

ESTTA Tracking number: **ESTTA936417**

Filing date: **11/20/2018**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	CrossFit, Inc.
Granted to Date of previous extension	12/15/2018
Address	3218 Lakeside Village Prescott, AZ 86301 UNITED STATES

Attorney information	Joel R. Feldman Greenberg Traurig, LLP 3333 Piedmont Rd. NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com, holta@gtlaw.com, vayners@gtlaw.com 678-553-4778
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**Applicant Information**

Application No	87926654	Publication date	10/16/2018
Opposition Filing Date	11/20/2018	Opposition Period Ends	12/15/2018
Applicant	IMSINC, LLC 1804 Garnet Ave # 277 Pacific Beach, CA 92109 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2014/05/01 First Use In Commerce: 2018/05/02 All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic tops and bottoms for runners, yoga and workout; Sports bra; Swimwear
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**Grounds for Opposition**

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

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	MURPH
Goods/Services	Fitness training; clothing, namely shirts

Attachments	MURPH WOD - Notice of Opposition with Exhibits.pdf(382695 bytes )
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Signature	/jrf/
Name	Joel R. Feldman
Date	11/20/2018

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

In the Matter of Application Serial No. 87/926,654: MURPH WOD  
Published in the *Official Gazette* on October 16, 2018

_____	)	
<b>CROSSFIT, INC.,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
v.	)	<b>Opposition No.</b> _____
	)	
<b>IMSINC, LLC,</b>	)	
	)	
<b>Applicant.</b>	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer CrossFit, Inc. (“CrossFit”), a Delaware corporation with an address of 3218 Lakeside Village Dr., Prescott AZ 86301, opposes IMSINC, LLC’s Application Serial No. 87/926,654 (the “Application”) to register MURPH WOD because CrossFit will be damaged by the registration of the Application.

The grounds for opposition are:

**BACKGROUND**

1. Applicant seeks to register MURPH WOD in International Class 25 for athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; athletic tops and bottoms for runners, yoga and workout; sports bra; swimwear (the “Class 25 Goods”).

2. The Application was filed on May 18, 2018, based on Applicant’s alleged use of the applied-for mark in commerce since May 2, 2018.

## CROSSFIT INC.'S USE OF THE MURPH MARK

3. CrossFit, through its predecessor-in-interest, is the creator of the CROSSFIT fitness brand, which it licenses to individual gym owners, known as affiliates (“Affiliates”).

4. As part of its physical fitness programming, CrossFit created a challenging workout for participants that consists of a 1 mile run, 100 pull-ups, 200 push-ups, 300 squats, and another 1 mile run, which it initially named “Body Armor.”

5. In August 2005, CrossFit renamed this workout the MURPH workout in memory of Navy Lieutenant Michael Murphy, who was killed in Afghanistan in June 2005. *See Exhibit 1.*

6. Over the past thirteen years, CrossFit’s MURPH workout has become one of CrossFit’s most well-known, iconic workouts of the day, earning a cult following and references in various unsolicited media.

7. Since 2005, CrossFit has authorized and encouraged its Affiliates to use the MURPH workout as the workout of the day, and particularly to use the MURPH workout as the workout of the day on Memorial Day to honor Lt. Murphy.

8. Many of CrossFit’s Affiliates hold licensed fundraising events and sell or give away licensed MURPH clothing in conjunction with “Memorial Day Murph” fitness programming.

9. CrossFit owns common-law rights for the mark MURPH, both standing alone and in combination with other terms and/or design elements, for fitness services and clothing.

10. CrossFit and its licensed Affiliates (as licensees) have used the MURPH mark in connection with fitness services since at least 2005, which is well before applicant’s application date (May 18, 2018) or alleged first-use-date (May 2, 2018).

11. CrossFit and its licensed Affiliates have used the MURPH mark in connection with commemorative shirts since at least 2012, which is well before applicant's application date (May 18, 2018) or alleged first-use date (May 2, 2018).

12. As a result of CrossFit's long and continuous use of its MURPH mark in connection with its physical fitness services and commemorative shirts, the consuming public and the trade have come to recognize the MURPH mark as belonging to CrossFit, and associate and identify the goods and services offered under the MURPH mark with CrossFit. CrossFit consequently derives substantial goodwill and value from this recognition, association, and identification by the consuming public and the trade.

13. Because of the high degree of inherent and acquired distinctiveness of the MURPH mark, the length of time and extent to which CrossFit has used the MURPH mark, the substantial trading area in which the MURPH mark is used, and the high degree of consumer recognition of the MURPH mark, the MURPH mark is a well-known and strong trademark, deserving of a broad scope of legal protection.

#### **PRIORITY AND LIKELIHOOD OF CONFUSION**

14. CrossFit used the MURPH mark for physical fitness services and clothing long before Applicant used or applied to register the MURPH WOD mark for the Class 25 Goods.

15. As a result of CrossFit's efforts, long before Applicant used or applied to register the MURPH WOD mark, CrossFit's MURPH Mark was substantially recognized by the public as a strong indicator of CrossFit's services.

