

ESTTA Tracking number: **ESTTA992778**

Filing date: **08/05/2019**

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	TMT Enterprises, LLC
Granted to Date of previous extension	08/17/2019
Address	1900 AVENUE OF THE STARS, 25TH FLOOR C/O KIA KAMRAN, P.C. LOS ANGELES, CA 90067-4301 UNITED STATES
Attorney information	KIA KAMRAN ESQ. KIA KAMRAN, P.C. 1900 AVENUE OF THE STARS, 25TH FLOOR LOS ANGELES, CA 90067-4301 UNITED STATES kia@tunelaw.com, matthew@tunelaw.com, assistant@tunelaw.com 3102848600

Applicant Information

Application No	88298782	Publication date	06/18/2019
Opposition Filing Date	08/05/2019	Opposition Period Ends	08/17/2019
Applicant	1 Percent Fitness LLC 646 N Sage Vista Drive LEHI, UT 84043 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. First Use: 2013/12/13 First Use In Commerce: 2019/01/12 All goods and services in the class are opposed, namely: Food preparation services featuring fresh, properly proportioned, healthy meals designed to fuel metabolism and burn fat and made to order for delivery or pickup
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Grounds for Opposition

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

U.S. Application No.	88300773	Application Date	02/13/2019
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	FITNESS KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Dietary and nutritional food supplements; dietary and nutritional protein supplements formed and packaged as bars; powdered dietary and nutritional supplement drink mix containing protein		

U.S. Application No.	88300775	Application Date	02/13/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FITNESS KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2012/01/01 First Use In Commerce: 2012/01/01 Delivery services, namely, delivery of prepared food to consumer homes and places of work		

U.S. Application No.	88300777	Application Date	02/13/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FITNESS KITCHEN		

Design Mark	FITNESS KITCHEN
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2012/01/01 First Use In Commerce: 2012/01/01 Food preparation services featuring customized meals made for delivery to consumer homes and places of work; catering services; providing a website featuring recipes and cooking information

U.S. Application No.	88300779	Application Date	02/13/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FITNESS KITCHEN		
Design Mark	FITNESS KITCHEN		
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2012/01/01 First Use In Commerce: 2012/01/01 Providing a website featuring information about health, wellness and nutrition; providing a website featuring information and advice in the fields of health, nutrition, weight loss, diet planning and lifestyle wellness; consultation services in the field of health, wellness and nutrition		


Attachments	88300773#TMSN.png(bytes) 88300775#TMSN.png(bytes) 88300777#TMSN.png(bytes) 88300779#TMSN.png(bytes) 1 PERCENT FITNESS KITCHEN Opposition 8-5-19.pdf(527331 bytes)
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Signature	/Kia Kamran/
Name	KIA KAMRAN ESQ.
Date	08/05/2019

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

TMT Enterprises, LLC,)	Opposition No. _____
Opposer)	
)	
v.)	Application No. 88/298,782
)	Mark: 1% FITNESS KITCHEN
1 Percent Fitness, LLC,)	
)	
Applicant.)	
)	
)	

OPPOSITION

Opposer TMT Enterprises, LLC, believes that it will be damaged by issuance of a registration for Applicant 1 Percent Fitness, LLC’s U.S. Trademark Application No. 88/298/782 for the mark **1% FITNESS KITCHEN** () in International Class 043 for “*Food preparation services featuring fresh, properly proportioned, healthy meals designed to fuel metabolism and burn fat and made to order for delivery or pick up,*” and hereby opposes the same on the following grounds. Allegations with respect to Opposer are based on actual knowledge and all other allegations are based on information and belief:

OPPOSER

1. Opposer TMT Enterprises, LLC, is a California based food preparation and delivery company, doing business as FITNESS KITCHEN, and is one of the pioneers of how healthy and wholesome food is prepared and delivered to an ever-expanding consumer base of diet and health conscious clients.
2. Opposer’s expansive consumer base spans from large scale catering services for the needy in partnership with special interest programs like the National Health Foundation, to food deliveries for discerning business travelers seeking affordable and dependable options for health-conscious food delivery while abroad, to traditional home deliveries for subscribing customers.

