

ESTTA Tracking number: **ESTTA1178773**

Filing date: **12/15/2021**

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	Wattbike IP Limited
Granted to Date of previous extension	12/15/2021
Address	VERMONT HOUSE NOTTINGHAM SOUTH & WILFORD IND. ESTATE NOTTINGHAM, NG11 7EP UNITED KINGDOM
Attorney information	RICHARD LEHV FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 WEST 42ND STREET 17TH FLOOR NEW YORK, NY 10036 UNITED STATES Primary Email: rlehv@fzlz.com Secondary Email(s): klim@fzlz.com, lzhang@fzlz.com, ttabfiling@fzlz.com 2128135928
Docket Number	WWBA 2110270

Applicant Information

Application No.	90433465	Publication date	08/17/2021
Opposition Filing Date	12/15/2021	Opposition Period Ends	12/15/2021
Applicant	RPM FITNESS, INC. 581 DIVISION ST STE B CAMPBELL, CA 95008 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Downloadable computer software, namely, a mobile phone application used in connection with a display screen that enables the user to watch himself or herself, other participants, and video content simultaneously on a single display; Digital media, namely, downloadable audio and audiovisual recordings, all in the field of exercise, fitness, wellness and personal development; downloadable software in the nature of an application for use by individuals participating in exercise classes, physical training, and exercise instruction for detecting, storing and reporting daily human energy expenditure and physical activity level, for developing and monitoring personal activity and exercise plans, training goals and giving feedback on the achieved results; downloadable software for social networking
Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Manually-operated exercise equipment, namely, pull-up bars, adjustable pull-up bars, squat racks, suspension trainers, gymnastic rings, plyometric boxes, kettlebells, dumbbells, jump ropes, resistance bands, sandbags, barbells, plates, barbell collars, weighted bars, sports balls, mobility tools, foam rollers, foam blocks, myofascial balls, sit-up cushions

Class 038. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Streaming of audio and video materials on the Internet featuring physical fitness classes, training, and instruction

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing classes, workshops and seminars in the fields of fitness and exercise, all accessible through a global computer network and mobile devices; physical fitness instruction and consultation accessible through a global computer network and mobile devices; physical fitness conditioning classes accessible through a global computer network and mobile devices; physical fitness training services accessible through a global computer network and mobile devices; providing information on exercise and physical fitness accessible through a global computer network and mobile devices

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing temporary use of non-downloadable computer application software for mobile devices, namely, software to assist the user with exercise, fitness, wellness and personal development

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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATOM		
Goods/Services	Exercise bicycles		

Attachments	F4398552.PDF(133887 bytes)
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Signature	/Richard Lehv/
Name	RICHARD LEHV
Date	12/15/2021

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

WATTBIKE IP LIMITED,

Opposer,

-against-

RPM FITNESS, INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Wattbike IP Limited, a company organized and existing under the laws of the United Kingdom, located and doing business at Vermont House, Nottingham South & Wilford Ind. Estate, Nottingham, NG11 7EP, United Kingdom, believes it will be damaged by the registration of the mark shown in Application Serial No. 90433465, and opposes that application under Section 13(a) of the Trademark Act of 1946, 15 U.S.C. § 1063(a).

As grounds for its opposition, Opposer, by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is using the mark ATOM on and in connection with a variety of goods and services, including exercise bicycles, in commerce in the United States. Such use commenced long prior to any date on which Applicant may rely.

2. In view of the foregoing, Opposer is the owner of common law rights in the ATOM mark in the United States.

3. Opposer's exercise bicycles are compatible with, and designed to work with a number of fitness computer applications, as well as performance tests and training programs.

4. Applicant, RPM Fitness, Inc., filed Application Serial No. 90433465, based on intent to use, for the mark ATOM for, among other goods and services:
- a. “Downloadable computer software, namely, a mobile phone application used in connection with a display screen that enables the user to watch himself or herself, other participants, and video content simultaneously on a single display; Digital media, namely, downloadable audio and audiovisual recordings, all in the field of exercise, fitness, wellness and personal development; downloadable software in the nature of an application for use by individuals participating in exercise classes, physical training, and exercise instruction for detecting, storing and reporting daily human energy expenditure and physical activity level, for developing and monitoring personal activity and exercise plans, training goals and giving feedback on the achieved results; downloadable software for social networking” in Class 9;
 - b. “Manually-operated exercise equipment, namely, pull-up bars, adjustable pull-up bars, squat racks, suspension trainers, gymnastic rings, plyometric boxes, kettlebells, dumbbells, jump ropes, resistance bands, sandbags, barbells, plates, barbell collars, weighted bars, sports balls, mobility tools, foam rollers, foam blocks, myofascial balls, sit-up cushions” in Class 28;
 - c. “Streaming of audio and video materials on the Internet featuring physical fitness classes, training, and instruction” in Class 38;
 - d. “Providing classes, workshops and seminars in the fields of fitness and exercise, all accessible through a global computer network and mobile devices; physical fitness instruction and consultation accessible through a global computer network

and mobile devices; physical fitness conditioning classes accessible through a global computer network and mobile devices; physical fitness training services accessible through a global computer network and mobile devices; providing information on exercise and physical fitness accessible through a global computer network and mobile devices” in Class 41; and

- e. “Providing temporary use of non-downloadable computer application software for mobile devices, namely, software to assist the user with exercise, fitness, wellness and personal development” in Class 42.

This mark was published for opposition in the Trademark Official Gazette on August 17, 2021.

5. Applicant’s ATOM mark is identical to Opposer's ATOM mark. The parties’ marks create the identical commercial impression and are identical in meaning, appearance and sound.

6. Not only are the marks confusingly similar, but also the parties’ goods are closely related. Opposer uses the mark ATOM on and in connection with exercise bicycles, while Applicant intends to use the mark ATOM on and in connection with a variety of goods and services in the exercise field.

7. Upon information and belief, Applicant applied to register the mark ATOM with full knowledge of Opposer’s prior rights in the ATOM mark for closely related products.

8. Applicant's application and the presumption of exclusivity that would come from a registration to Applicant of the ATOM mark are inconsistent with the prior rights of Opposer in the ATOM mark.

9. Applicant’s use and registration of a mark identical to Opposer’s mark for closely related goods and services is likely to create the mistaken impression that Applicant’s goods and

services are made by, come from, or are otherwise associated with Opposer or its goods or that Applicant's goods are endorsed, sponsored, or in some other way connected with Opposer. Any use of the mark ATOM on or in connection with the goods and services in Application Serial No. 90433465 is likely to cause confusion or mistake or to deceive the public into the belief that goods and services offered by Applicant under the ATOM mark come from or are otherwise authorized or sponsored by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

10. By reason of all the foregoing, Opposer will be damaged by the registration of the mark ATOM to Applicant.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of the mark in Application Serial No. 90433465 be denied.

Dated: New York, New York
December 15, 2021

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

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