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

Proceeding no.	91266809
Party	Plaintiff Glo Digital, Inc.
Correspondence address	REBECCA LIEBOWITZ VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998 UNITED STATES Primary email: trademarkdocket@venable.com Secondary email(s): rliebowitz@venable.com, cmitros@venable.com, pj miles@venable.com, ssfinkelstein@venable.com 202-344-4976
Submission	Motion for Summary Judgment Yes , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: 09/18/2022
Filer's name	Catherine Mitros
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Signature	/Catherine Mitros/
Date	09/13/2022
Attachments	Segment 001 of Opposition No 91266809 Motion for Summary Judgment.pdf (4477272 bytes) Segment 002 of Opposition No 91266809 Motion for Summary Judgment.pdf (4980398 bytes) Segment 003 of Opposition No 91266809 Motion for Summary Judgment.pdf (6129511 bytes) Segment 004 of Opposition No 91266809 Motion for Summary Judgment.pdf (5953989 bytes) Segment 005 of Opposition No 91266809 Motion for Summary Judgment.pdf (5893222 bytes) Segment 006 of Opposition No 91266809 Motion for Summary Judgment.pdf (5951340 bytes)

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

GLO DIGITAL, INC.,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91266809 (Parent)
	)	Opposition No. 91267145
	)	Opposition No. 91267291
)	
AMBER SOGORKA,)	
)	
Applicant.)	

Attorney's Reference: 120741-517108

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Opposer, Glo Digital, Inc., respectfully moves for summary judgment, pursuant to Rule 2.127 of the Trademark Rules of Practice and Rule 56 of the Federal Rules of Procedure on its claim that Applicant had not used its marks in connection with any of the services in the application in commerce as of the filing date and the applications are, therefore, void *ab initio*.¹ This motion is supported by the accompanying Memorandum, Statement of Undisputed Facts, and the attached exhibits.

Dated: September 13, 2022

Respectfully submitted,

/Catherine Mitros/

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¹ Opposer reserves its right to move for Summary Judgment on its remaining claim that there exists a likelihood of confusion between Applicant's marks and Opposer's marks.

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

_____)	
GLO DIGITAL, INC.,)	
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Opposer,)	
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v.)	Opposition No. 91266809 (Parent)
)	Opposition No. 91267145
AMBER SOGORKA,)	Opposition No. 91267291
)	
Applicant.)	
_____)	
Attorney's Reference: 120741-517108		

**OPPOSER'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

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Opposer, Glo Digital, Inc., respectfully submits this memorandum in support of its motion for partial summary judgment, pursuant to Rule 2.127 of the Trademark Rules of Practice and Rule 56 of the Federal Rules of Procedure, on its Petition for Opposition of Application Serial Nos. 88/654,320, 88/651,153 and 88/651,097 for GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW.

I. STATEMENT OF UNDISPUTED FACTS

1. Applicant is the owner of US trademark application Ser. Nos. 88/654,320, 88/651,153 and 88/651,097 for GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW. *See* Applicant's Answer to Opposer's Amended Notice of Opposition, ¶ 9 in Opposition Nos. 91266809, 91267145, 91267291.

2. Applicant filed the GLOW UP NUTRITION and FIND YOUR GLOW applications on October 11, 2009 and Applicant filed the GLOW UP application on October 15, 2019. *See* Applicant's Answer to Opposer's Amended Notice of Opposition, ¶ 9 in Opposition Nos. 91266809, 91267145, 91267291.

3. Applicant filed each of these applications based on use in commerce under 15 U.S.C. §1051(a) of the mark in commerce at least as early as August 1, 2019. *See* Applicant's Answer to Opposer's Amended Notice of Opposition, ¶ 9 in Opposition Nos. 91266809, 91267145, 91267291.

4. According to the Applicant, Applicant's services are comprised of "personalized nutritional counseling services" that take the form of 1:1 coaching, 60 minute "Intensive" consultations via Zoom video calls, a 30-day "Challenge" whereby an individual follows a "nutritional reset program" tailored to the individual, home kitchen visits and grocery store tours. *See* Mitros Decl. ¶ 3 and Exhibit 1, Response to Interrogatory 1 attached thereto.

5. In connection with the GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW applications, Applicant filed Declarations in support of, declaring under penalty of perjury that the marks were in use in commerce on or in connection with the identified services as of the filing date of the applications. *See* Applicant’s Answer to Opposer’s Amended Notice of Opposition, ¶ 32-33 in Opposition Nos. 91266809, 91267145, ¶ 31-32 in Opposition No. 91267145. Applicant further stated in its declarations that it was attaching one specimen of use “for each class showing the mark as used in commerce” on or in connection with any item in each class of goods. *Id.*

6. During discovery, Applicant was asked to state the “details and circumstances” relating to Applicant’s earliest rendering of the services listed in the GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW applications. *See* Mitros Decl. ¶ 3 and Exhibit 1, Interrogatory 3 attached thereto. Applicant responded that her “first client contract” was dated November 14, 2019. *See* Mitros Decl. ¶ 3 and Exhibit 1, Response to Interrogatory 3 attached thereto. Applicant’s first client contract designated a start date of December 5, 2019. *See* Mitros Decl. ¶ 3 and Exhibit 1, Response to Interrogatory 3, Documents Bates Numbered DEF00009-DEF00011 attached thereto.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is a “salutary method of disposition ‘designed to secure [the] just, speedy and inexpensive determination of every action.’” *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 4 USPQ2d 1793, 1795 (Fed. Cir. 1987) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)); TBMP § 528.01. Summary judgment is appropriate in a case such as this where there is no genuine issue as to any material fact, and Opposer is entitled to judgment as a matter of law. Upon a motion for summary judgment, the moving party must inform the Board of the basis for its motion and identify the evidence demonstrating the absence of a genuine issue of material fact.

See Celotex, 477 U.S. at 323; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 256 (1986). The burden then shifts to the non-moving party to set forth “[s]pecific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248-49; Fed. R. Civ. P. 56(e). A mere “scintilla” of evidence in support of the non-moving party’s position is not enough to defeat a moving party’s summary judgment motion; rather, when viewed in the light most favorable to the non-moving party, the evidence must be sufficient for a reasonable jury to find in favor of that party. *See Anderson*, 477 U.S. at 252.

In this case, there is no genuine issue of material fact that the marks were not in use in commerce at the time the application was filed despite sworn statements to the contrary made in the application. Therefore, Opposer is entitled to judgment as a matter of law.

III. THE APPLICATION IS VOID *AB INITIO* BECAUSE THE MARK WAS NOT USED IN COMMERCE

Section 1(a)(1) of the Trademark Act permits the owner of a trademark “used in commerce” to seek registration. “Use in commerce” is defined as “the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.” 15 U.S.C. § 1127. In addition, a mark is deemed to be in use when “it is used or displayed in the sale or advertising of services **and** the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.” *Id.* (emphasis added); *see also Aycock Eng’g Inc. v. Airflite Inc.*, 560 F.3d 1350, 1357 (Fed. Cir. 2009) (“[f]or service marks, the “use in commerce” requirement is met when (1) a mark is “used or displayed in the sale or advertising of services” and (2) either (i) the services are “rendered in commerce” or (ii) the services are “rendered in more than one State or in the United States and a foreign country and the person rendering those services is engaged in commerce in connection with the services.”).

“The registration of a mark that does not meet the use requirement is void ab initio.” *Id.* (affirming cancellation of Registrant’s registration because Registrant did not meet the use-in-commerce requirement when the application was filed and was therefore void *ab initio*). *See also Gay Toys, Inc. v. McDonald's Corp.*, 199 U.S.P.Q. 722 (Fed. Cir. 1978) (plaster mock-up of toy truck was not a good used in commerce and application was void *ab initio*); *Avakoff v. Southern Pacific Company*, 226 U.S.P.Q. 435 (Fed. Cir. 1985) (application was void *ab initio* since shipment of software from manufacturer to applicant was not use in commerce prior to filing).

At the time of filing, Applicant had not used her marks on or in connection with any of the services in her applications because she had not yet performed any of her services for others. Therefore, Application Serial Nos. 88/654,320, 88/651,153 and 88/651,097 for GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW are void *ab initio*.

1. Applicant's mark was not in use in connection with the designated services at the time of the filing of the applications under Section 1(a)

Applicant’s Marks were not in use in commerce on or in connection with any of the services identified in the applications, including “personalized nutritional counseling services” that take the form of 1:1 coaching, 60 minute “Intensive” consultations via Zoom video calls, a 30-day “Challenge” whereby an individual follows a “nutritional reset program” tailored to the individual, home kitchen visits and grocery store tours” as of the filing date of the applications, namely October 11, 2019 and October 11, 2019. Indeed, Applicant’s interrogatory responses and documents confirm that Applicant did not use the marks in commerce until December 5, 2019 at the earliest.

