit that Applicant does not use the phrase MEDICAL EXERCISE TRAINERS on hangtags or labels affixed to its clothing.

REQUEST NO. 17: Admit that Applicant only uses the phrase MEDICAL EXERCISE TRAINERS in association with its clothing on its website.

REQUEST NO. 18: Admit that you are in violation of the confidentiality section of the Confidential Settlement and Release Agreement signed by the parties to the case entitled

Michael Jones v. American Council on Exercise.

REQUEST NO. 19: Admit that you are in possession of documents in violation of the Protective Order issued by the Court in the case entitled *Michael Jones v. American Council on Exercise*.

REQUEST NO. 20: Admit that you intend to rely on documents from the case *Michael Jones v. American Council on Exercise*.

REQUEST NO. 21: Admit that you are aware of the Protective Order issued by the Court in the case entitled *Michael Jones v. American Council on Exercise*.

REQUEST NO. 22: Admit that there is no privity between Michael Jones and Applicant.

Respectfully submitted,

Mark Reichenthal, Esq.

Mark Reichenthal
Branfman Mayfield Bustarde Reichenthal LLP
462 Stevens Ave. #303
Solana Beach, CA 92075

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's First Requests For Admission To Applicant is being electronically mailed to Applicant's attorney at the following address:

[ERIK OSTERRIEDER](#)
RAO DEBOER OSTERRIEDER PLLC
2550 GRAY FALLS DRIVE SUITE 200
HOUSTON, TX 77077
UNITED STATES
erik@rdoip.com, sarah@rdoip.com
Phone: 281-372-6114

/s/ Rexford Brabson
Rexford Brabson

July 24, 2019

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

In the matter of Trademark Application Ser. No. 87064536

Applicant: Health Care Fitness Integrations, LLC

Mark: MEDICAL EXERCISE TRAINERS

American Council on Exercise)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91238589
)	
Health Care Fitness Integrations, LLC)	
)	
Applicant.)	
<hr style="border: 0.5px solid black;"/>		
)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER AMERICAN COUNCIL ON EXERCISE'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to 37 C.F.R. § 2.120, the Trademark Trial and Appeal Board Manual of Procedure § 408, and Rule 34 of the Federal Rules of Civil Procedure, Opposer American Council on Exercise (“Opposer”) hereby requests that Applicant Health Care Fitness Integrations, LLC (“Applicant”) produce for inspection and copying the following documents and things to the offices of Opposer’s attorney at Branfman Mayfield Bustarde Reichenthal LLP, 462 Stevens Ave. #303, Solana Beach, CA 92075, within thirty (30) days of service hereof as provided in said Rules.

INSTRUCTIONS

- 1) Applicant is requested to produce for inspection and copying all responsive documents and things in its possession, control, or custody, including all documents and things in the possession of its attorneys, employees, agents, or other representatives and persons or entities subject to its control.
- 2) Where a document is requested to be produced, the entire document, along with all attachments, appendices and exhibits is to be produced. Applicant is to produce the documents and things as they are kept in the ordinary course of business, with appropriate marking or designations so that it may be determined to which request they are responsive.
- 3) Photocopies of the documents may be produced in lieu of the originals. All non-identical copies of documents are to be produced. This includes all copies which bear any additional attorney or marginal notes, time stamps, or other additional markings or writings that do not appear on the original.
- 4) If Applicant knows of any document requested but cannot produce it, so state and give the particular reasons for such inability, and identify every person who Applicant believes has possession, custody or control of the document. This includes but is not limited to any contentions that any document or thing has been lost or destroyed.
- 5) With respect to each document which Applicant contends is privileged or otherwise exempt from discovery, state the basis for the privilege or other grounds for exclusion, the name and address of the author and the addressee, the date, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy, and the identification and location of the files where the original and each copy are normally kept.
- 6) Documents that exist in digital format should be produced both in a machine-readable format and in hard-copy form.
- 7) Applicant has a duty to supplement its responses until the time of the hearing or trial, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

- 1) "Applicant", "you" and "your" means Applicant Health Care Fitness Integrations, LLC and each of its predecessors, partners, members, directors, officers, employees, agents, attorneys and all other persons acting on or purporting to act on behalf of it.
- 2) "Opposer" means Opposer American Council on Exercise.
- 3) The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.
- 4) The term "person" means and includes, without limitation, every natural person, association, firm, partnership, corporation, board, committee, agency, commission, legal entity of any form or type, and every other organization or entity, whether public or private.
- 5) Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any request.
- 6) "And" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside its scope.
- 7) The terms "all" and "each" shall be construed to include the other.
- 8) Reference to "Applicant's Mark" shall mean the U.S. trademark application MEDICAL EXERCISE TRAINERS (Ser. No. 87064536) T-shirts in Class 025.
- 9) Reference to "Opposer's Marks" shall mean the following trademark registrations and all common law or other trademark rights associated therewith:
 - a. ACE MEDICAL EXERCISE SPECIALIST (Reg. No. 5588801) for Printed matter, namely, paper signs, books, manuals, curricula, newsletters, informational cards and brochures in the field of health and fitness in Class 016;
 - b. MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
 - c. ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as used in association with a wide variety of goods/services;
 - d. PERSONAL TRAINER as used in association with a wide variety of goods/services;

- e. ACE CERTIFIED PERSONAL TRAINER as used in association with a wide variety of goods/services;
- f. ACE PERSONAL TRAINER as used in association with a wide variety of goods/services; and
- g. PEER FITNESS TRAINER as used in association with a wide variety of goods/services.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: If Applicant's response to Request for Admission No. 1, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 2: If Applicant's response to Request for Admission No. 2, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 3: If Applicant's response to Request for Admission No. 3, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 4: If Applicant's response to Request for Admission No. 4, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 5: If Applicant's response to Request for Admission No. 5, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 6: If Applicant's response to Request for Admission No. 6, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting

Applicant's response.

REQUEST NO. 7: If Applicant's response to Request for Admission No. 7, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 8: If Applicant's response to Request for Admission No. 8, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 9: If Applicant's response to Request for Admission No. 9, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 10: If Applicant's response to Request for Admission No. 10, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 11: If Applicant's response to Request for Admission No. 11, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 12: If Applicant's response to Request for Admission No. 12, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 13: If Applicant's response to Request for Admission No. 13, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 14: If Applicant's response to Request for Admission No. 14, served

concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 15: If Applicant's response to Request for Admission No. 15, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 16: If Applicant's response to Request for Admission No. 16, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 17: If Applicant's response to Request for Admission No. 17, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 18: If Applicant's response to Request for Admission No. 18, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 19: If Applicant's response to Request for Admission No. 19, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 20: If Applicant's response to Request for Admission No. 20, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 21: If Applicant's response to Request for Admission No. 21, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 22: If Applicant's response to Request for Admission No. 22, served concurrently herewith, is anything other than an unqualified admission, produce all documents supporting Applicant's response.

REQUEST NO. 23: All documents which refer to, relate to, or demonstrate use by Applicant of Applicant's Mark in connection with any goods or services.

REQUEST NO. 24: All documents which refer to, relate to or comprise all licenses, agreements, consents or other documents concerning third-party sale or promotional giveaway of goods or services by Applicant bearing Applicant's Mark.

