

ESTTA Tracking number: **ESTTA1012381**

Filing date: **10/30/2019**

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	Niche.com, Inc.
Granted to Date of previous extension	10/30/2019
Address	5830 ELLSWORTH AVENUE SUITE 101 PITTSBURGH, PA 15232 UNITED STATES

Attorney information	ROCHELLE D. ALPERT MORGAN, LEWIS & BOCKIUS LLP ONE MARKET SPEAR ST. TOWER, 5TH FL. SAN FRANCISCO, CA 94105 UNITED STATES ralpert@morganlewis.com, sftrademarks@morganlewis.com, sharon.smith@morganlewis.com, peter.byrne@morganlewis.com, yelena.lolua@morganlewis.com 415 442-1326
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Applicant Information

Application No	88063603	Publication date	07/02/2019
Opposition Filing Date	10/30/2019	Opposition Period Ends	10/30/2019
Applicant	Wolf, Tyrel W 10361 Angel Oak Ct Orlando, FL 32836 UNITED STATES		

Goods/Services Affected by Opposition


<p>Class 041. First Use: 2016/12/04 First Use In Commerce: 2016/12/04 All goods and services in the class are opposed, namely: Fitness boot camps; Charitable services in the nature of providing fitness instruction in the field of strength and conditioning; Consulting services in the fields of fitness and exercise; Counseling services in the field of physical fitness; Education services, namely, providing panel discussions in the field of strength and conditioning; Educational services, namely, developing and conducting workouts, workshops, presentations, retreats, and personal training in right-brain fitness; Golf fitness instruction; Personal fitness training services; Personal fitness training services and consultancy; Personal fitness training services featuring aerobic and anaerobic activities combined with resistance and flexibility training; Personal trainer services; Physical fitness assessment services; Physical fitness conditioning classes; Physical fitness consultation; Physical fitness instruction; Physical fitness studio services, namely, providing exercise classes, body sculpting classes, and group fitness classes; Physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; Physical fitness training of individuals and</p>

groups; Physical fitness training services; Providing fitness and exercise facilities; Providing fitness and exercise studio services, namely, pilates instruction and training; Providing a website featuring information on exercise and fitness; Providing a website featuring information on exercise and fitness; Providing an interactive website featuring information and links relating to fitness; Providing an on-line computer database featuring information regarding exercise and fitness; Providing classes, workshops, seminars and camps in the fields of fitness, exercise, boxing, kickboxing and mixed martial arts; Providing facilities for strength and conditioning training; Providing personal fitness training for individuals; Providing personal training and physical fitness consultation to corporate clients to help their employees make physical fitness, strength, conditioning, and exercise alterations in their daily living; Providing personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living; Providing physical fitness and exercise service, namely, indoor cycling and yoga instruction

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4507852	Application Date	04/25/2013
Registration Date	04/01/2014	Foreign Priority Date	NONE
Word Mark	NICHE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2013/10/00 First Use In Commerce: 2013/10/00 Providing via the Internet information, ratings, reviews and evaluations about colleges, universities, graduate schools, professional schools, vocational schools and programs, online schools, high schools, junior high schools, elementary schools and nursery schools, school districts, scholarships, study abroad programs, majors, internships, and geographic areas, namely, cities, towns neighborhoods and communities		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NICHE; domain name niche.com; trade name Niche		
Goods/Services	As specified in the attached NOTICE OF OPPOSITION.		

Attachments	85914638#TMSN.png(bytes) Notice of Opposition and Exhibit A.pdf(386433 bytes)
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Signature	/RDA/
Name	ROCHELLE D. ALPERT
Date	10/30/2019

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

In the matter of Application Serial No. **88/063,603**
Filed August 2, 2018
For the mark **MYNICHE**
Published in the OFFICIAL GAZETTE on July 2, 2019

Niche.com, Inc.,		Opposition No.
	Opposer,	
v.		
Tyrel W. Wolf,		
	Applicant	

NOTICE OF OPPOSITION

Niche.com, Inc. (“Niche”), a Delaware corporation, believes it will be damaged by the application for MYNICHE, Serial No. 88/063,603 (“Application”), filed by Tyrel W. Wolf (“Applicant”). Niche hereby opposes the Application filed by Applicant. As grounds for the opposition, Niche alleges as follows:

Niche’s Trademark and Other Rights

1. Niche commenced use of its NICHE mark and trade name at least as early as 2013, and has continuously used the NICHE mark and trade name since in interstate commerce. Niche has used and uses the NICHE mark and trade name as a source identifier for its services, which include information on and/or rankings of, among other matters, educational institutions, cities, towns neighborhoods and communities. One of the categories of information that Niche collects and evaluates concerns “Health & Outdoors.” For example, you can look up the “Healthiest” locations or the locations with the best “Outdoor Activities.” Niche also offers a blog on a variety of topics. Niche also has continuously used the domain name www.niche.com

in connection with its services. The NICHE Mark and Name appear prominently on the website at www.niche.com.

2. Niche owns a federal trademark registration for the mark NICHE (U.S. Reg. No. 4,507,852), which was filed on April 25, 2013 as an intent-to-use application for use in connection with “providing via the Internet information, ratings, reviews and evaluations about colleges, universities, graduate schools, professional schools, vocational schools and programs, online schools, high schools, junior high schools, elementary schools and nursery schools, school districts, scholarships, study abroad programs, majors, internships, and geographic areas, namely, cities, towns neighborhoods and communities” in International Class 41. The federal trademark registration for this application issued on April 1, 2014. This trademark registration is now incontestable. A true and correct copy of the TSDR and Assignment Status printouts for this registration from the USPTO website is attached hereto as **Exhibit A**.

3. Niche has long owned and used the registered NICHE[®] mark and the NICHE mark, name and domain name at common law for its services, (collectively referred to as the “NICHE[®] Mark and Name”), and has used the NICHE[®] Mark and Name in interstate commerce, since well before the August 2, 2018 filing date of the opposed Application or the December 4, 2016 claimed first use date recited in the opposed Application.

4. Further, Niche has long used and uses various social media platforms, such as Facebook (www.facebook.com/nichesocial), Twitter (www.twitter.com/nichesocial) and Instagram (www.instagram.com/nichesocial) to promote the services that Niche offers.

5. The NICHE[®] Mark and Name, and the services associated with the NICHE[®] Mark and Name, are well-regarded, having been used in interstate commerce continuously for over five years.

6. Since before the opposed Application was filed and before the date of first use claimed in the opposed Application, Niche has expended substantial time and effort in promoting the NICHE[®] Mark and Name.

7. Through continuous and extensive use, the NICHE[®] Mark and Name have become identified substantially and exclusively with Niche and its services, including providing information, ratings and listings on educational institutions, cities, towns neighborhoods and communities. Over the years, Niche has received over 100 million ratings and reviews in connection with its services. Moreover, the NICHE website has been visited by millions of users. Further, third parties have published an array of articles and reports about Niche and its services. Accordingly, Niche has developed substantial goodwill in its NICHE[®] Mark and Name, and the NICHE[®] Mark and Name has strong association with Niche.

Applicant's Application for MYNICHE

8. By way of the opposed Application, Applicant, on August 2, 2018, applied to register MYNICHE in International Class 41 for the following services:

Fitness boot camps; Charitable services in the nature of providing fitness instruction in the field of strength and conditioning; Consulting services in the fields of fitness and exercise; Counseling services in the field of physical fitness; Education services, namely, providing panel discussions in the field of strength and conditioning; Educational services, namely, developing and conducting workouts, workshops, presentations, retreats, and personal training in right-brain fitness; Golf fitness instruction; Personal fitness training services; Personal fitness training services and consultancy; Personal fitness training services featuring aerobic and anaerobic activities combined with resistance and flexibility training; Personal trainer services; Physical fitness assessment services; Physical fitness conditioning classes; Physical fitness consultation; Physical fitness instruction; Physical fitness studio services, namely, providing exercise classes, body sculpting classes, and group fitness classes; Physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; Physical fitness training of individuals and groups; Physical fitness training services; Providing fitness and exercise facilities; Providing fitness and exercise studio services, namely, pilates instruction

and training; Providing a web site featuring information on exercise and fitness; Providing a website featuring information on exercise and fitness; Providing an interactive website featuring information and links relating to fitness; Providing an on-line computer database featuring information regarding exercise and fitness; Providing classes, workshops, seminars and camps in the fields of fitness, exercise, boxing, kick boxing and mixed martial arts; Providing facilities for strength and conditioning training; Providing personal fitness training for individuals; Providing personal training and physical fitness consultation to corporate clients to help their employees make physical fitness, strength, conditioning, and exercise alterations in their daily living; Providing personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living; Providing physical fitness and exercise service, namely, indoor cycling and yoga instruction