Applicant’s own discovery responses show that the marks were not used in commerce prior to December 5, 2019, four months later than the August 1, 2019 first-use date Applicant swore under oath to in her application. When asked to state the “details and circumstances” relating to

Applicant's earliest rendering of services, Applicant responded that her "first client contract" was dated November 14, 2019. *See* Mitros Decl. ¶ 3 and Exhibit 1, Response to Interrogatory 3 attached thereto. In response to the Interrogatory, Applicant produced the November 14, 2019 client contract, which was signed by Applicant's client on November 14, 2019, with a start date of December 5, 2019. *See* Mitros Decl. ¶ 3 and Exhibit 1, Response to Interrogatory 3, Documents Bates Numbered DEF00009-DEF00011 attached thereto. Thus, at best, Applicant's "first client contract" establishes a first use in commerce no earlier than December 5, 2019.

Applicant's other discovery responses fare no better. When asked for her basis for alleging use as of the October 15, 2019 application filing date or the August 1, 2019 purported date of first use, Applicant responded that she had been "promoting" her services as of February 28, 2019, citing to a screenshot of a February 28, 2019 Facebook post promoting Applicant's services. *See* Mitros Decl. ¶ 3 and Exhibit 1, Responses to Interrogatories 4 and 5, Documents Bates Numbered DEF00012-DEF00013 attached thereto. However, it is well-established that mere promotion is insufficient to establish use in commerce. *Aycock Engineering, Inc.*, 560 F.3d at 1358 ("[w]ithout question, advertising or publicizing a service that the applicant intends to perform in the future will not support registration.").

Based on the above evidence, it is undisputed that Applicant did not use the marks on or in connection with the designated services at the time she filed the applications.

2. Conclusion

There is no genuine issue of material fact that Applicant had not used its mark in commerce as of the filing date of the underlying applications rendering the resulting applications void *ab initio*. For the reasons set forth above, Opposer is entitled to summary judgment. Accordingly, Opposer respectfully requests that summary judgment be entered in its favor and that Application

Serial Nos. 88/654,320, 88/651,153 and 88/651,097 for GLOW UP, GLOW UP NUTRITION and FIND YOUR GLOW be abandoned in their entirety.

CERTIFICATE OF SERVICE

The undersigned, attorney for Opposer, hereby certifies that she served, by email, a copy of the foregoing **OPPOSER’S MOTION FOR SUMMARY JUDGMENT AND MEMEORANDUM IN SUPPORT with EXHIBITS** upon

Ruth K. Khalsa
THE IDEAS LAW FIRM, PLLC
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TEMPE, AZ 85283
UNITED STATES
ruth@trademarkelite.com, randall@trademarkelite.com

this 13th day of September, 2022.

/Catherine Mitros/
Catherine Mitros

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

GLO DIGITAL, INC.,)	
)	
Opposer,	)	Opposition Nos. 91266809 (parent)
	)	91267145
	)	91267291
)	
v.	)	Serial No.: 88/651153
	)	88/654320
	)	88651097
)	
AMBER SOGORKA,	)	Mark: GLOW UP NUTRITION
	)	GLOW UP
Applicant.	)	FIND YOUR GLOW
)	
)	
)	
)	

Attorney's Reference: 120741-534374

**DECLARATION BY CATHERINE MITROS IN SUPPORT OF OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

1. I am an associate at Venable LLP, and am counsel of record for Opposer Glo Digital, Inc. ("Glo Digital"). I am submitting this declaration in support of Glo Digital's Motion for Summary Judgment.

2. Attached hereto as Exhibit 1 are true and correct copies of Applicant's Responses to Opposer's Second Set of Interrogatories in Opposition Nos. 91266809, 91267145, 91267291.¹

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed this 13th day of September, 2022 at Washington, DC.

¹ These responses were signed by "Amber Clarkston." Opposer sought clarification from Applicant's counsel on whether "Amber Clarkston" was the same person as Applicant "Amber Sogorka." However, Applicant's counsel did not respond. For the purposes of this motion, Opposer assumes that Amber Clarkston is Applicant Amber Sogorka.

/Catherine Mitros/

Catherine Mitros
Venable LLP
Attorney for Glo Digital, Inc.

EXHIBIT I

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

GLO DIGITAL, INC., Opposer, v. AMBER SOGORKA, Applicant.	OPPOSITION No. 91267145 Mark: GLOW UP U.S. Serial No. 88/654,320
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**APPLICANT’S RESPONSE TO OPPOSER’S
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Applicant AMBER SOGORKA, (“Applicant”) states its responses and objections to Opposer, GLO DIGITAL, INC.’s, (“Opposer”) Second Set of Interrogatories (“Interrogatories”) as follows:

GENERAL RESPONSES AND OBJECTIONS

Each of Applicant’s responses, in addition to any specifically stated objections, is subject to and incorporates the following general responses and objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request, does not waive any of the Applicant’s general responses and objections.

The following responses reflect the current state of Applicant's knowledge, understanding and belief respecting matters about whichever inquiry has been made. Applicant expressly reserves their right to supplement or modify these responses with such pertinent information as they may hereafter discover to the extent required by the Federal Rules of Civil Procedure. Applicant expressly reserves the right to rely on, at any time, including trial, subsequently discovered documents and/or materials that have been produced promptly upon discovery.

Applicant objects to any interrogatory that seeks information constituting or containing information concerning communications between Applicant and their counsel, which are protected by the attorney-client privilege.

Applicant objects to any interrogatory that seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or any other available privilege or protection.

The inadvertent provision of information or the production by Applicant, pursuant to Rule 33(d), Fed. R. Civ. P., of documents containing information protected from discovery by the attorney-client privilege, work product doctrine or any other applicable privilege, shall not constitute a waiver of such privileges with respect to that information or those or any other documents. In the event that inadvertent production occurs, Opposer shall return all inadvertently-produced documents to Applicant upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.

Applicant objects to any interrogatory to the extent that it purports to impose upon Applicant any obligation beyond those imposed by the Federal Rules of Civil Procedure, including, but not limited to, any interrogatory that exceeds the scope of Rules 26(b) and 33, Fed. R. Civ. P.

Applicant objects to these interrogatories to the extent that they are overbroad, unduly burdensome, vague, ambiguous, confusing, require speculation to determine their meaning or use imprecise specifications of the information sought.

Applicant objects to any interrogatory to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Applicant objects to any interrogatory as unduly and unnecessarily burdensome to the extent that it seeks information that is a matter of public record, already in the Opposer's possession, or otherwise readily available to the Opposer, and, therefore, may be accessed and obtained by Opposer with less burden than Applicant can identify and provide requested information.

None of the objections or responses contained herein constitute an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials or information, or the truth or accuracy of any statement or characterization contained in the Interrogatories. Applicant's written responses are made without waiving, but, on the contrary, expressly reserving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality or any other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right

to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right at any time to revise, correct, add or clarify any of the responses provided herein.

Applicant objects to any interrogatory to the extent it is a contention interrogatory. Pursuant to Rule 33(c), Fed. R. Civ. P., Applicant objects to any such interrogatory on the grounds that it is premature in light of the present stage of discovery. The Applicant expects to receive further documents through discovery that will concern and provide information responsive to such interrogatories. Because FRCP Rule 26 imposes a duty of supplementation, complying with such interrogatories would require Applicant to continually supplement their responses each time they receive an additional document or information concerning the subject or contention on which the interrogatory seeks information. Doing so would cause the Applicant to suffer unnecessary burden and expense and would not serve to narrow the issues that are in dispute. *See, e.g. Nestle Foods Corp. v. Aetna Cas. and Sur. Co.*, 135 F.R.D. 101, 110-111 (D.N.J. 1990); *Conopco, Inc. v. Warner- Lambert Co.*, 2000 WL 342872, * 4 (D.N.J. 2000); *B. Braun Med. Inc. v. Abbott Labs*, 155 F.R.D. 525, 527 (E.D. Pa. 1994). Accordingly, in response to any such contention interrogatory, Applicant will provide a response encompassing the current state of their knowledge, belief, and understanding, but reserve the right to supplement their interrogatory response pursuant to Rule 26 at the conclusion of discovery, both as to the merits of this action and with respect to experts designated to testify at trial.