REQUEST NO. 25: All documents which refer to and summarize all yearly expenditures of the Applicant, from the date of first use until the present, for the advertising or promotion of goods/services bearing Applicant's Mark and any common law trademark use of Applicant's Mark, including without limitation, advertisements, promotional materials, sales materials, catalogues, brochures, mailing, and price lists, whether distributed publicly or not.

REQUEST NO. 26: All documents that identify Applicant's yearly expenditures to date for the manufacture, production, and offering for sale of goods or services bearing Applicant's Mark.

REQUEST NO. 27: All documents that refer to and identify all assignments, licenses, or other transfers to or from Applicant of any rights in Applicants' Mark.

REQUEST NO. 28: All documents or things related to any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, legal opinions, cease and desist letters, civil actions made by or against the Applicant regarding Applicant's Mark.

REQUEST NO. 29: Samples of marketing and promotional materials, including, without limitation, brochures, advertisements, pamphlets, manuals, service information sheets, and any other promotional merchandise or literature, on which Applicant's Mark has been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or

used in commerce.

REQUEST NO. 30: For any good or service sold by Applicant bearing Applicant's Mark, identify documents sufficient to demonstrate use in commerce in connection with each good or service.

REQUEST NO. 31: All documents on which the Applicant intends to rely on in this proceeding, including all documents that the Applicant intends to offer in evidence in this proceeding.

REQUEST NO. 32: Produce all documents that support Applicant's first affirmative defense in Applicant's Answer, specifically that there is no likelihood of confusion between Applicant's Mark and Opposer's Marks.

REQUEST NO. 33: Produce all documents that support Applicant's second affirmative defense in Applicant's Answer, specifically that Applicant began use of Applicant's Mark prior to Opposer's use of Opposer's Marks.

REQUEST NO. 34: Produce all documents that support Applicant's third affirmative defense in Applicant's Answer, specifically that Applicant's Mark is inherently distinctive or has acquired distinctiveness.

REQUEST NO. 35: Produce all documents that support Applicant's fourth affirmative defense in Applicant's Answer, specifically that Applicant has failed to use ACE MEDICAL EXERCISE SPECIALIST as a trademark.

REQUEST NO. 36: Produce all documents that support Applicant's fifth affirmative defense in Applicant's Answer, specifically that Opposer does not own trademark rights in and to Opposer's MEDICAL EXERCISE SPECIALIST trademark.

REQUEST NO. 37: Produce all documents that support Applicant's sixth affirmative defense in Applicant's Answer, specifically that Opposer's claims may be barred by estoppel.

REQUEST NO. 38: Produce all documents in your possession from the case entitled *Michael Jones v. American Council on Exercise*.

REQUEST NO. 39: Produce all documents in your possession from the case entitled *Michael Jones v. American Council on Exercise* that were filed with the Court.

REQUEST NO. 40: Produce all documents in your possession from the case entitled *Michael Jones v. American Council on Exercise* that are subject to the Court's Protective Order.

REQUEST NO. 41: For each good or service identified in response to Request for Production of Documents #30 above, identify:

- a. All relevant documents showing or describing that good or service;
- b. All documents related to sales or projected sales of each good or service;
- c. The earliest date susceptible to prove when Applicant made sales of each good or service in the United States; and
- d. Any documents which evidence Applicant's use of its mark on such goods or services.

Respectfully submitted,

Mark Reichenthal, Esq.

Mark Reichenthal
Branfman Mayfield Bustarde Reichenthal LLP
462 Stevens Ave. #303
Solana Beach, CA 92075

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's First Requests For Production of Documents To Applicant is being electronically mailed to Applicant's attorney at the following address:

[ERIK OSTERRIEDER](#)
RAO DEBOER OSTERRIEDER PLLC
2550 GRAY FALLS DRIVE SUITE 200
HOUSTON, TX 77077
UNITED STATES
erik@rdoip.com, sarah@rdoip.com
Phone: 281-372-6114

/s/ Rexford Brabson
Rexford Brabson

July 24, 2019

EXHIBIT C

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

AMERICAN COUNCIL ON EXERCISE,	§	
Opposer,	§	
	§	
v.	§	OPPOSITION No. 91238589
	§	
HEALTH CARE FITNESS	§	Ser. No. 87/064,536
INTEGRATION, LLC,	§	MEDICAL EXERCISE TRAINERS
Applicant/Defendant.	§	
	§	Pub. for Opp. Date: June 27, 2017

To: Opposer American Council on Exercise, through their counsel of record, Mark Reichenthal, Branfman Law Group, PC, 708 Civic Center Drive Oceanside, CA 92054

**APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC’S FIRST SET OF
REQUESTS FOR PRODUCTION**

Pursuant to 37. C.F.R. § 2.120, TBMP §408, and Fed. R. Civ. P. 34, Applicant Health Care Fitness Integration, LLC (“Applicant”) requests that Opposer American Council on Exercise (“Opposer”) produce the documents and tangible things identified herein at the office of Rao DeBoer Osterrieder PLLC, 2550 Gray Falls Drive, Suite 200, Houston, Texas 77077, on or before the expiration of 30 days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions are applicable herein:

1. The terms “Applicant,” “Health Care Fitness Integration, LLC”, “Health Care Fitness Integration” or “HCFI” (including possessive forms thereof), “you”, and “your” mean Applicant Health Care Fitness Integration, LLC.

2. The terms “Opposer,” “American Council on Exercise,” or “ACE” mean Opposer American Council on Exercise and all its employees, agents, attorneys, representatives, and/or other persons under its control, and shall include, without limitation, any predecessor or successor in interest thereof
3. The term “person” refers both to natural persons and to corporate and other legal entities.
4. The term “product” means goods and/or services associated with a mark.
5. The terms “and” as well as “or” shall be construed to mean disjunctively or conjunctively, as applicable, so as to bring within the scope of the request all responses which otherwise might be construed to be outside the scope.
6. To “identify” a person means:
 - (a) If an individual, to state the individual’s name, business address, home address, home or business phone numbers, and occupation or job title;
 - (b) If the person is a corporation, to state the corporation’s name, state of incorporation, and business address; and
 - (c) If the person is a business entity other than a corporation, to state the name of the business entity, the type of business entity, (e.g., partnership, limited partnership, etc.), its business address, and the owner or owners thereof.
7. To “identify” a document means to provide a description of each document sufficient to support a request for production, including at least a description of the type of documents (e.g., letter, memoranda, etc.), the date of the document, and identification of (a) the author; (b) the recipient (if any); (c) all persons who received or were sent copies of the documents; and (d) the person or persons presently having possession, custody, or control thereof.

8. To “identify” facts means to set forth all relevant facts necessary or sufficient to resolve an issue underlying any claim or defense in this action, including but not limited to an identification of the underlying actions, omissions, and relevant surrounding events; an identification of those persons who acted, failed to act, or observed such actions, omissions, or events; and any dates and locations relevant to such actions, omissions, or events.