16. The applied-for MURPH WOD mark is confusingly similar in sight, meaning, and commercial impression to CrossFit's MURPH mark because it incorporates the MURPH mark in its entirety. In addition, WOD stands for "workout of the day" and is an acronym used by CrossFit and its Affiliates to refer to a day's recommended fitness programming. CrossFit's

daily “WOD” is posted every day on CrossFit.com. *See Exhibit 2.* The Applicant’s combination of MURPH with the acronym WOD clearly calls to mind CrossFit.

17. The applied-for Class 25 Goods overlap with CrossFit’s shirts branded with the MURPH mark.

18. Applicant’s goods branded with the applied-for mark will be offered to the same type of consumers that use CrossFit’s MURPH-branded services and purchase CrossFit’s licensed MURPH shirts.

19. Based on the high degree of similarity between Applicant’s and CrossFit’s marks and the relatedness of Applicant’s Class 25 Goods and CrossFit’s licensed goods, the public is likely to incorrectly believe that Applicant’s Class 25 Goods are connected to CrossFit. This confusion will cause irreparable harm to CrossFit.

20. Any dissatisfaction with Applicant’s Class 25 Goods would reflect negatively upon and irreparably damage CrossFit’s reputation and the goodwill embodied in its CROSSFIT mark.

21. Applicant’s use and registration of the applied-for mark is likely to cause confusion, mistake, and deception as to the source of Applicant’s Class 25 Goods within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

22. Applicant’s use and registration of the applied-for mark will injure and damage CrossFit and the goodwill and reputation symbolized by CrossFit’s MURPH mark within the meaning of 15 U.S.C. § 1063(a).

23. Applicant’s applied-for mark is not registrable under 15 U.S.C. § 1052(d), because it resembles a mark previously used in the United States by CrossFit and is likely to cause confusion, mistake, or to deceive.

**CONCLUSION**

24. CrossFit requests that this opposition be sustained and registration of Application Serial No. 87/926,654 be refused.

Dated: November 20, 2018

Respectfully submitted,  
**GREENBERG TRAURIG LLP**



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Joel R. Feldman  
Sabina A. Vayner  
Alexandra A. Holt

Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, Georgia 30305  
Phone: (678) 553-4778  
Fax: (678) 553-4779

*Attorneys for Opposer  
CrossFit, Inc.*

# Exhibit 1

# CrossFit

## WORKOUT OF THE DAY

# Thursday 050818

**1341**

### "Murph"

For time:

1 mile Run  
100 Pull-ups  
200 Push-ups  
300 Squats  
1 mile Run

In memory of Navy Lieutenant Michael Murphy, 29, of Patchogue, N.Y., who was killed in Afghanistan June 28th, 2005.

This workout was one of Mike's favorites and he'd named it "Body Armor". From here on it will be referred to as "Murph" in honor of the focused warrior and great American who wanted nothing more in life than to serve this great country and the beautiful people who make it what it is.

Partition the pull-ups, push-ups, and squats as needed. Start and finish with a mile run. If you've got a twenty pound vest or body armor, wear it.

Post time to comments.

# Exhibit 2



The best thing you can do is read, search, and read some more before asking questions about CrossFit. Start with the **What is CrossFit?** (<https://www.crossfit.com/what-is-crossfit>) and **How To Start** (<https://www.crossfit.com/how-to-start>) pages, review the **Exercises & Demos** (<https://www.crossfit.com/exercisedemos/>), and dig through the discussion board.

Meanwhile, here are some of the most common questions people ask about CrossFit workouts:

## GENERAL

What's the WOD?	^
<p>The "WOD" is the "workout of the day." Each day a new WOD is posted to CrossFit.com, and it's part of a complete program designed to improve strength and conditioning. The CrossFit.com program is characterized by three days of work before one day of rest, though athletes may alter this pattern. The WOD can be scaled (adjusted) to provide a suitable challenge for athletes at any level.</p>	
Where is the WOD?	∨
What if I can't use the recommended weight or perform the programmed movements?	∨
Is the WOD enough? Should I do more?	≡
Will I/can I get big doing CrossFit?	∨
Where is that article in the CrossFit Journal?	∨
What's the "official" CrossFit warm-up?	∨
What's the Burgener Warm-Up?	∨
What's a "pood"?	∨
What do the acronyms and abbreviations in the WOD mean?	∨
What about abs? We never do crunches.	∨
What's a hook grip?	∨
When loads are listed, do they include the weight of the bar?	∨



Where can I find descriptions of the exercises prescribed in the WOD?	▼
What's a Tabata?	▼
How much weight for squats?	▼
Farmers carry/farmers walk?	▼
Waiters walk?	▼
Pull-ups vs. chin-ups?	▼
How do I do a burpee?	▼
What's a Samson stretch?	▼
What kind of sit-up should I do?	▼
What's a pistol?	▼
Where can I find some guidance on parallette training?	▼
Are kipping pull-ups cheating?	▼
What are the differences among the clean (and snatch) variations?	▼
What's the height of the target for wall-ball shots?	▼
What's the weight of the medicine ball for wall-ball shots?	▼

