

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

Fashion Institute of Technology,)
)
 Opposer,)
)
 v.) Opposition No.
) 91166257
)
 Frank M. Weyer,)
)
 Applicant.)
)

ANSWER AND COUNTERCLAIM

I, Frank Weyer, owner of Trademark Application Serial No. 78317588 for registration of the mark NYFIT (pronounced "nigh fit," as in "nylon/spandex fitness clothing") for "clothing, namely shirts," in response to the Notice of Opposition filed by Fashion Institute of Technology ("F.I.T.") dated August 16, 2005, and the Notice from the Trademark Office mailed August 17, 2005, hereby answer the notice and counterclaims as follows:

1. I admit the allegations of paragraph 1.
2. I admit the allegations of paragraph 2.
3. I deny the allegations of paragraph 3.
4. I deny the allegations of paragraph 4.
5. I deny the allegations of paragraph 5. F.I.T.'s Registration No. 2,247,127 is invalid. I do not have sufficient information to admit or deny

the validity of the remaining registrations cited in this paragraph, and on that basis deny the remaining allegations of this paragraph.

6. I do not have sufficient information to admit or deny the allegations cited in paragraph 6, and on that basis deny them.

7. I deny the allegations of paragraph 7.

8. I deny the allegations of paragraph 8.

9. I deny the allegations of paragraph 9.

10. I deny the allegations of paragraph 10.

11. I deny the allegations of paragraph 11.

12. I deny the allegations of paragraph 12.

13. I deny the allegations of paragraph 13.

14. I deny the allegations of paragraph 14.

Counterclaim

15. I reallege the allegations of paragraphs 1 – 14 hereof.

16. I, Frank Weyer, am the owner of Trademark Application Serial No. 78317588 for registration of the mark NYFIT (pronounced “nigh fit,” as in “nylon/spandex fitness clothing”) for “clothing, namely shirts.”

17. Opposer, Fashion Institute of Technology, (“F.I.T.”) is a small special purpose community college that offers two year and four year degrees in fashion design and related subjects to a limited number of students.

18. F.I.T is known by its acronym, “F.I.T.,” pronounced “eff, eye, tea.”

19. F.I.T. is not known by the word “fit”, and has never used the word “fit” as a trademark for clothing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing **ANSWER AND COUNTERCLAIM** to be served upon the attorney for Opposer in this proceeding, Kristen M. Walsh, Esq. at her address of record, NIXON PEABODY LLP, Clinton Square, P.O. Box 31051, Rochester, New York, 14603-1051, by first class mail, postage prepaid this 14th day of August, 2005.



Frank Weyer

20. F.I.T. is not entitled to the exclusive right to use the word “fit” in marks for clothing.

21. The word “fit” when used by itself for clothing is descriptive and is not entitled to registration on the principal register.

22. F.I.T. is the registered owner of trademark registration number 2,247,127 for the mark “FIT” for “clothing, namely, t-shirts, long-sleeved t-shirts, sweatshirts, sweatpants, hats, caps and headbands.”

23. To the extent that F.I.T. is alleging that its trademark registration number 2,247,127 for the mark “FIT” constitutes the word “fit,” then that registration is invalid on the basis of at least the following reasons: fraud in registering the mark, fraud in maintaining the registration of the mark, no use of the mark in commerce that may be regulated by the United States Congress, descriptiveness, and likelihood of confusion with dozens of preexisting registrations for marks for clothing that include the word “fit.”

WHEREFORE, I respectfully request that F.I.T.’s opposition be denied, that my application for registration of the trademark NYFIT be allowed, and that F.I.T.’s registration no. 2,247,127 for the mark “FIT” be cancelled.

Respectfully Submitted,



Frank Weyer
Applicant
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