9. The term “document” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually or orally reproduced tangible things, whether copies or originals, in your possession, custody, or control, including but not limited to letters, cables, e-mails, wires, memoranda, and interoffice communications; reports, notes, and minutes; phonorecords, drawings, blueprints, sketches, charts, and microfilm records; photographs, slides, movies, videotapes, and negatives thereof; and computer printouts, magnetic tapes, floppy disks, hard disks, and computer files, regardless of the media in which such information is stored; contracts, agreements, legal instruments, and other legal or official documents; and any tangible things of any kind.

10. The term “tangible things” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

11. Any documents or tangible things produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the individual requests listed below, as required by Rule 34(b) of the Federal Rules of Civil Procedure.

12. In each of your objections, if any, state the reasons for objecting. Specifically, where any privilege or work-product immunity is claimed, state whether such claim is based on work product or attorney-client privilege and state fully:

- (a) the name and capacity of the person originating the communication;
- (b) the name and capacity of each party to the communication and, where applicable, the names and capacities of all persons present during such communication or who otherwise received such communication;
- (c) the date, if any, of the communication;
- (d) a general summary of the subject matter of the communication; and
- (e) the source of the factual information on which such opinion was premised.

13. Capitalized words mean that such words are being referred to as a mark, *i.e.*, trademark or service mark.

14. If you would like an electronic copy of these written discovery requests to assist in your preparation of written responses, Plaintiff's counsel will provide you with an electronic copy upon request.

FIRST SET OF REQUESTS FOR PRODUCTION 1-54

[Courtesy Reminder: See Definitions and Instructions Section, *supra*.]

REQUEST FOR PRODUCTION NO. 1

Please produce all documents and tangible things that show Opposer's use of "medical exercise trainers" as a phrase.

REQUEST FOR PRODUCTION NO. 2

Please produce all documents and tangible things that show that show Opposer's use of "medical exercise specialist" as a phrase.

REQUEST FOR PRODUCTION NO. 3

Please produce all documents and tangible things that show Opposer's use of MEDICAL EXERCISE TRAINERS as its mark in association with any goods and services.

REQUEST FOR PRODUCTION NO. 4

Please produce all documents and tangible things that show Opposer's use of its marks that include EXERCISE and TRAINERS (*e.g.*, MEDICAL EXERCISE TRAINERS includes both EXERCISE and TRAINERS) in association with any goods and services.

REQUEST FOR PRODUCTION NO. 5

Please produce all documents and tangible things that show Opposer's use of its marks that include MEDICAL and TRAINERS (*e.g.*, MEDICAL EXERCISE TRAINERS includes both MEDICAL and TRAINERS) in association with any goods and services.

REQUEST FOR PRODUCTION NO. 6

Please produce all documents and tangible things that show Opposer's use of MEDICAL EXERCISE SPECIALIST as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 7

Please produce all documents and tangible things that show Opposer's use of ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 8

Please produce all documents and tangible things that show Opposer's use of PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 9

Please produce all documents and tangible things that show Opposer's use of ACE CERTIFIED PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents and tangible things that show Opposer's use of ACE PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents and tangible things that show Opposer's use of PEER FITNESS TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 12

Please produce all documents and tangible things that show Opposer's marks used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 13

Please produce all documents and tangible things in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 14

Please produce all of Opposer's productions, answers and admissions served in response to any discovery served on Opposer in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 15

Please produce all discovery regarding use of MEDICAL EXERCISE SPECIALIST served by all persons in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 16

Please produce all discovery vehicles served by all persons in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 17

Please produce all documents and tangible things that show ACE CERTIFIED MEDICAL EXERCISE SPECIALIST and ACE CERTIFIED PERSONAL TRAINER are certification marks.

REQUEST FOR PRODUCTION NO. 18

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as your trademark or service mark.

REQUEST FOR PRODUCTION NO. 19

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of MEDICAL EXERCISE SPECIALIST as your trademark or service mark.

REQUEST FOR PRODUCTION NO. 20

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of MEDICAL EXERCISE SPECIALIST as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 21

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 22

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE CERTIFIED PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 23

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 24

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of PEER FITNESS TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 25

Please produce all documents and tangible things regarding actual customer confusion between your marks and Applicant's use of MEDICAL EXERCISE TRAINERS.

REQUEST FOR PRODUCTION NO. 26

Please produce all documents and tangible things that mention Applicant.

REQUEST FOR PRODUCTION NO. 27

Please produce all documents and tangible things concerning any public opinion poll, study, survey, market research or other analysis performed that concerns the use of MEDICAL EXERCISE TRAINERS.

REQUEST FOR PRODUCTION NO. 28

Please produce all documents and tangible things concerning any public opinion poll, study, survey, market research or other analysis performed that concerns the use of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 29

Please produce all documents and tangible things concerning each instance of which you have actual or hearsay knowledge, directly or indirectly, of any actual or purported instance of confusion or association of any type between Applicant and you, or their respective goods and services.

REQUEST FOR PRODUCTION NO. 30

Please produce all documents and tangible things concerning comments, complaints or other discussion of Applicant's Products, including without limitation letters or e-mails from customers or potential customers.

REQUEST FOR PRODUCTION NO. 31

Please produce all documents and tangible things concerning allegations against you of trademark, copyright, or patent infringement, unfair competition, trademark dilution, or deceptive trade practices, including any cease and desist letters or other correspondence that did not result in actual litigation or contested proceedings.

REQUEST FOR PRODUCTION NO. 32

Please produce all documents and tangible things concerning the creation, development, selection, design or adoption of designations including the word CHROME, including but not limited to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

REQUEST FOR PRODUCTION NO. 33

Please produce all documents and tangible things concerning determinations that you have the right to adopt, use and/or register CHROME as part of any mark.

REQUEST FOR PRODUCTION NO. 34

Please produce all documents and tangible things concerning any formal or informal plan, policy or understanding you have concerning document retention or destruction, including retention, destruction, or archiving of e-mail correspondence.

REQUEST FOR PRODUCTION NO. 35

Please produce copies of all foreign (*i.e.*, non-U.S.) prosecution records for registration of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 36

Please produce copies of all domestic (*i.e.*, U.S.) prosecution records for registration of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 37

Please produce copies of all litigation records, including but not limited to documents and things sufficient to identify the parties and case numbers, regarding trademark infringement, invalidity, and prior-use contentions for your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 38

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is a merely descriptive mark for t-shirts.

REQUEST FOR PRODUCTION NO. 39

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is a generic mark (*i.e.*, generic) for t-shirts.

REQUEST FOR PRODUCTION NO. 40

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is a merely decorative or ornamental as you alleged in the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 41

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with MEDICAL EXERCISE SPECIALIST.

REQUEST FOR PRODUCTION NO. 42

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with ACE CERTIFIED MEDICAL EXERCISE SPECIALIST.

REQUEST FOR PRODUCTION NO. 43

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with PERSONAL TRAINER.

REQUEST FOR PRODUCTION NO. 44

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with ACE CERTIFIED PERSONAL TRAINER.

REQUEST FOR PRODUCTION NO. 45

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with ACE PERSONAL TRAINER.