## SUBSTITUTIONS

How do you choose substitutions?	▼
Can I create my own substitutions?	▼
What's the best substitute for rope climbing?	▼
What if I can't run? Or row?	▼
What's a good substitute for wall-ball shots?	▼
What's a good substitute for muscle-ups?	▼
What if I can't do pull-ups?	▼

What if I can't do handstand push-ups?	∨
What if I can't do L-sits?	∨
What if I don't have rings or can't do ring dips.	∨
What if I can't do double-unders or don't have a jump rope.	∨
What can I sub for back extensions?	∨
What can I sub for glute-ham sit-ups?	∨

## WOD

Explain The Workouts with Names (the Girls)	∨
Explain the Hero Workouts	∨
Explain Fight Gone Bad	∨
Explain Tabata This	∨
I can't do the WOD as prescribed. Any help for scaling?	∨
How about a worksheet to track my performance?	∨
OK, so I've done the CFT. How do I rank? Are there any standards?	∨
So what's this CrossFit Total (a.k.a. CFT) I keep hearing about?	III
What's this 1-1-1-1-1-1 all about? Is that really the whole WOD?	∨

## EQUIPMENT

Where can I get ____?	∨
Can I build ____?	∨
How do I build a lifting platform?	∨
What's the "best" damper setting on the C2 rower?	∨
What shoes should I wear?	∨

## ESSENTIAL REFERENCES

What are the essential references for CrossFit?	▼
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## NUTRITION

What is CrossFit's diet prescription?	▼
What are the best Zone Diet references?	▼

## TRAINER COURSES

What about trainer courses and certifications?	▼
How can I host a CrossFit Certificate Course at my gym?	▼
Is CrossFit Training on social media?	▼
Which trainer credentials does CrossFit offer?	▼
What are the prerequisites for each level of credential?	▼
Once a credential is earned, how is it maintained?	▼
What can those who achieve the CCFT (versus the CF-L3) do with the credential?	▼
How do I use my credential?	▼
Where can I find the Trainer Directory to verify CrossFit trainers?	▼
Where can I find out more about each credential?	▼
Which credential is necessary for CrossFit affiliation?	▼
Where can I find CrossFit courses?	▼
What are the current costs* of each credential?	▼
Which credentials allow me to say "I am certified"?	▼
Is there a curriculum test for the CF-L2, as there is for the CF-L1?	▼
What if I hold an L1, 2, 3 or "Coach" credential from before 2008?	▼
What if I have the Coaches Prep Course Certificate?	▼
Which credential is held by those who passed the former Level 2 performance test offered from January 2008 to January 2010?	▼

Which credentials are accredited?	▼
Which courses or exams are available in languages other than English?	▼
What is the distinction between a "Certificate Course" and a "Certification"?	▼

## AFFILIATES

What is the process for becoming an affiliate?	▼
What are the requirements for becoming an affiliate?	▼
What is included in being a CrossFit Affiliate?	▼
What is the cost of affiliation?	▼
Do affiliate fees increase?	▼
Do I still have to affiliate if I want to operate as a nonprofit?	▼
Can I open a CrossFit affiliate outside the United States?	▼
Can there be more than one affiliate in one town, city, state, neighborhood?	▼
Is this a franchise?	▼
Do I need to own a gym?	▼
If I purchased a URL does this mean I own that name?	▼
If I become an affiliate, does this mean I can credential CrossFit trainers?	▼
What material from CrossFit.com can I use on promotional items like t-shirts, my storefront, my website, etc.? How can I use the name?	▼
If I do not want to affiliate but I am a CrossFit trainer, how can I use the name legally?	▼
Can I work as a trainer at an affiliate if I'm not a CrossFit Level 1 Certificate holder?	▼
How should I select a name for my gym?	▼
Can I set my own rates?	▼
What is the recommended equipment for starting out?	▼
Should I send in videos and photos?	▼
Are CrossFit affiliates automatically allowed to offer CrossFit Kids classes?	▼

 Can I host a local/statewide/regional fitness competition. Any guidance?	▼
I'm thinking of/planning on opening multiple locations. Is that allowed?	▼
We're thinking of setting up some "sister affiliates" and we'd like similar names or even to share websites and design. Is that allowed?	▼

## MEDIA

Are the videos archived or stored anywhere on the site besides with the WODs?	▼
Where can I find more media?	▼
Do you have a YouTube channel?	▼
Is CrossFit on social media?	▼
Where can I find CrossFit Games media?	▼
Can I host CrossFit Media on my site?	▼
Can I use CrossFit's photos on my site/T-shirt/poster/etc.?	▼
How can I send in videos and photos?	▼

## RRG

Where can I find info about the CrossFit Risk Retention Group (RRG)?	
Does the RRG have an FAQ?	▼

**MAIN ([HTTPS://WWW.CROSSFIT.COM](https://www.crossfit.com))    [JOURNAL \(HTTP://JOURNAL.CROSSFIT.COM\)](http://journal.crossfit.com)**

**[AFFILIATES \(HTTPS://AFFILIATE.CROSSFIT.COM\)](https://affiliate.crossfit.com)**

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