Applicant states that the responses to many of the Opposer's interrogatories may, in substantial part, be derived or ascertained from Applicant's records as well as documents produced by Opposer in discovery. Pursuant to Rule 33(d), Fed. R. Civ. P., as the burden of

deriving or ascertaining the answer to such interrogatories from such records and documents is substantially the same for Opposer, Applicant will respond to such interrogatories by noting the specific documents or types of documents that will be responsive to Opposer's request.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe each of Applicant's Services listed in Application Serial No. 88654320.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I provide the following personalized nutritional counseling services to individual clients:

(a) 1:1 Coaching

The 1:1 coaching program has the highest success rate of helping clients make long term sustainable change. I guide the client through a habits-based program that meets them where they currently are. We work closely together on habit formation, building slowly from week to week until mastery of each topic/habit is achieved. We typically work on one new habit every 1-2 weeks depending on client's mastery level of each habit.

The flexible structure of the service allows us to dive deeper into areas that are more important to the particular client, bolster areas of moderate confidence and skill, skipping over the areas that the client has already mastered. The habit formation work is specifically tailored to the client's unique needs and may evolve as we work together. Focus areas of habit formation are diverse and may include everything from water intake, food diversity, bathroom regularity, gut health, non-preferred foods, cooking methods, macro- and micronutrient intake and best practices, sleep hygiene, stress management, processes related to decisions and mindsets around food, potential food intolerances, as well as many other things. Each client has unique goals and brings something different to the table - working 1:1 enables me to give the client the most effective, personally tailored coaching. The client is part of the decision-making process at all times.

I also provide the client with recipe ideas, educational content on an array of topics, a personalized nutrition coaching binder, and homework assignments.

Clients complete a detailed intake form followed by a week long food log for my review. The more I know and understand about the client and their unique history and relationship with food, the better I am able to support them and help them crush their goals! After I review the food log and intake forms, I formulate my initial recommendations on where we should start. Coaching takes place over Zoom; the initial appointment with a new client lasts approximately an hour and a half, after which we meet once a week for about 45 minutes. Clients also have unlimited access to me via text for questions or clarification (for example when eating out or grocery shopping).

(b) 60 Minute Intensive

This service is a one-time deep dive Zoom video call with me. Before the appointment, the client submits their nutrition and wellness related questions to me. During the call, I provide professional feedback and personalized recommendations. Clients often purchase this service in order to “get a feel” for what it's like to work with me, prior to signing up for a more lengthy service such as the Coaching or Challenge services.

(c) 30 Day Glow Up Challenge

The Glow Up Challenge is an anti-inflammatory nutritional reset program with a specific focus on reducing inflammation and toxin load, improving gut health, and improving digestion. Reducing inflammation and improving gut health are two of the most important things an individual can do to support health and wellness.

During the Glow Up Challenge, the client eliminates acidic, high glycemic, and inflammatory foods. The goals of the program are improved energy levels, sleep quality, skin health, mental clarity, blood pressure, cholesterol levels, digestion, elimination, among other things. Clients report experiencing fewer food cravings and headaches, and less joint pain and brain fog.

If weight loss is one of the client's goals, I tailor the program to specifically address this issue. For clients who don't want to lose weight but rather would like to recomp and add more muscle mass, I tailor the program accordingly.

(d) Home Kitchen Visit

I personally visit the client's home and help them to clean out and overhaul their pantry / refrigerator / kitchen. Areas of discussion during the visit include instruction on how to read and

interpret ingredient and nutritional labels on food, information about preservatives, and practical tips and tactics for healthy food shopping and selection. We also work on helping the client set up a home environment that supports their success in achieving their unique healthy eating goals, even if all family members may not be on board with the client's lifestyle choices.

(e) Grocery Store Tour

The client and I visit a grocery store together for a real time lesson in how to best navigate the store so that the client leaves with food that supports their health and goals, as opposed to food or food products that feed cravings or look irresistible but are nutritionally empty. Instruction during the grocery store visit is focused heavily on how to read ingredient and nutrition labels - what to look for, what to avoid, and why.

INTERROGATORY NO. 2:

Identify and explain all types of advertising and all types of media used or intended to be used to advertise and promote Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I advertise through word of mouth as well as on Instagram and Facebook.

INTERROGATORY NO. 3:

State the details and circumstances relating to Applicant's earliest rendering of "nutrition coaching services" in commerce, including, but not limited to, the date, location, and the customer the Services were first rendered to.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

My first client contract is dated November 14, 2019. See attached documents Bates numbered DEF00009-DEF00011.

INTERROGATORY NO. 4:

Separately identify each document that supports that Applicant was rendering "nutrition coaching services" as of October 15, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my services through word of mouth and social media. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 5:

Separately identify each document that supports the verified statement alleging that the applicant rendered “nutrition coaching services” as of August 1, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my nutrition coaching services. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 6:

Describe the customers to whom Applicant’s Services are marketed, distributed, and/or sold in the U.S., including, but not limited to, the customers’ demographics (e.g., geographic location, age, profession, education and income).

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

My clients include men and women of all ages who can afford my services and have a desire to improve their quality of life through better habit formation around nutrition.

INTERROGATORY NO. 7:

Describe the annual amount spent on advertising and promotion of Applicant's Services, in dollars, from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I have not tracked my advertising expenditures closely. Promotional expenditures since Fall 2019 would likely total a few thousand dollars.

INTERROGATORY NO. 8:

Describe Applicant's annual volume of sales in dollars and units in the United States for each of Applicant's Services offered under Applicant's Mark in the United States from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I do not have this number readily available. Total revenue to date is likely in the ballpark of \$15,000-\$17,000.

INTERROGATORY NO. 9:

Describe how many separate customers have utilized Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

Three 1:1 Coaching clients and approximately 90 or more 30 Day Glow Up Challenge clients.

INTERROGATORY NO. 10:

Describe how many separate customers have utilized Applicant's Services online, such as via streaming or downloadable video, including for example, via platforms such as Zoom, Microsoft Team, Google Meet, etc.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

The response to Interrogatory No. 9, above, regarding total client numbers for the various services I offer is hereby incorporated by this reference. Coaching services are provided in person, via Zoom, or by phone. In-person services such as Home Kitchen Visits or Grocery Store Tours are provided in person.

INTERROGATORY NO. 11:

Describe the geographic scope of Applicant's current use and intended use of Applicant's Mark.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 12:

List all geographical areas (by city and/or state) where Applicant's Services are currently sold or marketed or intended to be sold or marketed.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 13:

With respect to the customers that have used Applicant's Services, describe the geographical areas (by city and/or state) where each of the customers were located when Applicant's Services were rendered.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Past clients have been from all over the United States and the North American continent. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 14:

Describe how customers learn about Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I incorporate by this reference the Response to Interrogatory No. 2, above.

VERIFICATION OF INTERROGATORY RESPONSES

I, Amber Sogorka, believe, based on reasonable inquiry, that the foregoing Responses are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Signed: Amber K. Clarkston

Dated: 5/5/2022

RESPECTFULLY SUBMITTED this 29th day of April, 2022.

For Objections:

The Ideas Law Firm, PLLC

By: /Ruth K. Khalsa/
Ruth K. Khalsa
975 E Dava Drive
Tempe, Arizona 85283
Tel: 833.863.5483
AZ SBN 024116
ruth@trademarkelite.com
trademarks@trademarkelite.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that on April 29, 2022, a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES is being served by electronic mail addressed to the attorney of record on file with the Trademark Trial and Appeals Board for Opposer, as follows:

REBECCA LIEBOWITZ
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WASHINGTON, DC 20043-9998
(202) 344-4976

trademarkdocket@venable.com, rliebowitz@venable.com, cmitros@venable.com,
pjmiles@venable.com, ssfinkelstein@venable.com

/Ruth K. Khalsa/

Ruth K. Khalsa
975 E Dava Drive
Tempe, Arizona 85283

Amber Sogorka

November 17, 2019 at 6:12 PM



Updated Nutrition Coaching Pricing

To: Maytal [REDACTED]

Hi Maytal!

Sorry I missed you at my event today but I hope you had a great Sunday! Wanted to let you know that none of the people you referred came to the event today, so I am unable to extend that \$50 discount to you. That being said you did earn the other \$50 discount by getting me your signed contract and initial deposit so thank you for that!

Here is your updated Level 1, 3 month program pricing...