REQUEST FOR PRODUCTION NO. 46

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is association with t-shirts is likely to be confused with PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 47

Please produce all documents and tangible things that refer to, relate to or comprise licenses, agreements, consents or other documents concerning third-party sale or promotional giveaway of goods or services by Opposer bearing any of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 48

Please produce all documents and tangible things that refer to and summarize all yearly expenditures of Opposer, from the date of first use until the present, for the advertising or promotion of goods/services bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, including without limitation, advertisements, promotional materials, sales materials, catalogues, brochures, mailing, and price lists, whether distributed publicly or not.

REQUEST FOR PRODUCTION NO. 49

Please produce all documents and tangible things that identify Applicant's yearly expenditures to date for the manufacture, production, and offering for sale of goods or services bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 50

Please produce all documents and tangible things that refer to and identify all assignments, licenses, or other transfers to or from Opposer of any rights in your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 51

Please produce samples of marketing and promotional materials, including, without limitation, brochures, advertisements, pamphlets, manuals, service information sheets, and any other promotional merchandise or literature, on which your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, have been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

REQUEST FOR PRODUCTION NO. 52

For any good or service sold by Opposer bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, please identify documents sufficient to demonstrate use in commerce in connection with each good or service.

REQUEST FOR PRODUCTION NO. 53

Please produce all documents and tangible things on which the Opposer intends to rely on in this proceeding, including all documents that the Opposer intends to offer in evidence in this proceeding.

REQUEST FOR PRODUCTION NO. 54

For any good or service sold by Opposer bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, please identify documents sufficient to demonstrate use in commerce in connection with each good or service. In particular, for each good or service identified, please produce:

- a. all relevant documents and tangible things showing or describing that good or service;
- b. all relevant documents and tangible things related to sales or projected sales of each good or service;
- c. the earliest date susceptible to prove when Opposer made sales of each good or service in the United States; and
- d. any documents which evidence Opposer's use of its mark on such goods or services.

Dated: July 24, 2019

/Erik J. Osterrieder/

Erik J. Osterrieder

Rao DeBoer Osterrieder, PLLC

2550 Gray Falls Drive, Suite 200

Houston, TX 77077

(281) 372-6114

erik@rdoip.com

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION** was served via email on Opposer at:

Mark I. Reichenthal: markr@branfman.com

Dated: July 24, 2019

/Erik J. Osterrieder/
Erik J. Osterrieder
Rao DeBoer Osterrieder, PLLC
2550 Gray Falls Drive, Suite 200
Houston, TX 77077
(281) 372-6114
erik@rdoip.com
ATTORNEY FOR APPLICANT

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

AMERICAN COUNCIL ON EXERCISE, Opposer,	§ § §
v.	§ OPPOSITION No. 91238589
HEALTH CARE FITNESS INTEGRATION, LLC, Applicant/Defendant.	§ § Ser. No. 87/064,536 § MEDICAL EXERCISE TRAINERS § § Pub. for Opp. Date: June 27, 2017

To: Opposer American Council on Exercise, through their counsel of record, Mark Reichenthal, Branfman Law Group, PC, 708 Civic Center Drive Oceanside, CA 92054

**APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC’S
AMENDED FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to 37. C.F.R. § 2.120, TBMP §408, and Fed. R. Civ. P. 34, Applicant Health Care Fitness Integration, LLC (“Applicant”) requests that Opposer American Council on Exercise (“Opposer”) produce the documents and tangible things identified herein at the office of Rao DeBoer Osterrieder PLLC, 2550 Gray Falls Drive, Suite 200, Houston, Texas 77077, on or before the expiration of 30 days from the date of service hereof.

As compared to Applicant’s First Set of Requests for Production served on July 24, 2019, this Amended First Set of Requests for Production differs as follows: (1) requests 41-16: changes “is association” to “in association”; (2) request 32 and 33: removed CHROME and inserted your alleged marks; and (3) request 47-49: changed “bearing” to “for.” Please response to this this Amended First Set of Requests for Production because they include corrections to typos in the First Set of Requests for Production. Thank you.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions are applicable herein:

1. The terms “Applicant,” “Health Care Fitness Integration, LLC”, “Health Care Fitness Integration” or “HCFI” (including possessive forms thereof), “you”, and “your” mean Applicant Health Care Fitness Integration, LLC.
2. The terms “Opposer,” “American Council on Exercise,” or “ACE” mean Opposer American Council on Exercise and all its employees, agents, attorneys, representatives, and/or other persons under its control, and shall include, without limitation, any predecessor or successor in interest thereof
3. The term “person” refers both to natural persons and to corporate and other legal entities.
4. The term “product” means goods and/or services associated with a mark.
5. The terms “and” as well as “or” shall be construed to mean disjunctively or conjunctively, as applicable, so as to bring within the scope of the request all responses which otherwise might be construed to be outside the scope.
6. To “identify” a person means:
 - (a) If an individual, to state the individual’s name, business address, home address, home or business phone numbers, and occupation or job title;
 - (b) If the person is a corporation, to state the corporation’s name, state of incorporation, and business address; and
 - (c) If the person is a business entity other than a corporation, to state the name of the business entity, the type of business entity, (e.g., partnership, limited partnership, etc.), its business address, and the owner or owners thereof.

7. To “identify” a document means to provide a description of each document sufficient to support a request for production, including at least a description of the type of documents (e.g., letter, memoranda, etc.), the date of the document, and identification of (a) the author; (b) the recipient (if any); (c) all persons who received or were sent copies of the documents; and (d) the person or persons presently having possession, custody, or control thereof.

8. To “identify” facts means to set forth all relevant facts necessary or sufficient to resolve an issue underlying any claim or defense in this action, including but not limited to an identification of the underlying actions, omissions, and relevant surrounding events; an identification of those persons who acted, failed to act, or observed such actions, omissions, or events; and any dates and locations relevant to such actions, omissions, or events.

9. The term “document” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually or orally reproduced tangible things, whether copies or originals, in your possession, custody, or control, including but not limited to letters, cables, e-mails, wires, memoranda, and interoffice communications; reports, notes, and minutes; phonorecords, drawings, blueprints, sketches, charts, and microfilm records; photographs, slides, movies, videotapes, and negatives thereof; and computer printouts, magnetic tapes, floppy disks, hard disks, and computer files, regardless of the media in which such information is stored; contracts, agreements, legal instruments, and other legal or official documents; and any tangible things of any kind.

10. The term “tangible things” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

11. Any documents or tangible things produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the individual requests listed below, as required by Rule 34(b) of the Federal Rules of Civil Procedure.

12. In each of your objections, if any, state the reasons for objecting. Specifically, where any privilege or work-product immunity is claimed, state whether such claim is based on work product or attorney-client privilege and state fully:

- (a) the name and capacity of the person originating the communication;
- (b) the name and capacity of each party to the communication and, where applicable, the names and capacities of all persons present during such communication or who otherwise received such communication;
- (c) the date, if any, of the communication;
- (d) a general summary of the subject matter of the communication; and
- (e) the source of the factual information on which such opinion was premised.

13. Capitalized words mean that such words are being referred to as a mark, *i.e.*, trademark or service mark.

14. If you would like an electronic copy of these written discovery requests to assist in your preparation of written responses, Applicant’s counsel will provide you with an electronic copy upon request.

FIRST SET OF REQUESTS FOR PRODUCTION 1-54

[Courtesy Reminder: See Definitions and Instructions Section, *supra*.]

