

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

SERIAL NO.: 76/192241

MARK: AGT

FILED: January 10, 2001

PUBLISHED: July 2, 2002

AGF Management Limited)

Opposer)

v.)

Merrill Lynch & Co., Inc.)

Applicant)

Opposition No. _____

**CERTIFICATE OF MAILING
UNDER 37 C.F.R. § 1.8**

THE UNDERSIGNED CERTIFIES THAT THIS DOCUMENT IS BEING PLACED IN AN ENVELOPE ADDRESSED TO BOX TTAB, FEE, COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513, AND DEPOSITED AS FIRST CLASS MAIL, POSTAGE PREPAID, THIS 30TH DAY OF OCTOBER, 2002.

J. L. Lynch

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

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NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.104, AGF Management Limited ("Opposer") believes that it would be damaged by the registration of the above-identified trademark, and hereby opposes the same, on the grounds set forth below.

The Parties

1. Opposer, AGF Management Limited, is a corporation organized and existing under the laws of Canada, located and doing business at Toronto-Dominion Bank Tower, 31st Floor, Toronto, Ontario, Canada M5K 1E9.

2. Applicant, Merrill Lynch & Co., Inc., upon information and belief, is a Delaware corporation located and doing business at 222 Broadway, 17th Floor, New York, New York, 10038.

Opposer's Mark AGF

3. Opposer owns pending application Serial No. 75/604263, "AGF GROUP OF FUNDS" and Design (the "AGF Pending Application"), in connection with the following services in Class 036: "personal financial management services; mutual fund investment management, mutual fund distribution, mutual funds investment; mutual fund brokerage; investment advice and investment consultation in mutual funds, stocks, bonds and investment plans."

The Pending Application for AGT

4. Applicant has filed application Serial No. 76/192241 for the mark AGT (text form) (the "Proposed Mark"), in International Class 036 for "financial services, namely, the offering of equity or debt securities."

5. Applicant has designated Patrick Romain, at Applicant's stated address, as its designated representative upon whom notice or process in proceedings affecting the mark may be served.

The Grounds for Opposition

6. There is no issue of priority. Upon information and belief, Applicant has no rights in the Proposed Mark prior to the constructive use (filing) date of the AGF Pending Application, December 14, 1998, which is roughly one year prior to the claimed first use date of the Proposed Mark by Applicant (December 1, 1999).

7. Upon information and belief, the financial services of the Proposed Mark are identical or highly related to the financial services of the AGF Pending Application.

8. The Proposed Mark is confusingly similar to the mark of the AGF Pending Application, such that the use and registration of the Proposed Mark for the services identified in pending application Serial No. 76/192241 would be likely to cause confusion in the minds of consumers as to the source of Applicant's or Opposer's services, and would be likely to confuse and deceive the trade and purchasing public into believing that Applicant's goods originate with or are otherwise authorized, licensed, or sponsored by Opposer.

9. Concurrent use of the Proposed Mark by the Applicant and of the mark of the AGF Pending Application by Opposer may result in irreparable damage to Opposer's reputation and goodwill, because purchasers are likely to attribute the source of Applicant's goods to Opposer, or to believe that Applicant's services are affiliated with, endorsed by, approved by, or sponsored by Opposer.

10. Registration to Applicant of the Proposed Mark herein opposed would provide Applicant with the *prima facie* exclusive right to use the Proposed Mark in commerce in connection with the services of pending application Serial No. 76/192241.

11. As a result of registration to Applicant of the Proposed Mark (and therewith, the *prima facie* exclusive right to use the mark in commerce in connection with services to be provided by Opposer), confusion in the trade is likely to result from any concurrent use of the mark of the AGF Pending Application and the Applicant's Proposed Mark, all to the great detriment of Opposer.

12. The Proposed Mark, when used in connection with the services enumerated in the pending application Serial No. 76/192241, would be likely to cause confusion in the minds of consumers as to the source of Applicant's or Opposer's services, or to cause mistake, or to deceive, within the meaning of 15 U.S.C. § 1052(d). Therefore, the Proposed Mark is not registrable pursuant to 15 U.S.C. § 1052, and registration to Applicant should be refused.

13. By reason of all the foregoing, Opposer believes that it would be damaged by registration of the mark which is the subject of the pending application Serial No. 76/192241, and Opposer hereby opposes the same.

WHEREFORE, Opposer respectfully requests that this Notice of Opposition be sustained, and that pending application Serial No. 76/192241 be denied registration.

Please recognize as counsel for Opposer in this proceeding, Scot A. Duvall of the law firm Middleton Reutlinger, whose address is 2500 Brown & Williamson Tower, Louisville, Kentucky 40202-3410, and whose telephone number is (502) 584-1135.

Respectfully submitted,



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Dated: OCTOBER 30, 2002

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Date: February 25, 2003

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FROM: Name: Scot A. Duvall

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REMARKS: Re: Notice of Opposition for 76/192241 (AGT)
Please see the attached, per our discussion.
Thank you for your assistance.

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