Level 1 Cost

- First month \$300
- \$250 per month for 2nd and 3rd months
- You selected in person meetings, which is \$50 additional per month cost
- Total plan cost for 3 months = \$950
- \$50 discount for prompt client contract signature and initial deposit

= Your total 3 month cost is \$900

- You already paid \$100 which I put toward your first meeting (Dec 5th 10:30-Noon)
- Remaining balance is \$800
- Since you are paying per meeting, the per meeting price for the remaining 11 meetings (starting with your second meeting) is \$72.75
- Payment for meetings is required at least 24 hour in advance of the meeting

Please let me know if you have any questions!

I will email you tomorrow with instructions on completing your 7 day food diary.

Thanks!
Amber

Amber Sogorka
Certified Nutrition Coach
Founder, Glow Up Nutrition
www.glowupnow.com
[REDACTED]@glowupnow.com



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Amber K. Sogorka
Certified Nutrition Coach
[REDACTED]@glowupnow.com
760. [REDACTED]

NUTRITION COACHING SERVICES AGREEMENT

BETWEEN: Mary [REDACTED] (the "Client") and Amber K. Sogorka of Glow Up Nutrition (the "Coach"), collectively referred to as the "Parties."

Agreement Terms

1. **Services:** The Coach shall provide the following services ("Services") to the Client in accordance with the terms and conditions of this Agreement: **Nutrition Coaching.**

2. **Description of the Services**
 - A. **Initial Assessment:** Client and Coach will discuss the Client's goals and the Coach will create a plan to support the Client in achieving those goals. This includes specific habits / action steps that the Coach will teach to the Client, and the Client will practice and implement into their daily life. The plan will be adjusted and will progress as needed based on ongoing monitoring of client progress and metrics. Clients enrolled in the ProCoach program will perform all assessments online through the program.
 - B. **Periodic Check-ins:** The Coach and the Client will check in weekly or biweekly via 45-60 minute Zoom video calls, or in person, to see how the Client is doing with their habits / action steps. If the Client has shown 95% mastery of the previous habit / action step, the Coach will present a new habit / action step for the Client to implement. The Client is welcome to contact the Coach via text between 8:00am and 8:00pm with questions or concerns. If the Client wishes to schedule additional calls with the Coach at an interval of more than 1 per week, the Coach is happy to do so for an additional fee agreed upon in advance. The Client will submit data to demonstrate that they are making objective progress at intervals agreed upon by the Client and the Coach. These may include (but are not limited to) body photos, body measurements, weight logs, food logs or photos, and any forms sent to the Client as deemed necessary by the Coach to adequately provide the Services. Client will be given access into the Glow Up Nutrition private Facebook group while they are actively receiving Services.
 - C. **Monitoring of Progress:** Coach will use information from Client communication and meetings as well as subjective and objective data to monitor the Client's progress, and will share her feedback and suggestions for adjustments to habits / action steps and nutrition behaviors. All habits / actions steps will be discussed and agreed upon by both Parties. ProCoach clients will be monitored through the software and will proceed through the program as directed.
 - D. **Excluded Services:** Education and guidelines around meals and learning how to optimally fuel your body is a core part of the program, however, the Coach will not provide specific weekly meal plans that tell the Client exactly what to eat for every meal of every day. Also excluded are prepared foods and detailed workout plans.



www.glowupnow.com
Amber K. Sogorka
Certified Nutrition Coach
@glowupnow.com
760. [redacted]

3. **Methods of Communication:** Communication between the Coach and the Client may take place via Zoom video calls, ProCoach software, email, text, or in person meetings.

4. **Price and Payment:** Pricing will depend on the length and level of Services provided, and will be discussed and agreed upon before coaching begins. Payment is due on the 1st of each month, with a 5 day grace period. Payment can be made via Venmo, credit card (applicable fees will also be charged), check, or cash. The Coach has the right to cancel Services if payments are more than 14 days overdue, unless a specific agreement is made and agreed upon in writing between the Coach and the Client.

5. **Limit of Liability:** The Coach agrees to provide Services within her scope of practice, and the Client agrees to communicate with the Coach with full disclosure. The Client also agrees to comply with the agreed-upon habits / action steps. The Client understands and agrees that the Services are not a guarantee of results, and that the Coach assumes no liability for the Client's failure to comply with the habits / action steps agreed upon by the Parties. Services can be discontinued by the Coach or Client before the program is completed by submitting a request in writing. If Client discontinues Services, future months already paid for may be eligible for a refund if a specific agreement is made in writing between the Coach and the Client.

Select Desired Program:

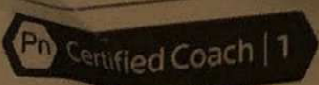
- 3 months *starting at January officially*
- 6 Months
- 12 Months

Coaching Start Date: 12/5/19 (1st session) Coaching End Date: TBD

Signed By: *[Signature]*
Client

Date: 11/14/19
Date: _____

Coach: Amber K. Sogorka
Glow Up Nutrition Founder and Certified Coach



Manage Page

- Glow Up Nutrition
- Meta Business Suite
- Inbox 9 new comments
- Planner
- Publishing tools
- News Feed
- Business Apps

- Home
- Manage shop
- Promote

Watch **Glow Up Nutri...**

Edit Send Email

Promote

Glow Up Nutrition

Published by Amber Sogorka · February 28, 2019 ·

These protein balls are packed with nutrients, are easy to make, and taste great. Give them a try! DM me for the recipe 😊



Promote

DEF00012



glowup_nutrition
Del Mar, California

...



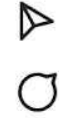
glowup_nutrition Why Eat Whole Eggs?

... Many people don't want to eat eggs, and especially egg yolk, because of the cholesterol content. Research has shown that high levels of dietary saturated fat have a much stronger correlation to increased levels of cholesterol than actual dietary cholesterol.

... Cholesterol has several essential rolls in the body including cell membrane function, dietary fat absorption, helping to synthesize bile salts, and it is also the basis of many steroid hormones including vitamin D. Because cholesterol has so many important roles in our body, our body makes its own cholesterol, and a lot of it.

... Eggs are a healthy nutrient dense food. They are low in calories, high in protein (4g in the whites and 2.5g in the yolk), and high in many important

[View Insights](#)



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MARCH 23, 2019



Add a comment...

Post

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

GLO DIGITAL, INC., Opposer, v. AMBER SOGORKA, Applicant.	OPPOSITION No. 91267291 Mark: FIND YOUR GLOW U.S. Serial No. 88/651,097
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**APPLICANT’S RESPONSE TO OPPOSER’S
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Applicant AMBER SOGORKA, (“Applicant”) states its responses and objections to Opposer, GLO DIGITAL, INC.’s, (“Opposer”) Second Set of Interrogatories (“Interrogatories”) as follows:

GENERAL RESPONSES AND OBJECTIONS

Each of Applicant’s responses, in addition to any specifically stated objections, is subject to and incorporates the following general responses and objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request, does not waive any of the Applicant’s general responses and objections.

The following responses reflect the current state of Applicant's knowledge, understanding and belief respecting matters about whichever inquiry has been made. Applicant expressly reserves their right to supplement or modify these responses with such pertinent information as they may hereafter discover to the extent required by the Federal Rules of Civil Procedure. Applicant expressly reserves the right to rely on, at any time, including trial, subsequently discovered documents and/or materials that have been produced promptly upon discovery.

Applicant objects to any interrogatory that seeks information constituting or containing information concerning communications between Applicant and their counsel, which are protected by the attorney-client privilege.

Applicant objects to any interrogatory that seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or any other available privilege or protection.

The inadvertent provision of information or the production by Applicant, pursuant to Rule 33(d), Fed. R. Civ. P., of documents containing information protected from discovery by the attorney-client privilege, work product doctrine or any other applicable privilege, shall not constitute a waiver of such privileges with respect to that information or those or any other documents. In the event that inadvertent production occurs, Opposer shall return all inadvertently-produced documents to Applicant upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.

Applicant objects to any interrogatory to the extent that it purports to impose upon Applicant any obligation beyond those imposed by the Federal Rules of Civil Procedure, including, but not limited to, any interrogatory that exceeds the scope of Rules 26(b) and 33, Fed. R. Civ. P.

Applicant objects to these interrogatories to the extent that they are overbroad, unduly burdensome, vague, ambiguous, confusing, require speculation to determine their meaning or use imprecise specifications of the information sought.

Applicant objects to any interrogatory to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Applicant objects to any interrogatory as unduly and unnecessarily burdensome to the extent that it seeks information that is a matter of public record, already in the Opposer's possession, or otherwise readily available to the Opposer, and, therefore, may be accessed and obtained by Opposer with less burden than Applicant can identify and provide requested information.

