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

Proceeding	91245121
Party	Defendant Alzheimer's New Jersey
Correspondence Address	LISA D TAYLOR INGLESINO WEBSTER WYCISKALA & TAYLOR 600 PARSIPPANY ROAD, SUITE 204 PARSIPPANY, NJ 07054 UNITED STATES ltaylor@iwt-law.com 973-947-7111
Submission	Answer
Filer's Name	Lisa D. Taylor, Esq.
Filer's email	ltaylor@iwwt.law, jfranck@iwwt.law
Signature	/Lisa D. Taylor/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ALZHEIMER'S DISEASE AND RELATED
DISORDERS ASSOCIATION,

Opposer,

v.

ALZHEIMER'S NEW JERSEY,

Applicant.

Opposition No. 91245121

Mark:



**ALZHEIMER'S NEW JERSEY
WALK TO FIGHT ALZHEIMER'S**

**ANSWER TO AMENDED NOTICE OF OPPOSITION
WITH AFFIRMATIVE DEFENSES**

The following is the Answer of Applicant, Alzheimer's New Jersey (the "Applicant"), owner of Federal Trademark Application Serial No. 87797112 for the mark WALK TO FIGHT ALZHEIMER'S (hereinafter the "Applicant's Mark"), by and through its Counsel, Inglesino, Webster, Wyciskala & Taylor, LLC, to the Amended Notice of Opposition filed on May 22, 2020 by Alzheimer's Disease and Related Disorders Association (hereinafter the "Opposer"). Applicant hereby states as follows:

1. With respect to paragraph 1 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies same.

2. With respect to paragraph 2 of the Amended Notice of Opposition, Applicant denies that Opposer's mark WALK TO END ALZHEIMER'S is well-known. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies same.

3. With respect to paragraph 3 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations, specifically whether Opposer is the current correct and proper owner of the claimed registration, whether the registration is currently valid and subsisting, and whether AA used the mark as early as June 30, 2009. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. With respect to paragraph 4 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies same.

5. With respect to paragraph 5 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to Opposer's date of first use for its mark; whether Opposer is the current correct and proper owner of the claimed mark, and whether such registration is currently valid and subsisting. Therefore, Applicant is without knowledge and information sufficient to form a belief as to the allegations as written and must deny same.

6. With respect to paragraph 6 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to Opposer's date of first use for its mark; whether Opposer is the current correct and proper owner of the claimed mark, and whether such registration is currently valid and subsisting. Therefore, Applicant is without knowledge and information sufficient to form a belief as to priority and must deny.

7. With respect to paragraph 7 of the Amended Notice of Opposition, Applicant denies the allegations therein.

8. With respect to paragraph 8 of the Amended Notice of Opposition, Applicant denies the allegations therein.

9. With respect to paragraph 9 of the Amended Notice of Opposition, Applicant admits the allegations therein.

10. With respect to paragraph 10 of the Amended Notice of Opposition, Applicant admits the allegations therein.

11. With respect to paragraph 11 of the Amended Notice of Opposition, Applicant denies the allegations therein.

12. With respect to paragraph 12 of the Amended Notice of Opposition, Applicant admits that the Applicant's Mark includes the words "Walk to Fight" and denies the remainder of the allegations therein.

13. With respect to paragraph 13 of the Amended Notice of Opposition, Applicant denies the allegations therein.

14. With respect to paragraph 14 of the Amended Notice of Opposition, Applicant is without knowledge of information sufficient to form a belief as to the truth of the allegations, and therefore denies same.

15. With respect to paragraph 15 of the Amended Notice of Opposition, Applicant denies the allegations contained therein.


16. With respect to paragraph 16 of the Amended Notice of Opposition, Applicant denies the allegations contained therein.

17. With respect to paragraph 17 of the Amended Notice of Opposition, Applicant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

18. Applicant hereby invokes the “Morehouse Defense” as set forth under *Morehouse Mfg. Corp. v. J. Strickland & Co.* 407 F.2d 881, 160 U.S.P.Q. 715, 717 (CCPA 1969). The Applicant owns, on the Principal Register, an October 4, 2016 Registration No. 5,053,635, Serial No. 86-910,025 for Class 36 goods and services (word mark “WALK TO FIGHT ALZHEIMER’S”) and a January 9, 2018 Registration No. 5,373,234, Serial No. 87-347,295 for




Class 36 goods and services (design mark ) that are substantially similar to Applicant’s Mark, and Opposer has failed to object to said registrations. Thus, there is no likelihood of confusion and the registration of Applicant’s Mark for substantially similar goods and services causes no additional injury to Opposer.

19. Opposer has failed to protect, police, and/or control its rights from widespread use, and/or failed to exercise quality control resulting in abandonment of its trademark rights for the Opposer’s pleaded marks Registration No. 4122255 and Application Serial No. 88209214 (collectively referred hereinafter as “Opposer’s Pledged Marks”).

