

ESTTA Tracking number: **ESTTA1106745**

Filing date: **01/08/2021**

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

Proceeding	91265704
Party	Defendant Rally PT, LLC
Correspondence Address	RALLY PT, LLC 1781 ST JOHNS AVE HIGHLAND PARK, IL 60035 UNITED STATES Primary Email: kate@rallyphysicaltherapy.com No phone number provided.
Submission	Answer
Filer's Name	Kathleen D Blankshain
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Signature	/Kathleen D Blankshain/
Date	01/08/2021
Attachments	Rally PT answer to opposition January 8.pdf(148165 bytes)

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

In the Matter of Application Serial No. 88680310
Published in the *Official Gazette* (Trademarks) on July 7, 2020

Rally Health, Inc.,

Opposer,

v.

Rally Pt, LLC,

Rally PT.

Opposition No. 91265704

Rally PT'S ANSWER TO OPPOSITION

Rally PT Rally PT, LLC ("Rally PT") respectfully denies Opposer's assertion that it will be damaged by registration of the mark shown in Application Serial No. 88/680.310.

Opposer alleges the following:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with offices at 3000 K Street NW, Suite 350, Washington, D.C. 20007-5109.
2. Opposer is a well-known developer and publisher of healthcare and health insurance mobile apps and software used by millions of consumers, which it markets using a family of RALLY-formative trademarks including but not limited to RALLY, RALLY HEALTH, RALLY CONNECT, RALLY CHOICE, and RALLY CARE ("Opposer's Marks").
3. In addition to its longstanding common law rights in Opposer's Marks, Opposer owns a number of United States trademark registrations for Opposer's Marks, including:
 - a. U.S. Reg. No. 4902473 for RALLY for, among other services, "Providing health information; Internet-based health care information services; providing health information to health care providers and employers to empower their members to better understand and manage their health; providing an interactive web site for providing health and medical information and providing electronic reports regarding the overall health of consumers," granted February 16, 2016;
 - b. U.S. Reg. No. 4914505 for Rally and associated Design for, among other services, "Providing health information; Internet-based health care information services; providing health information to health care providers

and employers to empower their members to better understand and manage their health; providing an interactive web site for providing health and medical information and providing electronic reports regarding the overall health of consumers,” granted March 8, 2016.

- c. U.S. Reg. No. 5202685 for RALLY CONNECT for, among other services, “Health care services, namely, providing medical information regarding health care professionals, and doctors,” granted May 16, 2017.
- d. U.S. reg. No. 5174311 for RALLY CHOICE for, among other services, “Providing an interactive website featuring technology that allows users to research and enroll in health care benefit plans,” granted April 4, 2017;
- e. U.S. Reg. No. 5800913 for RALLY MARKETPLACE for, among other services, “Online retail store services featuring goods in the fields of health, beauty, wellness, sports, wearable activity trackers, over the counter health supplies, nutritional supplements, vitamins...and services in the fields of health, beauty, wellness, sports,” granted July 9, 2019;
- f. U.S. Reg. No. 5200257 for RALLY HEALTH for, among other services, “Providing health information; Internet-based health care information services; providing health information to health care providers and employers to empower their members to better understand and manage their health; providing an interactive web site for providing health and medical information and providing electronic reports regarding the overall health of consumers,” granted May 9, 2018; and
- g. U.S. Reg. No 5633035 for Rally CARE for “mobile applications for estimating health care costs, searching for healthcare professionals and facilities, learning information about health care professionals and facilities, including patient satisfaction ratings; computer software featuring healthcare information,” granted December 18, 2018.

Opposer asserts that all of the foregoing registrations (collectively “Opposer’s Registrations”) are valid and subsisting on the Principal Register. Opposer asserts that they constitute *prima facie* evidence of its right to use Opposer’s Marks in commerce, and they provide constructive notice of ownership thereof by Opposer. Opposer asserts that true and correct copies of current printouts of information from the electronic database records of the USPTO, showing the current status and title of Opposer’s Registrations, which were attached as Exhibit A of the Notice of Opposition.