REQUEST FOR PRODUCTION NO. 1

Please produce all documents and tangible things that show Opposer's use of "medical exercise trainers" as a phrase.

REQUEST FOR PRODUCTION NO. 2

Please produce all documents and tangible things that show that show Opposer's use of "medical exercise specialist" as a phrase.

REQUEST FOR PRODUCTION NO. 3

Please produce all documents and tangible things that show Opposer's use of MEDICAL EXERCISE TRAINERS as its mark in association with any goods and services.

REQUEST FOR PRODUCTION NO. 4

Please produce all documents and tangible things that show Opposer's use of its marks that include EXERCISE and TRAINERS (*e.g.*, MEDICAL EXERCISE TRAINERS includes both EXERCISE and TRAINERS) in association with any goods and services.

REQUEST FOR PRODUCTION NO. 5

Please produce all documents and tangible things that show Opposer's use of its marks that include MEDICAL and TRAINERS (*e.g.*, MEDICAL EXERCISE TRAINERS includes both MEDICAL and TRAINERS) in association with any goods and services.

REQUEST FOR PRODUCTION NO. 6

Please produce all documents and tangible things that show Opposer's use of MEDICAL EXERCISE SPECIALIST as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 7

Please produce all documents and tangible things that show Opposer's use of ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 8

Please produce all documents and tangible things that show Opposer's use of PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 9

Please produce all documents and tangible things that show Opposer's use of ACE CERTIFIED PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents and tangible things that show Opposer's use of ACE PERSONAL TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents and tangible things that show Opposer's use of PEER FITNESS TRAINER as its mark used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 12

Please produce all documents and tangible things that show Opposer's marks used in association with any clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 13

Please produce all documents and tangible things in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 14

Please produce all of Opposer's productions, answers and admissions served in response to any discovery served on Opposer in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 15

Please produce all discovery regarding use of MEDICAL EXERCISE SPECIALIST served by all persons in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 16

Please produce all discovery vehicles served by all persons in Michael Jones v. American Council on Exercise, Civil Action H-15-3270.

REQUEST FOR PRODUCTION NO. 17

Please produce all documents and tangible things that show ACE CERTIFIED MEDICAL EXERCISE SPECIALIST and ACE CERTIFIED PERSONAL TRAINER are certification marks.

REQUEST FOR PRODUCTION NO. 18

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE CERTIFIED MEDICAL EXERCISE SPECIALIST as your trademark or service mark.

REQUEST FOR PRODUCTION NO. 19

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of MEDICAL EXERCISE SPECIALIST as your trademark or service mark.

REQUEST FOR PRODUCTION NO. 20

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of MEDICAL EXERCISE SPECIALIST as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 21

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 22

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE CERTIFIED PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 23

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of ACE PERSONAL TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 24

Please produce documents and tangible things sufficient to show the earliest dates that you first began to use of PEER FITNESS TRAINER as your mark in association with clothing-related goods and services.

REQUEST FOR PRODUCTION NO. 25

Please produce all documents and tangible things regarding actual customer confusion between your marks and Applicant's use of MEDICAL EXERCISE TRAINERS.

REQUEST FOR PRODUCTION NO. 26

Please produce all documents and tangible things that mention Applicant.

REQUEST FOR PRODUCTION NO. 27

Please produce all documents and tangible things concerning any public opinion poll, study, survey, market research or other analysis performed that concerns the use of MEDICAL EXERCISE TRAINERS.

REQUEST FOR PRODUCTION NO. 28

Please produce all documents and tangible things concerning any public opinion poll, study, survey, market research or other analysis performed that concerns the use of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 29

Please produce all documents and tangible things concerning each instance of which you have actual or hearsay knowledge, directly or indirectly, of any actual or purported instance of confusion or association of any type between Applicant and you, or their respective goods and services.

REQUEST FOR PRODUCTION NO. 30

Please produce all documents and tangible things concerning comments, complaints or other discussion of Applicant's Products, including without limitation letters or e-mails from customers or potential customers.

REQUEST FOR PRODUCTION NO. 31

Please produce all documents and tangible things concerning allegations against you of trademark, copyright, or patent infringement, unfair competition, trademark dilution, or deceptive trade practices, including any cease and desist letters or other correspondence that did not result in actual litigation or contested proceedings.

REQUEST FOR PRODUCTION NO. 32

Please produce all documents and tangible things concerning the creation, development, selection, design or adoption of designations for MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, including but not limited to trademark searches, investigations, market research or studies, written reports, artwork, sketches, drafts, drawings or images.

REQUEST FOR PRODUCTION NO. 33

Please produce all documents and tangible things concerning determinations that you have the right to adopt, use and/or register MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED

MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER as mark(s).

REQUEST FOR PRODUCTION NO. 34

Please produce all documents and tangible things concerning any formal or informal plan, policy or understanding you have concerning document retention or destruction, including retention, destruction, or archiving of e-mail correspondence.

REQUEST FOR PRODUCTION NO. 35

Please produce copies of all foreign (*i.e.*, non-U.S.) prosecution records for registration of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 36

Please produce copies of all domestic (*i.e.*, U.S.) prosecution records for registration of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 37

Please produce copies of all litigation records, including but not limited to documents and things sufficient to identify the parties and case numbers, regarding trademark infringement, invalidity, and prior-use contentions for your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 38

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is a merely descriptive mark for t-shirts.

REQUEST FOR PRODUCTION NO. 39

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS is a generic mark (*i.e.*, generic) for t-shirts.

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REQUEST FOR PRODUCTION NO. 41

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with MEDICAL EXERCISE SPECIALIST.

REQUEST FOR PRODUCTION NO. 42

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE CERTIFIED MEDICAL EXERCISE SPECIALIST.

REQUEST FOR PRODUCTION NO. 43

Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with PERSONAL TRAINER.

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Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE CERTIFIED PERSONAL TRAINER.

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Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE PERSONAL TRAINER.

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Please produce all documents and tangible things that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with PEER FITNESS TRAINER.

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Please produce all documents and tangible things that refer to, relate to or comprise licenses, agreements, consents or other documents concerning third-party sale or promotional giveaway of goods or services by Opposer for your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 48

Please produce all documents and tangible things that refer to and summarize all yearly expenditures of Opposer, from the date of first use until the present, for the advertising or promotion of goods/services for your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, including without limitation, advertisements, promotional materials, sales materials, catalogues, brochures, mailing, and price lists, whether distributed publicly or not.

REQUEST FOR PRODUCTION NO. 49

Please produce all documents and tangible things that identify Applicant's yearly expenditures to date for the manufacture, production, and offering for sale of goods or services for your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 50

Please produce all documents and tangible things that refer to and identify all assignments, licenses, or other transfers to or from Opposer of any rights in your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

REQUEST FOR PRODUCTION NO. 51

Please produce samples of marketing and promotional materials, including, without limitation, brochures, advertisements, pamphlets, manuals, service information sheets, and any other promotional merchandise or literature, on which your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, have been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

REQUEST FOR PRODUCTION NO. 52

For any good or service sold by Opposer bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, please identify documents sufficient to demonstrate use in commerce in connection with each good or service.