3. Through Opposer’s enormous efforts, and at no small expense, Opposer’s vision of preparing and delivering affordable, healthy and nutrient rich meal plans to the general public has not only become a reality, but also a lifestyle for its consumers.

4. Opposer’s use of its FITNESS KITCHEN mark in connection with its food preparation and delivery services has been continuous and in commerce since at least as early January 01, 2012.

5. Opposer owns U.S. Trademark Applications for the mark FITNESS KITCHEN, App. Serial No. 88/300,775 in Class 039 for “*Delivery services, namely, delivery of prepared food to consumer homes and places of work*”, and App. Serial No. 88/300,777 Class 043 for “*Food preparation services featuring customized meals made for delivery to consumer homes and places of work; catering services; providing a website featuring recipes and cooking information*”, both filed on February 13, 2019 with a first use and first use in commerce date of January 01, 2012. TESS printouts of the corresponding mark applications are attached as **Exhibit A**.

6. On April 27, 2019, the USPTO cited Applicant’s App. Serial No. 88/298,782 for the 1% FITNESS KITCHEN mark in a prior pending application advisory against Opposer’s App. Serial Nos. 88/300,777 and 88/300,775, and subsequently suspended Opposer’s applications on July 03, 2019.

7. Opposer additionally owns the following United States trademark applications for its FITNESS KITCHEN mark, TESS printouts attached in **Exhibit A**:

Mark	Class	Goods/Services
FITNESS KITCHEN Serial No.: 88/300,773 Publication Date: 06/18/2019	005	Dietary and nutritional food supplements; dietary and nutritional protein supplements formed and packaged as bars; powdered dietary and nutritional supplement drink mix containing protein
FITNESS KITCHEN Serial No.: 88/300,779 First Use: 01/01/2012 Publication Date: 07/30/2019	044	Providing a website featuring information about health, wellness and nutrition; providing a website featuring information and advice in the fields of health, nutrition, weight loss, diet planning and lifestyle wellness; consultation

		services in the field of health, wellness and nutrition
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8. Opposer also owns any and all corresponding common law rights to its FITNESS KITCHEN mark for all of the foregoing goods and services.
9. All the foregoing marks identified above are collectively referred to as “**Opposer’s Marks**”, and their respective goods and services are collectively referred to as “**Opposer’s Goods and Services**”.
10. Opposer has invested considerable money, time and effort into the use, advertising and promotion of Opposer’s Marks in connection with Opposer’s Goods and Services since at least before the first use date of Applicant’s 1% FITNESS KITCHEN mark.
11. Prior to Applicant’s first use date, Opposer has continuously and extensively used Opposer’s Marks in commerce on and in connection with the advertising, promotion, offer and sale of Opposer’s Goods and Services.

APPLICANT

12. Applicant 1 Percent Fitness, LLC, is a Utah Limited Liability Company with an address of record at 646 N Sage Vista Drive, Lehi, Utah 84043.
13. On February 12, 2019, Applicant filed a 1A use-based application, Application Serial Number 88/298,782, for the 1% FITNESS KITCHEN mark in Class 043 for “*Food preparation services featuring fresh, properly proportioned, healthy meals designed to fuel metabolism and burn fat and made to order for delivery or pick up*” (“**Applicant’s Services**”). The Application alleged a first use and first use in commerce date as of December 13, 2013 and January 12, 2019, respectively.
14. On June 18, 2019, Application Serial No. 88/298,782 published on the principal register.

FIRST GROUND FOR OPPOSITION:

PRIORITY AND LIKELIHOOD OF CONFUSION, 15 U.S.C. § 1052(D)

15. Opposer repeats and alleges each and every allegation in the preceding paragraphs as if fully set forth herein.

16. Opposer has used in commerce Opposer's Marks well before Applicant's February 12, 2019 filing date and the first use and first use in commerce date of December 13, 2013 and January 12, 2019, respectively, alleged by Applicant in its App. Serial No. 88/298,782.

17. On information and belief, Applicant did not use Applicant's Mark in commerce in connection with its services before its first use date of December 13, 2013.

18. Opposer's first use dates for Opposer's Marks predate any date upon which Applicant can rely, and accordingly, Opposer's rights are senior to Applicant's.

19. Opposer's Mark and Applicant's Mark are nearly identical in appearance, sound, connotation and commercial impression.