None of the objections or responses contained herein constitute an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials or information, or the truth or accuracy of any statement or characterization contained in the Interrogatories. Applicant's written responses are made without waiving, but, on the contrary, expressly reserving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality or any other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right

to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right at any time to revise, correct, add or clarify any of the responses provided herein.

Applicant objects to any interrogatory to the extent it is a contention interrogatory. Pursuant to Rule 33(c), Fed. R. Civ. P., Applicant objects to any such interrogatory on the grounds that it is premature in light of the present stage of discovery. The Applicant expects to receive further documents through discovery that will concern and provide information responsive to such interrogatories. Because FRCP Rule 26 imposes a duty of supplementation, complying with such interrogatories would require Applicant to continually supplement their responses each time they receive an additional document or information concerning the subject or contention on which the interrogatory seeks information. Doing so would cause the Applicant to suffer unnecessary burden and expense and would not serve to narrow the issues that are in dispute. *See, e.g. Nestle Foods Corp. v. Aetna Cas. and Sur. Co.*, 135 F.R.D. 101, 110-111 (D.N.J. 1990); *Conopco, Inc. v. Warner- Lambert Co.*, 2000 WL 342872, * 4 (D.N.J. 2000); *B. Braun Med. Inc. v. Abbott Labs*, 155 F.R.D. 525, 527 (E.D. Pa. 1994). Accordingly, in response to any such contention interrogatory, Applicant will provide a response encompassing the current state of their knowledge, belief, and understanding, but reserve the right to supplement their interrogatory response pursuant to Rule 26 at the conclusion of discovery, both as to the merits of this action and with respect to experts designated to testify at trial.

Applicant states that the responses to many of the Opposer's interrogatories may, in substantial part, be derived or ascertained from Applicant's records as well as documents produced by Opposer in discovery. Pursuant to Rule 33(d), Fed. R. Civ. P., as the burden of

deriving or ascertaining the answer to such interrogatories from such records and documents is substantially the same for Opposer, Applicant will respond to such interrogatories by noting the specific documents or types of documents that will be responsive to Opposer's request.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe each of Applicant's Services listed in Application Serial No. 88651097.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I provide the following personalized nutritional counseling services to individual clients:

(a) 1:1 Coaching

The 1:1 coaching program has the highest success rate of helping clients make long term sustainable change. I guide the client through a habits-based program that meets them where they currently are. We work closely together on habit formation, building slowly from week to week until mastery of each topic/habit is achieved. We typically work on one new habit every 1-2 weeks depending on client's mastery level of each habit.

The flexible structure of the service allows us to dive deeper into areas that are more important to the particular client, bolster areas of moderate confidence and skill, skipping over the areas that the client has already mastered. The habit formation work is specifically tailored to the client's unique needs and may evolve as we work together. Focus areas of habit formation are diverse and may include everything from water intake, food diversity, bathroom regularity, gut health, non-preferred foods, cooking methods, macro- and micronutrient intake and best practices, sleep hygiene, stress management, processes related to decisions and mindsets around food, potential food intolerances, as well as many other things. Each client has unique goals and brings something different to the table – working 1:1 enables me to give the client the most effective, personally tailored coaching. The client is part of the decision-making process at all times.

I also provide the client with recipe ideas, educational content on an array of topics, a personalized nutrition coaching binder, and homework assignments.

Clients complete a detailed intake form followed by a week long food log for my review. The more I know and understand about the client and their unique history and relationship with food, the better I am able to support them and help them crush their goals! After I review the food log and intake forms, I formulate my initial recommendations on where we should start. Coaching takes place over Zoom; the initial appointment with a new client lasts approximately an hour and a half, after which we meet once a week for about 45 minutes. Clients also have unlimited access to me via text for questions or clarification (for example when eating out or grocery shopping).

(b) 60 Minute Intensive

This service is a one-time deep dive Zoom video call with me. Before the appointment, the client submits their nutrition and wellness related questions to me. During the call, I provide professional feedback and personalized recommendations. Clients often purchase this service in order to “get a feel” for what it's like to work with me, prior to signing up for a more lengthy service such as the Coaching or Challenge services.

(c) 30 Day Glow Up Challenge

The Glow Up Challenge is an anti-inflammatory nutritional reset program with a specific focus on reducing inflammation and toxin load, improving gut health, and improving digestion. Reducing inflammation and improving gut health are two of the most important things an individual can do to support health and wellness.

During the Glow Up Challenge, the client eliminates acidic, high glycemic, and inflammatory foods. The goals of the program are improved energy levels, sleep quality, skin health, mental clarity, blood pressure, cholesterol levels, digestion, elimination, among other things. Clients report experiencing fewer food cravings and headaches, and less joint pain and brain fog.

If weight loss is one of the client's goals, I tailor the program to specifically address this issue. For clients who don't want to lose weight but rather would like to recomp and add more muscle mass, I tailor the program accordingly.

(d) Home Kitchen Visit

I personally visit the client's home and help them to clean out and overhaul their pantry / refrigerator / kitchen. Areas of discussion during the visit include instruction on how to read and

interpret ingredient and nutritional labels on food, information about preservatives, and practical tips and tactics for healthy food shopping and selection. We also work on helping the client set up a home environment that supports their success in achieving their unique healthy eating goals, even if all family members may not be on board with the client's lifestyle choices.

(e) Grocery Store Tour

The client and I visit a grocery store together for a real time lesson in how to best navigate the store so that the client leaves with food that supports their health and goals, as opposed to food or food products that feed cravings or look irresistible but are nutritionally empty. Instruction during the grocery store visit is focused heavily on how to read ingredient and nutrition labels – what to look for, what to avoid, and why.

INTERROGATORY NO. 2:

Identify and explain all types of advertising and all types of media used or intended to be used to advertise and promote Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I advertise through word of mouth as well as on Instagram and Facebook.

INTERROGATORY NO. 3:

State the details and circumstances relating to Applicant's earliest rendering of "professional nutritional counseling services" in commerce, including, but not limited to, the date, location, and the customer the Services were first rendered to.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

My first client contract is dated November 14, 2019. See attached documents Bates numbered DEF00009-DEF00011.

INTERROGATORY NO. 4:

Separately identify each document that supports that Applicant was rendering "professional nutritional counseling services" as of October 15, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my services through word of mouth and social media. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 5:

Separately identify each document that supports the verified statement alleging that the applicant rendered “nutrition coaching services” as of August 1, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my services through word of mouth and social media. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 6:

Describe the customers to whom Applicant’s Services are marketed, distributed, and/or sold in the U.S., including, but not limited to, the customers’ demographics (e.g., geographic location, age, profession, education and income).

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

My clients include men and women of all ages who can afford my services and have a desire to improve their quality of life through better habit formation around nutrition.

INTERROGATORY NO. 7:

Describe the annual amount spent on advertising and promotion of Applicant's Services, in dollars, from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I have not tracked my advertising expenditures closely. Promotional expenditures since Fall 2019 would likely total a few thousand dollars.

INTERROGATORY NO. 8:

Describe Applicant's annual volume of sales in dollars and units in the United States for each of Applicant's Services offered under Applicant's Mark in the United States from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I do not have this number readily available. Total revenue to date is likely in the ballpark of \$15,000-\$17,000.

INTERROGATORY NO. 9:

Describe how many separate customers have utilized Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

Three 1:1 Coaching clients and approximately 90 or more 30 Day Glow Up Challenge clients.

INTERROGATORY NO. 10:

Describe how many separate customers have utilized Applicant's Services online, such as via streaming or downloadable video, including for example, via platforms such as Zoom, Microsoft Team, Google Meet, etc.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

The response to Interrogatory No. 9, above, regarding total client numbers for the various services I offer is hereby incorporated by this reference. Coaching services are provided in person, via Zoom, or by phone. In-person services such as Home Kitchen Visits or Grocery Store Tours are provided in person.

INTERROGATORY NO. 11:

Describe the geographic scope of Applicant's current use and intended use of Applicant's Mark.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 12:

List all geographical areas (by city and/or state) where Applicant's Services are currently sold or marketed or intended to be sold or marketed.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 13:

With respect to the customers that have used Applicant's Services, describe the geographical areas (by city and/or state) where each of the customers were located when Applicant's Services were rendered.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Past clients have been from all over the United States and the North American continent. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 14:

Describe how customers learn about Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I incorporate by this reference the Response to Interrogatory No. 2, above.