REQUEST FOR PRODUCTION NO. 53

Please produce all documents and tangible things on which the Opposer intends to rely on in this proceeding, including all documents that the Opposer intends to offer in evidence in this proceeding.

REQUEST FOR PRODUCTION NO. 54

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- a. all relevant documents and tangible things showing or describing that good or service;
- b. all relevant documents and tangible things related to sales or projected sales of each good or service;
- c. the earliest date susceptible to prove when Opposer made sales of each good or service in the United States; and
- d. any documents which evidence Opposer's use of its mark on such goods or services.

Dated: July 25, 2019

/Erik J. Osterrieder/

Erik J. Osterrieder

Rao DeBoer Osterrieder, PLLC

2550 Gray Falls Drive, Suite 200

Houston, TX 77077

(281) 372-6114

erik@rdoip.com

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC'S AMENDED FIRST SET OF REQUESTS FOR PRODUCTION** was served via email on Opposer at:

Mark I. Reichenthal: markr@branfman.com

Dated: July 25, 2019

/Erik J. Osterrieder/
Erik J. Osterrieder
Rao DeBoer Osterrieder, PLLC
2550 Gray Falls Drive, Suite 200
Houston, TX 77077
(281) 372-6114
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ATTORNEY FOR APPLICANT

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

AMERICAN COUNCIL ON EXERCISE, Opposer,	§ § §	
v.	§	OPPOSITION No. 91238589
HEALTH CARE FITNESS INTEGRATION, LLC, Applicant/Defendant.	§ § § §	Ser. No. 87/064,536 MEDICAL EXERCISE TRAINERS Pub. for Opp. Date: June 27, 2017

To: Opposer American Council on Exercise, through their counsel of record, Mark Reichenthal, Branfman Law Group, PC, 708 Civic Center Drive Oceanside, CA 92054

**APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC’S FIRST SET OF
INTERROGATORIES**

Pursuant to 37 C.F.R. §§ 2.116 and 2.120, TBMP §§ 405 and 408, and Fed. R. Civ. P. 33, Applicant Health Care Fitness Integration, LLC (“Applicant”) requests that Opposer American Council on Exercise (“Opposer”) answer, under oath, the interrogatories, herein before the expiration of 30 days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions are applicable herein:

1. The terms “Applicant,” “Health Care Fitness Integration, LLC,” “Health Care Fitness Integration” or “HCFI” (including possessive forms thereof), “you”, and “your” mean Applicant Health Care Fitness Integration, LLC.

2. The terms “Opposer,” “American Council on Exercise,” or “ACE” mean Opposer American Council on Exercise and all its employees, agents, attorneys, representatives, and/or other

persons under its control, and shall include, without limitation, any predecessor or successor in interest thereof.

3. The term “person” refers both to natural persons and to corporate and other legal entities.

4. The term “product” means goods and/or services associated with a mark.

5. The terms “and” as well as “or” shall be construed to mean disjunctively or conjunctively, as applicable, so as to bring within the scope of the interrogatory all answers which otherwise might be construed to be outside the scope.

6. To “identify” a person means:

(a) If an individual, to state the individual’s name, business address, home address, home or business phone numbers, and occupation or job title;

(b) If the person is a corporation, to state the corporation’s name, state of incorporation, and business address; and

(c) If the person is a business entity other than a corporation, to state the name of the business entity, the type of business entity, (e.g., partnership, limited partnership, etc.), its business address, and the owner or owners thereof.

7. To “identify” a document means to provide a description of each document sufficient to support a request for production, including at least a description of the type of documents (e.g., letter, memoranda, etc.), the date of the document, and identification of (a) the author; (b) the recipient (if any); (c) all persons who received or were sent copies of the documents; and (d) the person or persons presently having possession, custody, or control thereof.

8. To “identify” facts means to set forth all relevant facts necessary or sufficient to resolve an issue underlying any claim or defense in this action, including but not limited to an identification

of the underlying actions, omissions, and relevant surrounding events; an identification of those persons who acted, failed to act, or observed such actions, omissions, or events; and any dates and locations relevant to such actions, omissions, or events.

9. The term “document” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure, and refers to all handwritten, typed, printed, or otherwise visually or orally reproduced tangible things, whether copies or originals, in your possession, custody, or control, including but not limited to letters, cables, e-mails, wires, memoranda, and interoffice communications; reports, notes, and minutes; phonorecords, drawings, blueprints, sketches, charts, and microfilm records; photographs, slides, movies, videotapes, and negatives thereof; and computer printouts, magnetic tapes, floppy disks, hard disks, and computer files, regardless of the media in which such information is stored; contracts, agreements, legal instruments, and other legal or official documents; and any tangible things of any kind.

10. The term “tangible things” is defined to be synonymous in meaning and equal in scope to the use of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

11. Any documents or tangible things produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the individual interrogatories listed below, as required by the Federal Rules of Civil Procedure.

12. In each of your objections, if any, state the reasons for objecting. Specifically, where any privilege or work-product immunity is claimed, state whether such claim is based on work product or attorney-client privilege and state fully:

- (a) the name and capacity of the person originating the communication;
- (b) the name and capacity of each party to the communication and, where applicable, the names and capacities of all persons present during such communication or who otherwise received such communication;
- (c) the date, if any, of the communication;
- (d) a general summary of the subject matter of the communication; and
- (e) the source of the factual information on which such opinion was premised.

13. Capitalized words mean that such words are being referred to as a mark, *i.e.*, trademark or service mark.

14. If you would like an electronic copy of these interrogatories to assist in your preparation of written responses, Applicant's counsel will provide you with an electronic copy upon request.

FIRST SET OF INTERROGATORIES

[Courtesy Reminder: See Definitions and Instructions Section, *supra.*]

INTERROGATORY NO. 1

Please identify and describe, in detail, all goods and services sold or distributed by Opposer bearing or used in connection with your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, wherein such detail includes the dates and locations when Opposer first stated selling each of such goods and services for each of your alleged marks named herein.

INTERROGATORY NO. 2

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS is a merely descriptive mark for t-shirts.

INTERROGATORY NO. 3

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS is a generic mark (*i.e.*, generic) for t-shirts.

INTERROGATORY NO. 4

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS is a merely decorative or ornamental as you alleged in the Notice of Opposition.

INTERROGATORY NO. 5

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with MEDICAL EXERCISE SPECIALIST.

INTERROGATORY NO. 6

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE CERTIFIED MEDICAL EXERCISE SPECIALIST.

INTERROGATORY NO. 7

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with PERSONAL TRAINER.

INTERROGATORY NO. 8

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE CERTIFIED PERSONAL TRAINER.

INTERROGATORY NO. 9

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with ACE PERSONAL TRAINER.

INTERROGATORY NO. 10

Please set forth all facts and circumstances that support your contention that MEDICAL EXERCISE TRAINERS in association with t-shirts is likely to be confused with PEER FITNESS TRAINER.

INTERROGATORY NO. 11

Please identify and describe yearly expenditures, from the date of first use until the present, for the advertising or promotion of each good/service bearing your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, including without limitation, advertisements, promotional materials, sales materials, catalogues, brochures, mailing, and price lists, whether distributed publicly or not.