9. Well in advance of the filing date of the Application and the date of first use claimed in the Application, Niche had long used its NICHE[®] Mark and Name for its services, including providing information and/or ratings related to education and locations, including “health and outdoor” activities. Niche owned a federal trademark registration for its NICHE[®] Mark and Name, for its services, providing constructive notice to Applicant of Niche’s trademark rights. Niche offers its services at no cost and directs its services to a wide array of consumers.

10. Overall, Applicant’s Application is not limited as to any type of customers or consumers. Thus, on information and belief, Applicant intends to use its applied for designation for services that are directly related, complementary and/or overlapping to those services Niche has long offered under the NICHE[®] Mark and Name.

11. The designation in the opposed Application fully incorporates the NICHE[®] Mark and Name.

12. Applicant’s use of the designation it seeks to register in its Application is without consent or authorization of Niche.

13. The Trademark Trial and Appeals Board granted a timely filed extension of time to oppose filed by Niche. As a result, the expiration of this opposition period is October 30, 2019. Thus, this opposition has been timely filed.

FIRST CAUSE OF ACTION
Likelihood of Confusion

14. Niche incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 13 of this Notice of Opposition.

15. The opposed designation referenced in the Application is confusingly similar in sight, sound and meaning, as well as overall commercial impression to Niche's NICHE[®] Mark and Name. The Application is for a mark that includes Niche's NICHE[®] Mark and Name. On the face of the Application, the mark appears virtually identical to Niche's trademark NICHE[®].

16. Based on the face of the Application, the services identified in the opposed Application compete or overlap with, are directly related to, and/or complementary to the services Niche promotes, offers and sells under its NICHE[®] Mark and Name.

17. Further, the services listed in the Application are, or will be offered, promoted and/or sold through the same or overlapping channels of trade and/or in the same geographic locations, are or will be used and/or are likely to be used by the same or overlapping users, and are or will be directed and/or are likely to be directed to the same or overlapping type of customers to whom Niche markets, offers services using its NICHE[®] Mark and Name.

18. Niche's trademark rights for and in the NICHE[®] Mark and Name the filing date of the Application, the constructive use date, and the claimed first use date recited in the Application.

19. Niche believes it will be damaged by registration of the applied-for designation covered by the Application because consumers are likely to be confused and believe, mistakenly,

that Applicant or Applicant's services emanate from, are sponsored or authorized by, or are otherwise associated or affiliated with Niche, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), when there is no affiliation whatsoever between Niche and Applicant, or Niche's services protected by its NICHE[®] Mark and Name and those services offered by Applicant, with consequent injury to Niche and to the relevant public.

20. Unless the Application is denied, Applicant will unjustifiably reap the benefits of the goodwill that Niche has built and Niche will suffer irreparable damage and injury as a result of the confusion and mistake and false association that is likely to arise.

21. Accordingly, Applicant is not entitled to a registration for the opposed MYNICHE designation under the Lanham Act, 15 U.S.C. § 1052(d), as the proposed designation is likely to cause confusion or mistake or to deceive or disparage by falsely suggesting a connection with Niche and its mark, when there is none.

SECOND CAUSE OF ACTION
Lack of Use in Interstate Commerce for All of the Services

22. Niche Incorporates by reference and relleges as though fully set forth herein the Allegations of paragraphs 1 through 13 and 15 through 20 of this Notice of Opposition.

23. On information and belief, as of the filing date of the Application, Applicant did not have use of the mark in commerce for each of the services listed.

24. Accordingly, Applicant is not entitled to a registration for the opposed MYNICHE designation under the Lanham Act.

WHEREFORE, Niche prays that Application Serial No. 88/063,603 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Niche.

Dated: October 30, 2019

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS, LLP

By: /s/ Rochelle D. Alpert
Rochelle D. Alpert


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Niche.com, Inc.