VERIFICATION OF INTERROGATORY RESPONSES

I, Amber Sogorka, believe, based on reasonable inquiry, that the foregoing Responses are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Signed: Amber K. Clarkston
Dated: 5/5/2022

RESPECTFULLY SUBMITTED this 9th day of May, 2022.

For Objections:

The Ideas Law Firm, PLLC

By: /Ruth K. Khalsa/
Ruth K. Khalsa
975 E Dava Drive
Tempe, Arizona 85283
Tel: 833.863.5483
AZ SBN 024116
ruth@trademarkelite.com
trademarks@trademarkelite.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that on May 9, 2022, a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES is being served by electronic mail addressed to the attorney of record on file with the Trademark Trial and Appeals Board for Opposer, as follows:

REBECCA LIEBOWITZ
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(202) 344-4976

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/Ruth K. Khalsa/
Ruth K. Khalsa
975 E Dava Drive
Tempe, Arizona 85283

Amber Sogorka

November 17, 2019 at 6:12 PM



Updated Nutrition Coaching Pricing

To: Maytal [REDACTED]

Hi Maytal!

Sorry I missed you at my event today but I hope you had a great Sunday! Wanted to let you know that none of the people you referred came to the event today, so I am unable to extend that \$50 discount to you. That being said you did earn the other \$50 discount by getting me your signed contract and initial deposit so thank you for that!

Here is your updated Level 1, 3 month program pricing...

Level 1 Cost

- First month \$300
- \$250 per month for 2nd and 3rd months
- You selected in person meetings, which is \$50 additional per month cost
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= Your total 3 month cost is \$900

- You already paid \$100 which I put toward your first meeting (Dec 5th 10:30-Noon)
- Remaining balance is \$800
- Since you are paying per meeting, the per meeting price for the remaining 11 meetings (starting with your second meeting) is \$72.75
- Payment for meetings is required at least 24 hour in advance of the meeting

Please let me know if you have any questions!

I will email you tomorrow with instructions on completing your 7 day food diary.

Thanks!
Amber

Amber Sogorka
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Founder, Glow Up Nutrition
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Certified Nutrition Coach
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760. [REDACTED]

NUTRITION COACHING SERVICES AGREEMENT

BETWEEN: Mary [REDACTED] (the "Client") and Amber K. Sogorka of Glow Up Nutrition (the "Coach"), collectively referred to as the "Parties."

Agreement Terms

1. **Services:** The Coach shall provide the following services ("Services") to the Client in accordance with the terms and conditions of this Agreement: **Nutrition Coaching.**
2. **Description of the Services**
 - A. **Initial Assessment:** Client and Coach will discuss the Client's goals and the Coach will create a plan to support the Client in achieving those goals. This includes specific habits / action steps that the Coach will teach to the Client, and the Client will practice and implement into their daily life. The plan will be adjusted and will progress as needed based on ongoing monitoring of client progress and metrics. Clients enrolled in the ProCoach program will perform all assessments online through the program.
 - B. **Periodic Check-ins:** The Coach and the Client will check in weekly or biweekly via 45-60 minute Zoom video calls, or in person, to see how the Client is doing with their habits / action steps. If the Client has shown 95% mastery of the previous habit / action step, the Coach will present a new habit / action step for the Client to implement. The Client is welcome to contact the Coach via text between 8:00am and 8:00pm with questions or concerns. If the Client wishes to schedule additional calls with the Coach at an interval of more than 1 per week, the Coach is happy to do so for an additional fee agreed upon in advance. The Client will submit data to demonstrate that they are making objective progress at intervals agreed upon by the Client and the Coach. These may include (but are not limited to) body photos, body measurements, weight logs, food logs or photos, and any forms sent to the Client as deemed necessary by the Coach to adequately provide the Services. Client will be given access into the Glow Up Nutrition private Facebook group while they are actively receiving Services.
 - C. **Monitoring of Progress:** Coach will use information from Client communication and meetings as well as subjective and objective data to monitor the Client's progress, and will share her feedback and suggestions for adjustments to habits / action steps and nutrition behaviors. All habits / actions steps will be discussed and agreed upon by both Parties. ProCoach clients will be monitored through the software and will proceed through the program as directed.
 - D. **Excluded Services:** Education and guidelines around meals and learning how to optimally fuel your body is a core part of the program, however, the Coach will not provide specific weekly meal plans that tell the Client exactly what to eat for every meal of every day. Also excluded are prepared foods and detailed workout plans.



www.glowupnow.com
Amber K. Sogorka
Certified Nutrition Coach
@glowupnow.com
760. [redacted]

3. **Methods of Communication:** Communication between the Coach and the Client may take place via Zoom video calls, ProCoach software, email, text, or in person meetings.

4. **Price and Payment:** Pricing will depend on the length and level of Services provided, and will be discussed and agreed upon before coaching begins. Payment is due on the 1st of each month, with a 5 day grace period. Payment can be made via Venmo, credit card (applicable fees will also be charged), check, or cash. The Coach has the right to cancel Services if payments are more than 14 days overdue, unless a specific agreement is made and agreed upon in writing between the Coach and the Client.

5. **Limit of Liability:** The Coach agrees to provide Services within her scope of practice, and the Client agrees to communicate with the Coach with full disclosure. The Client also agrees to comply with the agreed-upon habits / action steps. The Client understands and agrees that the Services are not a guarantee of results, and that the Coach assumes no liability for the Client's failure to comply with the habits / action steps agreed upon by the Parties. Services can be discontinued by the Coach or Client before the program is completed by submitting a request in writing. If Client discontinues Services, future months already paid for may be eligible for a refund if a specific agreement is made in writing between the Coach and the Client.

Select Desired Program:

3 months *starting at January officially*
 6 Months
 12 Months

Coaching Start Date: 12/5/19 (1st session) Coaching End Date: TBD

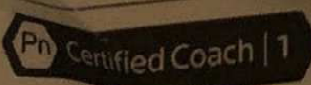
Signed By:

[Signature]
Client

Date: 11/14/19

Date: _____

Coach: Amber K. Sogorka
Glow Up Nutrition Founder and Certified Coach





glowup_nutrition
Del Mar, California

...



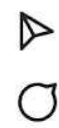
glowup_nutrition Why Eat Whole Eggs?

... Many people don't want to eat eggs, and especially egg yolk, because of the cholesterol content. Research has shown that high levels of dietary saturated fat have a much stronger correlation to increased levels of cholesterol than actual dietary cholesterol.

... Cholesterol has several essential rolls in the body including cell membrane function, dietary fat absorption, helping to synthesize bile salts, and it is also the basis of many steroid hormones including vitamin D. Because cholesterol has so many important roles in our body, our body makes its own cholesterol, and a lot of it.

... Eggs are a healthy nutrient dense food. They are low in calories, high in protein (4g in the whites and 2.5g in the yolk), and high in many important

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MARCH 23, 2019



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

GLO DIGITAL, INC., Opposer, v. AMBER SOGORKA, Applicant.	OPPOSITION No. 91266809 Mark: GLOW UP NUTRITION U.S. Serial No. 88/651,153
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**APPLICANT’S RESPONSE TO OPPOSER’S
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Applicant AMBER SOGORKA, (“Applicant”) states its responses and objections to Opposer, GLO DIGITAL, INC.’s, (“Opposer”) Second Set of Interrogatories (“Interrogatories”) as follows:

GENERAL RESPONSES AND OBJECTIONS

Each of Applicant’s responses, in addition to any specifically stated objections, is subject to and incorporates the following general responses and objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request, does not waive any of the Applicant’s general responses and objections.

The following responses reflect the current state of Applicant's knowledge, understanding and belief respecting matters about whichever inquiry has been made. Applicant expressly reserves their right to supplement or modify these responses with such pertinent information as they may hereafter discover to the extent required by the Federal Rules of Civil Procedure. Applicant expressly reserves the right to rely on, at any time, including trial, subsequently discovered documents and/or materials that have been produced promptly upon discovery.

Applicant objects to any interrogatory that seeks information constituting or containing information concerning communications between Applicant and their counsel, which are protected by the attorney-client privilege.

Applicant objects to any interrogatory that seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or any other available privilege or protection.

The inadvertent provision of information or the production by Applicant, pursuant to Rule 33(d), Fed. R. Civ. P., of documents containing information protected from discovery by the attorney-client privilege, work product doctrine or any other applicable privilege, shall not constitute a waiver of such privileges with respect to that information or those or any other documents. In the event that inadvertent production occurs, Opposer shall return all inadvertently-produced documents to Applicant upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.