20. Opposer's services under Opposer's App. Serial Nos. 88/300,777 and 88/300,775 for Class 034 and 043, respectively, are legally identical in part and highly related to Applicant's Services under Applicant's Mark.

21. Opposer's Goods and Services under App. Serial Nos. 88/300,773 and 88/300,779 for Classes 005 and 044, respectively, are substantially related to Applicant's Services under Applicant's Mark.

22. Opposer's Goods and Services and Applicant's Services are offered to identical purchasers.

23. Applicant's 1% FITNESS KITCHEN mark, when used in connection with Applicant's Services, is likely to cause confusion, mistake, or deceive the trade and purchasing public who, upon seeing Opposer's Marks in connection with Applicant's Services, would believe that such services originate with, are approved, sponsored or endorsed by, or have some connection or affiliation with Opposer pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this Opposition be sustained and that the Board order that Application Serial No. 88/298,782 be refused registration.

The required fee of four hundred dollars (\$400) is submitted herewith. Opposer appoints Kia Kamran, Esq., and Matthew Stearns, Esq., of Kia Kamran, P.C., to transact all business in connection with this Opposition on Opposer's behalf.

Dated: August 05, 2019

Respectfully submitted,

/Kia Kamran/

Kia Kamran, Esq.
Matthew Stearns, Esq.
Kia Kamran P.C.
1900 Avenue of the Stars, 25th Floor
Los Angeles, CA 90067-4301
(310) 284-8600
Attorneys for Opposer

EXHIBIT A

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FITNESS KITCHEN

Word Mark	FITNESS KITCHEN
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional food supplements; dietary and nutritional protein supplements formed and packaged as bars; powdered dietary and nutritional supplement drink mix containing protein
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88300773
Filing Date	February 13, 2019
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	June 18, 2019
Owner	(APPLICANT) TMT Enterprises, LLC LIMITED LIABILITY COMPANY CALIFORNIA c/o Kia Kamran, P.C. 1900 Avenue of the Stars, 25th Floor LOS ANGELES CALIFORNIA 900674301
Attorney of Record	Kia Kamran
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FITNESS" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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FITNESS KITCHEN

Word Mark FITNESS KITCHEN
Goods and Services IC 039. US 100 105. G & S: Delivery services, namely, delivery of prepared food to consumer homes and places of work. FIRST USE: 20120101. FIRST USE IN COMMERCE: 20120101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 88300775
Filing Date February 13, 2019
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) **TMT Enterprises**, LLC LIMITED LIABILITY COMPANY CALIFORNIA c/o Kia Kamran, P.C. 1900 Avenue of the Stars, 25th Floor LOS ANGELES CALIFORNIA 900674301
Attorney of Record Kia Kamran
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
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FITNESS KITCHEN

Word Mark FITNESS KITCHEN
Goods and Services IC 043. US 100 101. G & S: Food preparation services featuring customized meals made for delivery to consumer homes and places of work; catering services; providing a website featuring recipes and cooking information. FIRST USE: 20120101. FIRST USE IN COMMERCE: 20120101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 88300777
Filing Date February 13, 2019
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) **TMT Enterprises**, LLC LIMITED LIABILITY COMPANY CALIFORNIA c/o Kia Kamran, P.C. 1900 Avenue of the Stars, 25th Floor LOS ANGELES CALIFORNIA 900674301
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Type of Mark SERVICE MARK
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FITNESS KITCHEN

Word Mark FITNESS KITCHEN
Goods and Services IC 044. US 100 101. G & S: Providing a website featuring information about health, wellness and nutrition; providing a website featuring information and advice in the fields of health, nutrition, weight loss, diet planning and lifestyle wellness; consultation services in the field of health, wellness and nutrition. FIRST USE: 20120101. FIRST USE IN COMMERCE: 20120101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 88300779
Filing Date February 13, 2019
Current Basis 1A
Original Filing Basis 1A
Published for Opposition July 30, 2019
Owner (APPLICANT) **TMT Enterprises, LLC** LIMITED LIABILITY COMPANY CALIFORNIA c/o Kia Kamran, P.C. 1900 Avenue of the Stars, 25th Floor LOS ANGELES CALIFORNIA 900674301
Attorney of Record Kia Kamran
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FITNESS" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
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