

ESTTA Tracking number: **ESTTA1080435**

Filing date: **09/08/2020**

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	ProFoot, Inc.
Granted to Date of previous extension	09/06/2020
Address	74 20TH STREET BROOKLYN, NY 11232 UNITED STATES
Attorney information	JOHN M. NABER, ALISA C. SIMMONS FITCH EVEN TABIN & FLANNERY LLP 120 SOUTH LASALLE STREET SUITE 2100 CHICAGO, IL 60603 UNITED STATES Primary Email: trademark@fitcheven.com Secondary Email(s): asimmons@fitcheven.com 312-577-7000
Docket Number	9093-149003

Applicant Information

Application No.	88438807	Publication date	03/10/2020
Opposition Filing Date	09/08/2020	Opposition Period Ends	09/06/2020
Applicant	Twin Med, LLC 11333 GREENSTONE AVENUE SANTA FE SPRINGS, CA 90670 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2003/01/31 First Use In Commerce: 2003/01/31
Opposed goods and services in the class: heating pads for medical purposes, namely, instant hot packs for placing on the body; medical ice packs, namely, cold packs for placing on the body; thermometers for medical use;

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. Registration	4515974	Application Date	01/31/2013
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No.			
Registration Date	04/15/2014	Foreign Priority Date	NONE
Word Mark	PROCURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2014/02/17 First Use In Commerce: 2014/02/17 Topical first aid gel		

Attachments	Notice of Opposition to PROCURE by Twin Med - Ser No 88438807.pdf(106415 bytes) Exhibit A to Notice of Opposition to PROCURE.pdf(391469 bytes)
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Signature	/Alisa C. Simmons/
Name	JOHN M. NABER, ALISA C. SIMMONS
Date	09/08/2020

9093-149003

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

ProFoot, Inc.,

Opposer,

v.

Opposition No.

Twin Med, LLC
Applicant.

Serial No.: 88438807

Filed: May 20, 2019

Mark: *ProCure*

Published: March 10, 2020

NOTICE OF OPPOSITION

ProFoot, Inc., a New York corporation, having a principal place of business at 74 20th Street, Brooklyn, New York 11232 (“ProFoot”), believes that it will be damaged by registration of the mark PROCURE in Application No. 88438807, owned by Applicant Twin Med, LLC, a Delaware limited liability company located in Santa Fe Springs, California (“Applicant”), and opposes the same upon the following grounds:

COUNT I – PRIORITY AND LIKELIHOOD OF CONFUSION

1. ProFoot manufactures and sells topical first aid products under the brand name PROCURE.
2. Applicant seeks registration on the Principal Register for the mark PROCURE for healthcare, medical and personal care products including, “Heating pads for medical purposes, namely, instant hot packs for placing on the body; medical ice packs, namely, cold packs for placing on the body; thermometers for medical use,” in Class 10,” among other such healthcare, medical, and personal care products in Application Serial No. 88438807, filed May 20, 2019, and published for opposition on March 10, 2020.

3. Commencing before Applicant's application filing date, ProFoot has been engaged in and continues to be engaged in the manufacture, distribution, sale, and promotion of topical first aid products under the brand PROCURE.

4. ProFoot began using the mark PROCURE at least as early as February 17, 2014, in connection with topical first aid products, and began using the trade name PROCURE in connection with topical first aid products at least as early as February 17, 2014.

5. For its PROCURE mark, ProFoot filed an application on January 31, 2013, for which the U.S. Patent and Trademark Office (USPTO) issued U.S. Registration No. 4515974 on April 15, 2014, for use on topical first aid gel. ProFoot's Registration No. 4515974 is presently valid and subsisting and is now owned by ProFoot and is *prima facie* evidence of ProFoot's exclusive right to use said mark in commerce on those goods. ProFoot's Registration No. 4515974 is incontestable under the provisions of 15 U.S.C. § 1065. A printout of Registration No. 4515974 with status and title information from the USPTO website is attached as Exhibit A.

6. On information and belief, ProFoot's PROCURE mark has a filing, registration, and use-based priority that is earlier than the May 20, 2019, filing date in Application No. 88438807.

7. ProFoot has expended substantial money and effort in promoting its PROCURE mark and PROCURE trade name in connection with its topical first aid products in the United States. As a result of such efforts and expenditures, as well as the high quality of its goods, the PROCURE mark has come to represent extremely valuable goodwill to ProFoot. ProFoot has also enjoyed revenue from the sales of its products associated with its PROCURE mark.

8. On information and belief, the specified goods noted above for which Applicant seeks registration of the PROCURE mark in Class 10 are related to the goods that ProFoot offers in connection with its PROCURE mark and PROCURE trade name.

9. On information and belief, the goods noted above for which Applicant seeks registration of the PROCURE mark in Class 10 are likely to be marketed and sold to the same or related customers and through the same or related channels of trade in which ProFoot provides its goods in connection with its PROCURE mark and its PROCURE trade name.

10. Applicant's PROCURE mark is confusingly similar in appearance, sound, and meaning to ProFoot's PROCURE mark and to the PROCURE trade name.

11. Applicant's PROCURE mark and use of that mark by Applicant on the goods specified in Class 10 in Application Serial No. 88438807 are likely to cause confusion, mistake, or deception that Applicant's goods are those of ProFoot's or are otherwise endorsed, sponsored, or approved by ProFoot, whereby ProFoot will be damaged by the registration of Applicant's PROCURE mark on the Principal Register of the U.S. Patent and Trademark Office.

12. If Applicant is granted registration of its PROCURE mark for products in Class 10 as set forth in Application Serial No. 88438807, Applicant will thereby obtain the *prima facie* exclusive right to use such mark for those products, and such registration will damage, impair, and diminish ProFoot's goodwill and rights in its PROCURE mark and trade name, causing irreparable injury to ProFoot.

PRAYER FOR RELIEF

WHEREFORE, ProFoot prays that this Opposition be sustained, that Application No. 88438807 be rejected, that registration of the mark PROCURE for the products listed in that application in Class 10 be refused, and that ProFoot be granted such further relief as this Board deems just and appropriate.

Date: September 8, 2020

Respectfully submitted,

By: /Alisa Simmons/
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Exhibit A



United States Patent and Trademark Office

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PROCURE

Word Mark	PROCURE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Topical first aid gel. FIRST USE: 20140217. FIRST USE IN COMMERCE: 20140217
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85837463
Filing Date	January 31, 2013
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	June 25, 2013
Registration Number	4515974
Registration Date	April 15, 2014
Owner	(REGISTRANT) ProFoot, Inc. CORPORATION NEW YORK 74 20th Street Brooklyn NEW YORK 11232
Attorney of Record	John M. Naber and Alisa C. Simmons
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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No assignment has been recorded at the USPTO

For Serial Number: 85837463

If 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