Applicant objects to any interrogatory to the extent that it purports to impose upon Applicant any obligation beyond those imposed by the Federal Rules of Civil Procedure, including, but not limited to, any interrogatory that exceeds the scope of Rules 26(b) and 33, Fed. R. Civ. P.

Applicant objects to these interrogatories to the extent that they are overbroad, unduly burdensome, vague, ambiguous, confusing, require speculation to determine their meaning or use imprecise specifications of the information sought.

Applicant objects to any interrogatory to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Applicant objects to any interrogatory as unduly and unnecessarily burdensome to the extent that it seeks information that is a matter of public record, already in the Opposer's possession, or otherwise readily available to the Opposer, and, therefore, may be accessed and obtained by Opposer with less burden than Applicant can identify and provide requested information.

None of the objections or responses contained herein constitute an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials or information, or the truth or accuracy of any statement or characterization contained in the Interrogatories. Applicant's written responses are made without waiving, but, on the contrary, expressly reserving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality or any other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right

to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right at any time to revise, correct, add or clarify any of the responses provided herein.

Applicant objects to any interrogatory to the extent it is a contention interrogatory. Pursuant to Rule 33(c), Fed. R. Civ. P., Applicant objects to any such interrogatory on the grounds that it is premature in light of the present stage of discovery. The Applicant expects to receive further documents through discovery that will concern and provide information responsive to such interrogatories. Because FRCP Rule 26 imposes a duty of supplementation, complying with such interrogatories would require Applicant to continually supplement their responses each time they receive an additional document or information concerning the subject or contention on which the interrogatory seeks information. Doing so would cause the Applicant to suffer unnecessary burden and expense and would not serve to narrow the issues that are in dispute. *See, e.g. Nestle Foods Corp. v. Aetna Cas. and Sur. Co.*, 135 F.R.D. 101, 110-111 (D.N.J. 1990); *Conopco, Inc. v. Warner- Lambert Co.*, 2000 WL 342872, * 4 (D.N.J. 2000); *B. Braun Med. Inc. v. Abbott Labs*, 155 F.R.D. 525, 527 (E.D. Pa. 1994). Accordingly, in response to any such contention interrogatory, Applicant will provide a response encompassing the current state of their knowledge, belief, and understanding, but reserve the right to supplement their interrogatory response pursuant to Rule 26 at the conclusion of discovery, both as to the merits of this action and with respect to experts designated to testify at trial.

Applicant states that the responses to many of the Opposer's interrogatories may, in substantial part, be derived or ascertained from Applicant's records as well as documents produced by Opposer in discovery. Pursuant to Rule 33(d), Fed. R. Civ. P., as the burden of

deriving or ascertaining the answer to such interrogatories from such records and documents is substantially the same for Opposer, Applicant will respond to such interrogatories by noting the specific documents or types of documents that will be responsive to Opposer's request.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe each of Applicant's Services listed in Application Serial No. 88651153.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I provide the following personalized nutritional counseling services to individual clients:

(a) 1:1 Coaching

The 1:1 coaching program has the highest success rate of helping clients make long term sustainable change. I guide the client through a habits-based program that meets them where they currently are. We work closely together on habit formation, building slowly from week to week until mastery of each topic/habit is achieved. We typically work on one new habit every 1-2 weeks depending on client's mastery level of each habit.

The flexible structure of the service allows us to dive deeper into areas that are more important to the particular client, bolster areas of moderate confidence and skill, skipping over the areas that the client has already mastered. The habit formation work is specifically tailored to the client's unique needs and may evolve as we work together. Focus areas of habit formation are diverse and may include everything from water intake, food diversity, bathroom regularity, gut health, non-preferred foods, cooking methods, macro- and micronutrient intake and best practices, sleep hygiene, stress management, processes related to decisions and mindsets around food, potential food intolerances, as well as many other things. Each client has unique goals and brings something different to the table – working 1:1 enables me to give the client the most effective, personally tailored coaching. The client is part of the decision-making process at all times.

I also provide the client with recipe ideas, educational content on an array of topics, a personalized nutrition coaching binder, and homework assignments.

Clients complete a detailed intake form followed by a week long food log for my review. The more I know and understand about the client and their unique history and relationship with food, the better I am able to support them and help them crush their goals! After I review the food log and intake forms, I formulate my initial recommendations on where we should start. Coaching takes place over Zoom; the initial appointment with a new client lasts approximately an hour and a half, after which we meet once a week for about 45 minutes. Clients also have unlimited access to me via text for questions or clarification (for example when eating out or grocery shopping).

(b) 60 Minute Intensive

This service is a one-time deep dive Zoom video call with me. Before the appointment, the client submits their nutrition and wellness related questions to me. During the call, I provide professional feedback and personalized recommendations. Clients often purchase this service in order to “get a feel” for what it's like to work with me, prior to signing up for a more lengthy service such as the Coaching or Challenge services.

(c) 30 Day Glow Up Challenge

The Glow Up Challenge is an anti-inflammatory nutritional reset program with a specific focus on reducing inflammation and toxin load, improving gut health, and improving digestion. Reducing inflammation and improving gut health are two of the most important things an individual can do to support health and wellness.

During the Glow Up Challenge, the client eliminates acidic, high glycemic, and inflammatory foods. The goals of the program are improved energy levels, sleep quality, skin health, mental clarity, blood pressure, cholesterol levels, digestion, elimination, among other things. Clients report experiencing fewer food cravings and headaches, and less joint pain and brain fog.

If weight loss is one of the client's goals, I tailor the program to specifically address this issue. For clients who don't want to lose weight but rather would like to recomp and add more muscle mass, I tailor the program accordingly.

(d) Home Kitchen Visit

I personally visit the client's home and help them to clean out and overhaul their pantry / refrigerator / kitchen. Areas of discussion during the visit include instruction on how to read and

interpret ingredient and nutritional labels on food, information about preservatives, and practical tips and tactics for healthy food shopping and selection. We also work on helping the client set up a home environment that supports their success in achieving their unique healthy eating goals, even if all family members may not be on board with the client's lifestyle choices.

(e) Grocery Store Tour

The client and I visit a grocery store together for a real time lesson in how to best navigate the store so that the client leaves with food that supports their health and goals, as opposed to food or food products that feed cravings or look irresistible but are nutritionally empty. Instruction during the grocery store visit is focused heavily on how to read ingredient and nutrition labels – what to look for, what to avoid, and why.

INTERROGATORY NO. 2:

Identify and explain all types of advertising and all types of media used or intended to be used to advertise and promote Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

I advertise through word of mouth as well as on Instagram and Facebook.

INTERROGATORY NO. 3:

State the details and circumstances relating to Applicant's earliest rendering of “Dietary and nutritional counseling; Wellness and health-related consulting services” in commerce, including, but not limited to, the date, location, and the customer the Services were first rendered to.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

My first client contract is dated November 14, 2019. See attached documents Bates numbered DEF00009-DEF00011.

INTERROGATORY NO. 4:

Separately identify each document that supports that Applicant was rendering “Dietary and nutritional counseling; Wellness and health-related consulting services” as of October 11, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my services through word of mouth and social media. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 5:

Separately identify each document that supports the verified statement alleging that the applicant rendered “Dietary and nutritional counseling; Wellness and health-related consulting services” as of August 1, 2019.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing General Objections, Applicant responds as follows:

On February 28, 2019, I began promoting my services through word of mouth and social media. See attached documents Bates numbered DEF00012-DEF00013.

INTERROGATORY NO. 6:

Describe the customers to whom Applicant’s Services are marketed, distributed, and/or sold in the U.S., including, but not limited to, the customers’ demographics (e.g., geographic location, age, profession, education and income).

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

My clients include men and women of all ages who can afford my services and have a desire to improve their quality of life through better habit formation around nutrition.

INTERROGATORY NO. 7:

Describe the annual amount spent on advertising and promotion of Applicant's Services, in dollars, from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I have not tracked my advertising expenditures closely. Promotional expenditures since Fall 2019 would likely total a few thousand dollars.

INTERROGATORY NO. 8:

Describe Applicant's annual volume of sales in dollars and units in the United States for each of Applicant's Services offered under Applicant's Mark in the United States from the date the Mark was first used in commerce to the present.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to, and without waiving the foregoing objections, Applicant responds as follows:

I do not have this number readily available. Total revenue to date is likely in the ballpark of \$15,000-\$17,000.

INTERROGATORY NO. 9:

Describe how many separate customers have utilized Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

Three 1:1 Coaching clients and approximately 90 or more 30 Day Glow Up Challenge clients.