EXHIBIT A

BULK DATA: Since May 7 at 12 a.m., the TSDR Application Programming Interface (API) has not included all information. Images of trademark registration certificates issued since July 2016 and some office actions are absent in the API. Customers who need to retrieve a copy of a registration certificate or an office action should download it directly from the TSDR documents tab.

INTERMITTENT SYSTEM ISSUES: Due to high-volume usage, you may experience intermittent issues on the Trademark Status and Document Retrieval (TSDR) system between 6 – 8 a.m. ET. Refreshing your web browser should resolve the issue. If you still need assistance accessing a document, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS	DOCUMENTS	MAINTENANCE	Back to Search	Print
Generated on: This page was generated by TSDR on 2019-10-30 15:29:48 EDT				
Mark: NICHE				
<h1>NICHE</h1>				
US Serial Number: 85914638		Application Filing Date: Apr. 25, 2013		
US Registration Number: 4507852		Registration Date: Apr. 01, 2014		
Register: Principal				
Mark Type: Service Mark				
TM5 Common Status Descriptor:		LIVE/REGISTRATION/Issued and Active		
		The trademark application has been registered with the Office.		
Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.				
Status Date: May 11, 2019				
Publication Date: Sep. 24, 2013		Notice of Allowance Date: Nov. 19, 2013		
▼ Mark Information ▲ Collapse All				
Mark Literal Elements: NICHE				
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.				
Mark Drawing Type: 4 - STANDARD CHARACTER MARK				
▼ Goods and Services				
Note: The following symbols indicate that the registrant/owner has amended the goods/services:				
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis (...) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and • Asterisks *..* identify additional (new) wording in the goods/services. 				
For: Providing via the Internet information, ratings, reviews and evaluations about colleges, universities, graduate schools, professional schools, vocational schools and programs, online schools, high schools, junior high schools, elementary schools and nursery schools, school districts, scholarships, study abroad programs, majors, internships, and geographic areas, namely, cities, towns neighborhoods and communities				
International Class(es): 041 - Primary Class		U.S Class(es): 100, 101, 107		
Class Status: ACTIVE				
Basis: 1(a)				
First Use: Oct. 2013		Use in Commerce: Oct. 2013		
▼ Basis Information (Case Level)				
Filed Use: No		Currently Use: Yes		
Filed ITU: Yes		Currently ITU: No		
Filed 44D: No		Currently 44E: No		
Filed 44E: No		Currently 66A: No		
Filed 66A: No		Currently No Basis: No		
Filed No Basis: No				
▼ Current Owner(s) Information				
Owner Name: NICHE.COM, INC.				
Owner Address: 2840 Liberty Avenue, Suite 202 PITTSBURGH, PENNSYLVANIA UNITED STATES 15222				
Legal Entity Type: CORPORATION		State or Country Where: DELAWARE		

Organized:

▼ Attorney/Correspondence Information

Attorney of Record

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Docket Number: 06177.2050

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Correspondent e-mail
 Authorized: Yes

Domestic Representative - Not Found

▲ Prosecution History

▼ TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 117

Date in Location: May 11, 2019

▼ Assignment Abstract Of Title Information - Click to Load

▼ Proceedings - Click to Load



Trademark Assignment Abstract of Title

Total Assignments: 1Serial #: [85914638](#)

Filing Dt: 04/25/2013

Reg #: [4507852](#)

Reg. Dt: 04/01/2014

Registrant: NICHE.COM, INC.

Mark: NICHE

Assignment: 1Reel/Frame: [5175/0257](#)

Recorded: 12/17/2013

Pages: 5

Conveyance: CHANGE OF NAME

Assignor: [COLLEGE PROWLER, INC.](#)

Exec Dt: 08/26/2013

Entity Type: CORPORATION

Citizenship: DELAWARE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: [NICHE.COM, INC.](#)5830 ELLSWORTH AVENUE, SUITE 101
PITTSBURGH, PENNSYLVANIA 15232Correspondent: ROCHELLE D. ALPERT
ONE MARKET, SPEAR STREET TOWER
SAN FRANCISCO, CA 94105If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.6
Web interface last modified: August 25, 2017 v.2.6

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