20. The Applicant owns, on the Principal Register, an October 4, 2016 Registration No. 5,053,635, Serial No. 86-910,025 for Class 36 goods and services (word mark “WALK TO FIGHT ALZHEIMER’S”) and a January 9, 2018 Registration No. 5,373,234, Serial No. 87-347,295 for



Class 36 goods and services (design mark ) that are substantially similar to Applicant’s Mark, and Opposer has failed to object to said registrations. Applicant has been using Applicant’s Mark and developing consumer recognition for years, with such use being open,

notorious, and known to Opposer. Thus, Opposer has unreasonably delayed in taking legal action to the detriment of Applicant whom relied on and was prejudiced by such inaction, constituting laches.

21. The Applicant owns, on the Principal Register, an October 4, 2016 Registration No. 5,053,635, Serial No. 86-910,025 for Class 36 goods and services (word mark “WALK TO FIGHT ALZHEIMER’S”) and a January 9, 2018 Registration No. 5,373,234, Serial No. 87-347,295 for



Class 36 goods and services (design mark) that are substantially similar to Applicant’s Mark, and Opposer has failed to object to said registrations. Applicant has been using Applicant’s Mark and developing consumer recognition for years, with such use being open, notorious, and known to Opposer. Thus, Opposer has unreasonably delayed in taking legal action to the detriment of Applicant whom relied on and was prejudiced by such inaction, constituting estoppel.

22. The Applicant owns, on the Principal Register, an October 4, 2016 Registration No. 5,053,635, Serial No. 86-910,025 for Class 36 goods and services (word mark “WALK TO FIGHT ALZHEIMER’S”) and a January 9, 2018 Registration No. 5,373,234, Serial No. 87-347,295 for



Class 36 goods and services (design mark) that are substantially similar to Applicant’s Mark, and Opposer has failed to object to said registrations. Applicant has been using Applicant’s Mark and developing consumer recognition for years, with such use being open, notorious, and known to Opposer. Thus, by virtue of its inaction, Opposer has given its tacit assent

that such Applicant's Mark does not present a threat of likelihood of confusion or dilution of Opposer's Pledged Mark, constituting acquiescence.

23. Opposer's Pledged Marks and/or elements of Opposer's Pledged Marks have been used extensively by other charitable organizations and third-parties.

24. Opposer's dilution claim must be dismissed pursuant to the noncommercial use exception under 15 U.S.C. § 1125(c)(3)(C).

25. Opposer cannot demonstrate any likelihood that the public will be confused or misled as to the source of Applicant's goods or services, or that Applicant's goods or services are associated with or endorsed by Opposer.

26. At all times relevant hereto, Applicant has acted in good faith.

27. Opposer has disclaimed trademark rights for "WALK" and "ALZHEIMER'S".

28. Applicant's mark is unique and distinctive from Opposer's mark.

29. The wording in Applicant's mark and Opposer's mark are different. Opposer's mark contains the word "END" which is not present in Applicant's mark; Applicant's mark contains the word "FIGHT" which is not present in Opposer's mark; and Applicant's mark contains the word "New Jersey".

30. Applicant's mark and Opposer's mark are different in appearance. Applicant's mark includes a drawing of a pair of sneakers which is not present in Opposer's mark; Applicant's mark includes a drawing of the State of New Jersey which is not present in Opposer's mark; Applicant's mark does not contain the same color or shade of purple as is used within the Opposer's mark; Applicant's Mark does not contain an arrow or near full circle as contained in Opposer's Mark; and the wording in the Applicant's and Opposer's Pledged Marks are not similarly formatted.

31. Applicant's mark contains the words "Alzheimer's New Jersey" above the logo, which clearly identifies that the mark is associated with Applicant.

32. The color purple is used in numerous trademarks for organizations that provide services for people dealing with the disease referred to as Alzheimer's.

33. The word "Walk" is registered in numerous trademarks in connection with various charitable organizations that sponsor walks to raise funds for their causes.

34. Opposer's mark is not famous and/or Opposer has failed to maintain the level of fame, notoriety, and distinctiveness sufficient to obtain relief as a famous mark.

35. Opposer cannot establish that Applicant's alleged use creates a likelihood of impairment to the distinctiveness of any alleged famous mark owned by Opposer, and Opposer cannot establish the requisite causation to establish harm.

36. Applicant's mark and Opposer's mark are not likely to cause confusion, mistake or deception to customers.

37. Applicant's mark and Opposer's mark are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant.

38. Applicant's mark and Opposer's mark are not confusingly similar in appearance, sound, connotation or meaning.

39. Opposer lacks standing to maintain the instant opposition.

40. Opposer cannot establish priority.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board reject the Notice of Opposition and permit registration of Applicant's Mark in Application Serial Number 87797112 in the United States Patent and Trademark Office.

Dated: June 18, 2020

Respectfully submitted,

By: /Lisa D. Taylor, Esq./ _____
Lisa D. Taylor, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Telephone (973) 947-7111
Facsimile (973) 887-2700
Attorneys of Record for Applicant
Alzheimer's New Jersey

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2020, I caused to be served a true and complete copy of the foregoing Answer to Notice of Opposition by electronic mail upon:

Shima S. Roy, Esq.
Baker & McKenzie
300 E. Randolph Street, Suite 5000
Chicago, IL 60601
Shima.roy@bakermckenzie.com
Attorney for Opposer
Alzheimer's Disease and Related Disorders Association

By: /Lisa D. Taylor, Esq./
Lisa D. Taylor, Esq.