INTERROGATORY NO. 12

Please identify and describe, in detail, all actions taken by Opposer to establish and protect Opposer's rights in each your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

INTERROGATORY NO. 13

Please identify and describe, in detail, all actions or each good or service distributed by Applicant bearing, or used in connection with each your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER, the annual amount of actual or projected sales in dollars in the United States on a yearly basis from the date of first use until the present

INTERROGATORY NO. 14

Please identify and describe, in detail, any common law trademark use by Opposer of each your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

INTERROGATORY NO. 15

Please identify and describe, in detail, any alleged use in commerce by Opposer of each your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER that resulted in goods/services being provided at no cost to any member of the public.

INTERROGATORY NO. 16

Please identify and describe, in detail, all facts, circumstances and arguments made in legal proceedings (*e.g.*, before the TTAB, before a federal court, in an administrative hearing, etc.) in which ACE is a party, including but not limited to Michael Jones v. American Council on Exercise, Civil Action H-15-3270, that do not support counts in the instant opposition between Opposer and Applicant.

INTERROGATORY NO. 17

Please identify and describe, in detail, all facts and circumstances that show your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER are certification marks.

INTERROGATORY NO. 18

Please identify and describe, in detail, all facts and circumstances that show your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER are used in association with clothing goods, wherein such detail includes the dates and locations when Opposer first stated selling clothing goods for each of your alleged marks named herein.

INTERROGATORY NO. 19

Please identify and describe, in detail, all facts and circumstances, that relate to licenses, assignments, agreements, transfers, consents or other documents concerning third-party sale or promotional giveaway of goods or services by Opposer for any of your alleged marks in the Notice of Opposition, *i.e.*, MEDICAL EXERCISE SPECIALIST, ACE CERTIFIED MEDICAL EXERCISE SPECIALIST, PERSONAL TRAINER, ACE CERTIFIED PERSONAL TRAINER, ACE PERSONAL TRAINER, and PEER FITNESS TRAINER.

INTERROGATORY NO. 20

Please identify each person who may present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence at any hearing or at the trial in this matter, identifying the facts or opinions about which such person may be asked to testify.

INTERROGATORY NO. 21

Please identify and describe all documents, tangible things, and testifying persons on which the Opposer intends to rely on in this proceeding, including those the Opposer intends to offer in evidence in this proceeding.

INTERROGATORY NO. 22

Please identify all person(s) providing information to each of Interrogatories 1-21, and, in particular, identify what information such person(s) provided to each of Interrogatories 1-21.

Dated: July 25, 2019

/Erik J. Osterrieder/

Erik J. Osterrieder

Rao DeBoer Osterrieder, PLLC

2550 Gray Falls Drive, Suite 200

Houston, TX 77077

(281) 372-6114

erik@rdoip.com

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC'S FIRST SET OF INTERROGATORIES** was served via email on Opposer at:

Mark I. Reichenthal: markr@branfman.com

Dated: July 25, 2019

/Erik J. Osterrieder/
Erik J. Osterrieder
Rao DeBoer Osterrieder, PLLC
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(281) 372-6114
erik@rdoip.com
ATTORNEY FOR APPLICANT

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

AMERICAN COUNCIL ON EXERCISE,	§	
Opposer,	§	
	§	
v.	§	OPPOSITION No. 91238589
	§	
HEALTH CARE FITNESS	§	Ser. No. 87/064,536
INTEGRATION, LLC,	§	MEDICAL EXERCISE TRAINERS
Applicant/Defendant.	§	
	§	Pub. for Opp. Date: June 27, 2017

To: Opposer American Council on Exercise, through their counsel of record, Mark Reichenthal, Branfman Law Group, PC, 708 Civic Center Drive Oceanside, CA 92054

**APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC’S FIRST SET OF
REQUESTS FOR ADMISSION**

Pursuant to 37. C.F.R. § 2.120, TBMP § 407, and Fed. R. Civ. P. 36, Applicant Health Care Fitness Integration, LLC (“Applicant”) requests that Opposer American Council on Exercise (“Opposer”) answer the requests for admission herein on or before the expiration of 30 days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions are applicable herein:

1. The terms “Applicant,” “Health Care Fitness Integration, LLC”, “Health Care Fitness Integration” or “HCFI” (including possessive forms thereof), “you”, and “your” mean Applicant Health Care Fitness Integration, LLC.
2. The terms “Opposer,” “American Council on Exercise,” or “ACE” mean Opposer American Council on Exercise and all its employees, agents, attorneys, representatives, and/or other

persons under its control, and shall include, without limitation, any predecessor or successor in interest thereof

3. The term “person” refers both to natural persons and to corporate and other legal entities.

4. The term “product” means goods and/or services associated with a mark.

5. The terms “and” as well as “or” shall be construed to mean disjunctively or conjunctively, as applicable, so as to bring within the scope of the request all responses which otherwise might be construed to be outside the scope.

6. Capitalized words mean that such words are being referred to as a mark, *i.e.*, trademark or service mark. For instance, MEDICAL EXERCISE SPECIALIST means that “medical exercise specialist” is used as a trademark or service mark.

7. If you would like an electronic copy of these written discovery requests to assist in your preparation of written responses, Applicant’s counsel will provide you with an electronic copy upon request.

FIRST SET OF REQUESTS FOR ADMISSION

[Courtesy Reminder: See Definitions and Instructions Section, *supra.*]

REQUEST FOR ADMISSION NO. 1

Please admit or deny that Opposer has no documents showing its use of “medical exercise trainers” in prose, *i.e.*, not as a mark.

REQUEST FOR ADMISSION NO. 2

Please admit or deny that at least one person other than Opposer has trademark rights in MEDICAL EXERCISE SPECIALIST.

REQUEST FOR ADMISSION NO. 3

Please admit or deny that a person named or business associated with Michael Jones has trademark rights in MEDICAL EXERCISE SPECIALIST.

REQUEST FOR ADMISSION NO. 4

Please admit or deny that Opposer’s MEDICAL EXERCISE SPECIALIST is a merely descriptive mark.

REQUEST FOR ADMISSION NO. 5

Please admit or deny that Opposer’s MEDICAL EXERCISE SPECIALIST is a generic mark.

REQUEST FOR ADMISSION NO. 6

Please admit or deny that Opposer’s only use of MEDICAL EXERCISE SPECIALIST on clothing-related goods has been ornamental, *i.e.*, not used as a mark.

REQUEST FOR ADMISSION NO. 7

Please admit or deny that Opposer has not used MEDICAL EXERCISE SPECIALIST on clothing goods.

REQUEST FOR ADMISSION NO. 8

Please admit or deny that Opposer has not used ACE CERTIFIED MEDICAL EXERCISE SPECIALIST on clothing goods.

REQUEST FOR ADMISSION NO. 9

Please admit or deny that Opposer has not used PERSONAL TRAINER on clothing goods.

REQUEST FOR ADMISSION NO. 10

Please admit or deny that Opposer has not used ACE CERTIFIED PERSONAL TRAINER on clothing goods.

REQUEST FOR ADMISSION NO. 11

Please admit or deny that Opposer has not used ACE PERSONAL TRAINER on clothing goods.

REQUEST FOR ADMISSION NO. 12

Please admit or deny that Opposer has not used PEER FITNESS TRAINER on clothing goods.

