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

Proceeding	91238589
Party	Defendant Health Care Fitness Integrations, LLC
Correspondence Address	Erik Osterrieder Rao DeBoer Osterrieder, PLLC 2550 Gray Falls Drive, Suite 200 Houston, TX 77077 Email: erik@rdoip.com, sarah@rdoip.com
Submission	Answer
Filer's Name	Erik J Osterrieder
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Date	02/01/2018
Attachments	Answer.pdf(29666 bytes)

**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,	§	Ser. No. 87/064,536
Applicant/Defendant.	§	MEDICAL EXERCISE TRAINERS
	§	Pub. for Opp. Date: June 27, 2017

ANSWER

Applicant Health Care Fitness Integration, LLC (“HCFI”), through its undersigned attorney, timely files its answer and defenses to the Notice of Opposition (“Notice”) filed by American Council on Exercise.

1. As to numbered paragraph 1 of the Notice, these averments are alleged factual representations requiring neither denial nor admission, but to the extent that a denial or admission is required, this paragraph is denied.
2. As to numbered paragraph 2 of the Notice, the first sentence is admitted. As to its second sentence, it is denied except that it is admitted that the examiner refused registration of HCFI’s mark as being “merely descriptive” with regard to class 41 goods.
3. As to numbered paragraph 3 of the Notice, it is admitted.
4. As to numbered paragraph 4 of the Notice, it is admitted except that as to “denying Opposer a chance to challenge the ‘239 Application,” it is denied that no opposition procedure for marks registered on the Supplemental Register is caused by Applicant; instead, it is long-established by US trademark practice and procedure.

5. As to numbered paragraphs 5-58 of the Notice, HCFI has not had an adequate opportunity to investigate these averments, and, therefore, is without knowledge or information sufficient to form a belief as to the truth of these averments, and, accordingly, denies these paragraphs.
6. As to the last, unnumbered paragraph of the Notice that begins with WHEREFORE, HCFI denies American Council on Exercise is entitled to the relief it seeks, and respectfully requests dismissal of this Notice so as to rightfully allow HCFI a registration for its mark, MEDICAL EXERCISE TRAINERS, in conjunction “t-shirts” in class 25.

DEFENSES

7. Failure to State a Claim – Any and all claims in the Notice legally and/or factually fail to state claims upon which American Council on Exercise can be granted and/or is entitled to relief. With this notice, HCFI reserves the right to make appropriate motions under Fed. R. Civ. P. 12(b) and 12(c).
8. Lack of Standing – The claims asserted and relief sought are barred because American Council on Exercise is not the owner of valid mark(s), whether registered or not, at issue.
9. No Likelihood of Confusion – HCFI’s mark is not likely to be confused with other existing or purported marks.
10. Senior User – HCFI’s mark was used prior to other existing or purported mark(s) with which a likelihood of confusion is alleged or found to exist.
11. Fraud – American Council on Exercise’s application for its alleged mark, ACE MEDICAL EXERCISE SPECIALIST, is the product of one or more instances of fraud to the USPTO, because American Council on Exercise, at the time of filing and/or during prosecution of its application to register ACE MEDICAL EXERCISE SPECIALIST, alleged it was entitled to

seek registration for this alleged mark. With intent to deceive, American Council on Exercise intentionally and knowingly misrepresented that American Council on Exercise possessed the right to use its applied-for mark at issue, when used on or in connection with the alleged goods, by alleged first use dates, so as not to cause confusion, mistake, or to deceive when compared to other existing marks. As a result, American Council on Exercise's is fraudulently procuring registration of ACE MEDICAL EXERCISE SPECIALIST.

12. Estoppel, Acquiescence, Waiver – American Council on Exercise's claims are barred, in whole or in part, by its expressed and/or implied acts and/or words.
13. Laches – American Council on Exercise's claims are barred, in whole or in part, by its failure to act more promptly.
14. Unclean Hands – The claims asserted and relief sought by American Council on Exercise are barred by the equitable doctrine of unclean hands.
15. Inherently Distinctive and/or Acquired Distinctiveness – HCFI's mark is registrable and valid because it is inherently distinctive and/or has acquired distinctiveness.

PRAYER

WHEREFORE, because American Council on Exercise will not be damaged by the registration of HCFI's mark under this opposition, HCFI respectfully requests that the TTAB dismiss with prejudice the opposition against HCFI's mark and allow its registration.

Respectfully submitted,

Dated: February 1, 2018

By: /Erik J. Osterrieder/
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CERTIFICATE OF TRANSMISSION

This is to certify that a true and correct copy of the foregoing **ANSWER** was transmitted, via ESTTA, to the Trademark Trial and Appeal Board, on the date of signing below:

Mark I. Reichenthal: markr@branfman.com

Dated: February 1, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER** was served via email on Opposer at:

Mark I. Reichenthal: markr@branfman.com

Dated: February 1, 2018

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