4. Opposer asserts that for at least five years prior to the filing of the application at issue, Opposer has used Opposer’s marks in commerce in the United States on and in connection with the foregoing services. Opposer further asserts that by virtue of the excellence of the products and services sold under Opposer’s marks, Opposer’s Marks are recognizable to consumers in connection with a wide range of products and services in the health care industry and have developed a valuable reputation in connection with those services.
5. Opposer asserts that notwithstanding Opposer’s prior rights in and to Opposer’s Marks, on November 5, 2019, Rally PT filed U.S. Trademark Application, Serial No. 88680310 (“Trademark Application”) for registration of the mark RALLY PHYSICAL THERAPY (“Rally PT’s Mark”), in International Classes 041 for “Personal fitness training services; Training services in the field of sports performance” and Class 044 for “Physical rehabilitation; Physical therapy,” alleging a date of first use of December 17, 2017 (the ‘Opposed Application’). On July 7, 2020, Rally PT’s Trademark Application was published in the *Official Gazette* for opposition.

Rally PT answers as follows:

1–3: Regarding paragraphs 1–3 above, Rally PT acknowledges receipt of Exhibit A mentioned above and admits these documents appear to indicate existence of registrations listed in 3.a–g. Rally PT does not have information to evaluate whether the allegations of paragraphs 1–2 are true.

4: Regarding paragraph 4 above, Rally PT does not have information to evaluate whether the allegations are true.

5: Regarding paragraph 5 above, Rally PT admits it applied for a registration mark as alleged by the Opposer. Rally PT denies Opposer had prior rights that affect Rally PT’s application. Rally PT admits Rally PT’s Trademark Application was published in the *Official Gazette* for opposition on July 7, 2020.

ANSWER TO OPPOSER’S FIRST CLAIM FOR RELIEF

(Likelihood of Confusion with Registered Mark)

6. Rally PT answers Opposer’s claims in paragraphs 1 through 5 as stated above.

7. Rally PT denies Opposer’s claim that Rally PT’s mark so resembles Opposer’s Marks as shown in Opposer’s Registrations as to be likely, when used on or in connection, with the ser-

vices identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Rally PT's Mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. (symbol) 1052 (d). Rally PT denies that registration of Rally PT's mark is likely to or will cause confusion, mistake, or deception. Further, the primary services provided by Rally PT include one-on-one physical therapy evaluation and treatment performed by licensed healthcare providers, which are distinct from Opposer's services outlined in paragraph 3. Opposer does not provide physical therapy services by licensed healthcare providers. Furthermore, Opposer provides a disclaimer through the United Healthcare website explicitly distinguishing between the services provided by Rally PT and services provided by Opposer: "Rally Health provides health and well-being information and support as part of your health plan. It does not provide medical advice or other health services, and is not a substitute for your doctor's care" (<https://www.uhc.com/individual-and-family/member-resources/health-care-programs/rally>). Accordingly, registration of Rally PT's mark cannot cause confusion, mistake, or deception.

8. Rally PT denies Opposer's claim that Opposer will be damaged by registration of Rally PT's Mark in connection with the services identified in the Opposed Application, because registration will give Rally PT *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's Marks as shown in Opposer's Registrations.

ANSWER TO OPPOSER'S SECOND CLAIM FOR RELIEF

(Likelihood of Confusion with Previously Used Trademark)

9. Rally PT answers Opposer's claims in paragraphs 1 through 5 as stated above.

10. Rally PT denies the following claim made by the Opposer: Rally PT's mark so resembles Opposer's Marks as shown in Opposer's Registrations as to be likely, when used on or in connection, with the services identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Rally PT's Mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. §1052 (d).

11. Rally PT denies the following claim made by the Opposer: Opposer will be damaged by registration of Rally PT's Mark in connection with the services identified in the Opposed Application, because registration will give Rally PT *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's Marks as shown in Opposer's Registrations.

Wherefore Rally PT, LLC asks that the opposition be dismissed and Rally PT, LLC's mark be allowed.

DATED: January 8, 2021

Respectfully submitted,

Rally PT, LLC

By:  Kathleen Blankshain PT, LLC

Kathleen Blankshain
CEO, Owner of Rally PT, LLC
1781 St Johns Ave
Highland Park, IL 60035

Proof of Service.

I hereby certify that a true and complete copy of the foregoing answer to opposition has been served on Rally Health, Inc. by forwarding said copy on January 8, 2021 via email to: Stephen Lott, slott@seyfarth.com.

Signature:

Kathleen Blankslein PT, DPT

Date: January 8, 2021