

04-18-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

FitAmerica, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation State Florida Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Lidl Stiftung & Co. KG

Internal

Address: StiftsbergstraBe 1

Street Address: D-74167 Neckarsulm

City: Germany State: Zip: D-74167

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation State Germany Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 4/11/03

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,112,347

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Jonathan P. Osha

Internal Address: 1221 McKinney Street, Suite 2800

Street Address:

City: Houston State: TX Zip: 77010

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41): \$40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

04/17/2003 DBYKRE 00000115 2112347

DO NOT USE THIS SPACE

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Wendy S. Harvey Name of Person Signing

Wendy S. Harvey Signature

4/11/03 Date

Total number of pages including cover sheet, attachments, and document: 6

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REGISTRATION: 2,090,571
ATTORNEY DOCKET NO.: 07522/015003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2, 112, 347

In re Reg. No.: 2,090,571
Reg. Date: November 11, 1997
Mark: VITA-FIT

Commissioner of Trademarks
Box Post Reg - No Fee
2900 Crystal Drive
Arlington, VA 22202-3513

Appointment of New Attorneys

Applicant hereby revokes all previous powers of attorney and appoints Alan D. Rosenthal, Jonathan P. Osha, Wendy S. Harvey, Thomas K. Scherer, T. Chyau Liang, Robert P. Lord, Ahab S. Ayoub, James L. Kurka, and Malcolm E. Whittaker members of the Bar of the State of Texas, (each with full power to act independently of the others), to transact all business in the Patent and Trademark Office in connection therewith, and to receive all correspondence and to take any and all other actions with regard to this trademark and registration thereof.

Applicant hereby requests that all correspondence be directed to:

Jonathan P. Osha
Rosenthal & Osha L.L.P.
One Houston Center, Suite 2800
1221 McKinney Street
Houston, TX 77010
Phone: 713-228-8600
Fax: 713-228-8778

Lidl Stiftung & Co. KG

Dated: 11.04.03

By: [Signature]
Name: Peter Fischer
Title: GF

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AMERICAN

FAX NO. 954 570 8608

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FROM : LAW OFFICE FREDRIC ABRAMSON
04/02/2003 19:07 FAX 7132288

PHONE NO. : 301 869 5636

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ASSIGNMENT AGREEMENT

THIS AGREEMENT IS BY AND BETWEEN Fit America, Inc. ("Assignor"), a corporation organized and existing under the laws of the state of Florida and having a place of business located at 2101 W. Commercial Blvd., Fort Lauderdale, Florida 33309, United States of America, and Lidl Stiftung & Co. K.G. ("Assignee"), a corporation organized and existing under the laws of Germany and having a place of business located at Stiftsbergstraße 1, D-74167 Neckarsulm, Germany;

For the consideration described herein, the parties hereto agree as follows:

1.01 Assignor agrees to file, prior to April 12, 2003, with the United States Patent and Trademark Office an Affidavit of Use and Incontestability in the form of Exhibit A attached hereto. Assignor represents and warrants to Assignee that the statements made in such Affidavit are true and correct.

1.02 Assignee agrees to pay to Assignor, upon being provided with proof of filing by Assignor of the Affidavit of Use and Incontestability, the sum of Ten Thousand United States Dollars (US \$10,000.00).

1.03 Upon receipt of the payment specified in Paragraph 1.02 above, Assignor does hereby sell, assign, and transfer to Assignee the entire right, title, and interest in and to the trademark "VITA-FIT" and U.S. Trademark Registration No. 2,112,547 (and any renewal and extension that may be granted thereon), together with the goodwill of the business connected therewith, and all claims for damages by reason of past infringement of such trademark with the right to sue for and collect the same. Assignor agrees that, within two business days following receipt of such payment, it shall (a) sign and send to counsel for Assignee by overnight air courier a confirmatory assignment of the form attached hereto as Exhibit B, and (b) send to

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FAX NO. 954 570 8608

P. 03

FROM: LAW OFFICE FREDRIC ABRAMSON
DATE: 04/04/2003 20:38 FAX 71322887

PHONE NO.: 301 668 5635

Apr. 04 2003 07:19PM PS

copied for Assignee by overnight air courier the original certificate of registration for the trademark registration referred to in Paragraph 1.02 above.

1.04 Assignee shall be responsible for recording of the confirmatory assignment with the United States Patent and Trademark Office.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute duplicate copies of this agreement on the dates and in the capacities specified.

FIT AMERICA, INC.

LIDL STIFTUNG & CO. KG.

By: 

By: 

Title: V. Pres

Title: GF

Date: 4/7/03

Date: 11.04.03

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P. 04

FROM : LAW OFFICE FREDRIC ABRAMSON
04/04/2003 10:59 FAX 7132286778

PHONE NO. : 301 869 5636
Kontakt & Osho

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EXHIBIT B

TRADEMARK ASSIGNMENT

Fit America, Inc. ("Assignor"), a corporation organized and existing under the laws of the state of Florida and having a place of business located at 2101 W. Commercial Blvd., Fort Lauderdale, Florida 33309, United States of America, owns and has used in its business the trademark "VITA-FIT" and U.S. Trademark Registration No. 2,112,347 associated therewith (the "Trademark and Registration").

Lidl Stiftung & Co. K.G. ("Assignee"), a corporation organized and existing under the laws of Germany and having a place of business located at Stiftsbergstraße 1, D-74167 Neckarsulm, Germany, desires to acquire the entire right, title, and interest in and to the Trademark and Registration, together with the goodwill of the business associated therewith.

For and in consideration of the sum of Ten Thousand United States Dollars (US \$10,000.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, and transfer to Assignee the entire right, title, and interest in and to the trademark "VITA-FIT" and U.S. Trademark Registration No. 2,112,347 (and any renewal and extension that may be granted thereon), together with the goodwill of the business associated therewith, and all claims for damages by reason of past infringement of such trademark with the right to sue for and collect the same.

FIT AMERICA, INC.

LIDL STIFTUNG & CO. K.G.

By: [Signature]
Title: VP
Date: 4/7/03

By: [Signature]
Title: GF
Date: 11.04.03
Peter Fischer

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TRADEMARK

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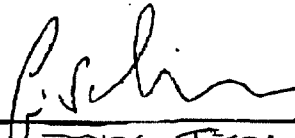
DESIGNATION OF DOMESTIC REPRESENTATIVE

MARK: VITA-FIT
REGISTRATION NO.: 2,090,571
REGISTRANT: Lidl Stiftung & Co. KG

Rosenthal & Osha L.L.P., whose postal address is One Houston Center, Suite 2800, 1221 McKinney Street, Houston, TX 77010 is hereby designated Registrant's representative upon whom notice or process in any proceedings affecting the mark may be served.

Date: 11-04-03

Lidl Stiftung & Co. KG

By: 
Name: Peter Fischer
Title: GF

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