REQUEST FOR ADMISSION NO. 13

Please admit or deny that Opposer did not use MEDICAL EXERCISE SPECIALIST on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 14

Please admit or deny that Opposer did not use ACE CERTIFIED MEDICAL EXERCISE SPECIALIST on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 15

Please admit or deny that Opposer did not use PERSONAL TRAINER on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 16

Please admit or deny that Opposer did not use ACE CERTIFIED PERSONAL TRAINER on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 17

Please admit or deny that Opposer did not use ACE PERSONAL TRAINER on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 18

Please admit or deny that Opposer did not use PEER FITNESS TRAINER on clothing goods prior to January 1, 2017.

REQUEST FOR ADMISSION NO. 19

Please admit or deny that Opposer did not use MEDICAL EXERCISE SPECIALIST on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 20

Please admit or deny that Opposer did not use ACE CERTIFIED MEDICAL EXERCISE SPECIALIST on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 21

Please admit or deny that Opposer did not use PERSONAL TRAINER on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 22

Please admit or deny that Opposer did not use ACE CERTIFIED PERSONAL TRAINER on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 23

Please admit or deny that Opposer did not use ACE PERSONAL TRAINER on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 24

Please admit or deny that Opposer did not use PEER FITNESS TRAINER on clothing goods prior to January 1, 2016.

REQUEST FOR ADMISSION NO. 25

Please admit or deny that Opposer's MEDICAL EXERCISE SPECIALIST is a certification mark.

REQUEST FOR ADMISSION NO. 26

Please admit or deny that Opposer's ACE CERTIFIED MEDICAL EXERCISE SPECIALIST is a certification mark.

REQUEST FOR ADMISSION NO. 27

Please admit or deny that Opposer's PERSONAL TRAINER is a certification mark.

REQUEST FOR ADMISSION NO. 28

Please admit or deny that Opposer's ACE CERTIFIED PERSONAL TRAINER is a certification mark.

REQUEST FOR ADMISSION NO. 29

Please admit or deny that Opposer's ACE PERSONAL TRAINER is a certification mark.

REQUEST FOR ADMISSION NO. 30

Please admit or deny that Opposer's PEER FITNESS TRAINER is a certification mark.

REQUEST FOR ADMISSION NO. 31

Please admit or deny that a trademark cannot be a certification mark also.

REQUEST FOR ADMISSION NO. 32

Please admit or deny in Michael Jones v. American Council on Exercise, Civil Action H-15-3270 you argued that a trademark cannot be a certification mark also.

REQUEST FOR ADMISSION NO. 33

Please admit or deny that a word mark may function as a trademark on clothing even if the word mark is not on a hangtag or label affixed to the clothing.

REQUEST FOR ADMISSION NO. 34

Please admit or deny that Opposer has not sold more than \$2,000 of MEDICAL EXERCISE SPECIALIST clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 35

Please admit or deny that Opposer has not sold more than \$2,000 of ACE CERTIFIED MEDICAL EXERCISE SPECIALIST clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 36

Please admit or deny that Opposer has not sold more than \$2,000 of PERSONAL TRAINER clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 37

Please admit or deny that Opposer has not sold more than \$2,000 of ACE CERTIFIED PERSONAL TRAINER clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 38

Please admit or deny that Opposer has not sold more than \$2,000 of ACE PERSONAL TRAINER clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 39

Please admit or deny that Opposer has not sold more than \$2,000 of PEER FITNESS TRAINER clothing goods since January 1, 2017.

REQUEST FOR ADMISSION NO. 40

Please admit or deny that “medical” is a generic word for goods or services relating to the science of treatment of illnesses or injuries.

REQUEST FOR ADMISSION NO. 41

Please admit or deny that “medical” is a descriptive word for goods or services relating to the science of treatment of illnesses or injuries.

REQUEST FOR ADMISSION NO. 42

Please admit or deny that “exercise” is a generic word for goods or services relating to the activity of requiring physical effort carried out to sustain or improve health and fitness.

REQUEST FOR ADMISSION NO. 43

Please admit or deny that “exercise” is a descriptive word for goods or services relating to the activity of requiring physical effort carried out to sustain or improve health and fitness.

REQUEST FOR ADMISSION NO. 44

Please admit or deny that “specialist” is a generic word for goods or services relating to concentration primarily on a particular subject or activity or highly skilled in a specific and restricted field.

REQUEST FOR ADMISSION NO. 45

Please admit or deny that “specialist” is a descriptive word for goods or services relating to concentration primarily on a particular subject or activity or highly skilled in a specific and restricted field.

REQUEST FOR ADMISSION NO. 46

Please admit or deny that “personal” is a generic word for goods or services relating to affecting or belonging to a particular person rather than to anyone else.

REQUEST FOR ADMISSION NO. 47

Please admit or deny that “personal” is a descriptive word for goods or services relating to affecting or belonging to a particular person rather than to anyone else.

REQUEST FOR ADMISSION NO. 48

Please admit or deny that “trainer” is a generic word for goods or services relating to a person who trains.

REQUEST FOR ADMISSION NO. 49

Please admit or deny that “trainer” is a descriptive word for goods or services relating to a person who trains.

REQUEST FOR ADMISSION NO. 50

Please admit or deny that “certified” is a generic word for goods or services relating to being proved by a certificate or endorsed.

REQUEST FOR ADMISSION NO. 51

Please admit or deny that “certified” is a descriptive word for goods or services relating to being proved by a certificate or endorsed.

REQUEST FOR ADMISSION NO. 52

Please admit or deny that “ace” is a generic word for goods or services relating to being very good or excellent.

REQUEST FOR ADMISSION NO. 53

Please admit or deny that “ace” is a laudatory word for goods or services relating to being very good or excellent.

REQUEST FOR ADMISSION NO. 54

Please admit or deny that “ace” is a descriptive word for goods or services relating to being very good or excellent.

REQUEST FOR ADMISSION NO. 55

Please admit or deny that “peer” is a generic word for goods or services relating to a person or something being of equal worth in some respect.

REQUEST FOR ADMISSION NO. 56

Please admit or deny that “peer” is a descriptive word for goods or services relating to a person or something being of equal worth in some respect.

REQUEST FOR ADMISSION NO. 57

Please admit or deny that “fitness” is a generic word for goods or services relating to the condition of being physically fit and healthy.

REQUEST FOR ADMISSION NO. 58

Please admit or deny that “fitness” is a descriptive word for goods or services relating to the condition of being physically fit and healthy.

REQUEST FOR ADMISSION NO. 59

Please admit or deny that Opposer knows of no instances of actual confusion by persons believing Opposer is the source of t-shirts bearing the phrase “medical exercise trainers,” regardless whether or not “medical exercise trainers” is a trademark.

Dated: July 25, 2019

/Erik J. Osterrieder/
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Rao DeBoer Osterrieder, PLLC
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Houston, TX 77077
(281) 372-6114
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ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT HEALTH CARE FITNESS INTEGRATION, LLC'S FIRST SET OF REQUESTS FOR ADMISSION** was served via email on Opposer at:

Mark I. Reichenthal: markr@branfman.com

Dated: July 25, 2019

/Erik J. Osterrieder/
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