INTERROGATORY NO. 10:

Describe how many separate customers have utilized Applicant's Services online, such as via streaming or downloadable video, including for example, via platforms such as Zoom, Microsoft Team, Google Meet, etc.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

The response to Interrogatory No. 9, above, regarding total client numbers for the various services I offer is hereby incorporated by this reference. Coaching services are provided in person, via Zoom, or by phone. In-person services such as Home Kitchen Visits or Grocery Store Tours are provided in person.

INTERROGATORY NO. 11:

Describe the geographic scope of Applicant's current use and intended use of Applicant's Mark.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 12:

List all geographical areas (by city and/or state) where Applicant's Services are currently sold or marketed or intended to be sold or marketed.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above. Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 13:

With respect to the customers that have used Applicant's Services, describe the geographical areas (by city and/or state) where each of the customers were located when Applicant's Services were rendered.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I do not limit the geographic scope of my business activities and have no plans to do so in the future. Past clients have been from all over the United States and the North American continent. Utilizing Zoom, I am able to work with any paying, willing client, regardless of where they are located.

INTERROGATORY NO. 14:

Describe how customers learn about Applicant's Services.

RESPONSE:

Applicant hereby incorporates each and every General Objection set forth above.

Subject to and without waiving the foregoing objections, Applicant responds as follows:

I incorporate by this reference the Response to Interrogatory No. 2, above.

VERIFICATION OF INTERROGATORY RESPONSES

I, Amber Sogorka, believe, based on reasonable inquiry, that the foregoing Responses are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Signed: Amber K. Clarkston

Dated: 5/5/2022

RESPECTFULLY SUBMITTED this 9th day of May, 2022.

For Objections:

The Ideas Law Firm, PLLC

By: /Ruth K. Khalsa/

Ruth K. Khalsa

975 E Dava Drive

Tempe, Arizona 85283

Tel: 833.863.5483

AZ SBN 024116

ruth@trademarkelite.com

trademarks@trademarkelite.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that on May 9, 2022, a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES is being served by electronic mail addressed to the attorney of record on file with the Trademark Trial and Appeals Board for Opposer, as follows:

REBECCA LIEBOWITZ
VENABLE LLP
P.O. BOX 34385
WASHINGTON, DC 20043-9998
(202) 344-4976

trademarkdocket@venable.com, rliebowitz@venable.com, cmitros@venable.com,
pj miles@venable.com, ssfinkelstein@venable.com

/Ruth K. Khalsa/

Ruth K. Khalsa
975 E Dava Drive
Tempe, Arizona 85283

Amber Sogorka

November 17, 2019 at 6:12 PM



Updated Nutrition Coaching Pricing

To: Maytal [REDACTED]

Hi Maytal!

Sorry I missed you at my event today but I hope you had a great Sunday! Wanted to let you know that none of the people you referred came to the event today, so I am unable to extend that \$50 discount to you. That being said you did earn the other \$50 discount by getting me your signed contract and initial deposit so thank you for that!

Here is your updated Level 1, 3 month program pricing...

Level 1 Cost

- First month \$300
- \$250 per month for 2nd and 3rd months
- You selected in person meetings, which is \$50 additional per month cost
- Total plan cost for 3 months = \$950
- \$50 discount for prompt client contract signature and initial deposit

= Your total 3 month cost is \$900

- You already paid \$100 which I put toward your first meeting (Dec 5th 10:30-Noon)
- Remaining balance is \$800
- Since you are paying per meeting, the per meeting price for the remaining 11 meetings (starting with your second meeting) is \$72.75
- Payment for meetings is required at least 24 hour in advance of the meeting

Please let me know if you have any questions!

I will email you tomorrow with instructions on completing your 7 day food diary.

Thanks!
Amber

Amber Sogorka
Certified Nutrition Coach
Founder, Glow Up Nutrition
www.glowupnow.com
[REDACTED]@glowupnow.com



www.glowupnow.com
Amber K. Sogorka
Certified Nutrition Coach
[REDACTED]@glowupnow.com
760. [REDACTED]

NUTRITION COACHING SERVICES AGREEMENT

BETWEEN: Mary [REDACTED] (the "Client") and Amber K. Sogorka of Glow Up Nutrition (the "Coach"), collectively referred to as the "Parties."

Agreement Terms

1. **Services:** The Coach shall provide the following services ("Services") to the Client in accordance with the terms and conditions of this Agreement: **Nutrition Coaching.**

2. **Description of the Services**
 - A. **Initial Assessment:** Client and Coach will discuss the Client's goals and the Coach will create a plan to support the Client in achieving those goals. This includes specific habits / action steps that the Coach will teach to the Client, and the Client will practice and implement into their daily life. The plan will be adjusted and will progress as needed based on ongoing monitoring of client progress and metrics. Clients enrolled in the ProCoach program will perform all assessments online through the program.
 - B. **Periodic Check-ins:** The Coach and the Client will check in weekly or biweekly via 45-60 minute Zoom video calls, or in person, to see how the Client is doing with their habits / action steps. If the Client has shown 95% mastery of the previous habit / action step, the Coach will present a new habit / action step for the Client to implement. The Client is welcome to contact the Coach via text between 8:00am and 8:00pm with questions or concerns. If the Client wishes to schedule additional calls with the Coach at an interval of more than 1 per week, the Coach is happy to do so for an additional fee agreed upon in advance. The Client will submit data to demonstrate that they are making objective progress at intervals agreed upon by the Client and the Coach. These may include (but are not limited to) body photos, body measurements, weight logs, food logs or photos, and any forms sent to the Client as deemed necessary by the Coach to adequately provide the Services. Client will be given access into the Glow Up Nutrition private Facebook group while they are actively receiving Services.
 - C. **Monitoring of Progress:** Coach will use information from Client communication and meetings as well as subjective and objective data to monitor the Client's progress, and will share her feedback and suggestions for adjustments to habits / action steps and nutrition behaviors. All habits / actions steps will be discussed and agreed upon by both Parties. ProCoach clients will be monitored through the software and will proceed through the program as directed.
 - D. **Excluded Services:** Education and guidelines around meals and learning how to optimally fuel your body is a core part of the program, however, the Coach will not provide specific weekly meal plans that tell the Client exactly what to eat for every meal of every day. Also excluded are prepared foods and detailed workout plans.



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760. [redacted]

3. **Methods of Communication:** Communication between the Coach and the Client may take place via Zoom video calls, ProCoach software, email, text, or in person meetings.

4. **Price and Payment:** Pricing will depend on the length and level of Services provided, and will be discussed and agreed upon before coaching begins. Payment is due on the 1st of each month, with a 5 day grace period. Payment can be made via Venmo, credit card (applicable fees will also be charged), check, or cash. The Coach has the right to cancel Services if payments are more than 14 days overdue, unless a specific agreement is made and agreed upon in writing between the Coach and the Client.

5. **Limit of Liability:** The Coach agrees to provide Services within her scope of practice, and the Client agrees to communicate with the Coach with full disclosure. The Client also agrees to comply with the agreed-upon habits / action steps. The Client understands and agrees that the Services are not a guarantee of results, and that the Coach assumes no liability for the Client's failure to comply with the habits / action steps agreed upon by the Parties. Services can be discontinued by the Coach or Client before the program is completed by submitting a request in writing. If Client discontinues Services, future months already paid for may be eligible for a refund if a specific agreement is made in writing between the Coach and the Client.

Select Desired Program:

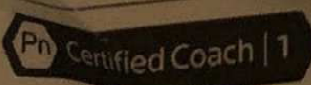
- 3 months *starting at January officially*
- 6 Months
- 12 Months

Coaching Start Date: 12/5/19 (1st session) Coaching End Date: TBD

Signed By: *[Signature]*
Client

Date: 11/14/19
Date: _____

Coach: Amber K. Sogorka
Glow Up Nutrition Founder and Certified Coach





glowup_nutrition
Del Mar, California



glowup_nutrition Why Eat Whole Eggs?

... Many people don't want to eat eggs, and especially egg yolk, because of the cholesterol content. Research has shown that high levels of dietary saturated fat have a much stronger correlation to increased levels of cholesterol than actual dietary cholesterol.

... Cholesterol has several essential rolls in the body including cell membrane function, dietary fat absorption, helping to synthesize bile salts, and it is also the basis of many steroid hormones including vitamin D. Because cholesterol has so many important roles in our body, our body makes its own cholesterol, and a lot of it.

... Eggs are a healthy nutrient dense food. They are low in calories, high in protein (4g in the whites and 2.5g in the yolk), and high in many important

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MARCH 23, 2019



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