

Exhibit

11/13

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

Applicant: RedSky Partners, LLC)
Serial No.: 78/086,328)
Filing Date: 01 October 2001)
Service Mark: RedSky (Stylized))
Published: 04 June 2002)

International Class: 036



08-05-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #61

RedSky Securities, LLC,
Opposer,
v.
RedSky Partners, LLC,
Applicant.

Opposition No. _____

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NOTICE OF OPPOSITION

TRADEMARK TRIAL AND
APPEAL BOARD
02 AUG -9 AM 8:44

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on

02 August 2002

02 Aug 02
Date

Eric Kruschka
Signature

Serial No.: 78/086,328

Dear Sir:

Opposer, RedSky Securities, LLC, an Illinois Limited Liability Company, located at and having its principal place of business at 30 South Wacker Drive, Suite 1615, Chicago, Illinois 60606 (“Opposer”), believes that it will be damaged by the registration of the mark shown in U.S. Service Mark Application Serial No. 78/086,328 and use of the mark REDSKY, and hereby opposes registration of said mark by RedSky Partners, LLC (“Applicant”).

As grounds of opposition, it is alleged that:

1. The above U.S. Service Mark Application Serial No. 78/086,328, seeking registration of the mark REDSKY for “financial services, namely management and operation of investment funds” in International Class 036, was filed by Applicant on 01 October 2001 (“filing date”), based upon Applicant’s alleged intent to use the mark. Applicant’s mark was published for opposition on 04 June 2002 in International Class 036 in the Official Gazette of the U.S. Patent and Trademark Office. Opposer filed with the Trademark Trial and Appeal Board a First Request for Extension of Time to File Notice of Opposition on 24 June 2002, and was granted an extension of time of thirty (30) days up to and including 03 August 2002 for filing a Notice of Opposition against U.S. Service Mark Application Serial No. 78/086,328.

2. Prior to the filing date of Applicant's U.S. Service Mark Application, Opposer has continuously used, and is now, using REDSKY, both as a trade name and a service mark in commerce in the United States in connection with financial services, namely brokerage services for electronic securities trading access.

3. On 11 April 2001, Opposer filed with the Illinois Secretary of State Articles of Amendment, whereby the corporate name was changed from Yourtrade.com Securities, Inc. to RedSky Securities, Inc. (Exhibit A).

4. Opposer filed with the NASD an Application for Broker-Dealer Registration in the name of RedSky Securities, Inc. on or about 09 May 2001. (Exhibit B).

5. Currently, Opposer operates as a Limited Liability Company, namely RedSky Securities, LLC.

6. Opposer has used the mark REDSKY in commerce at least as early as May, 2001.

7. Opposer actively promoted its business and services using the mark REDSKY at least as early as May, 2001.

8. Since at least as early as July, 2001, a website page for *www.redskysecurities.com* has been fully operational and displays Opposer's service mark REDSKY and Opposer's membership with the NASD and SIPC, and provides

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contact information, including a telephone number and an e-mail address. (Exhibit C).

9. Opposer also owns the following domain names, each registered with Network Solutions on 10 May 2001: redskyventures.com, redskyfinancial.com, redskyfunds.com, redskybrokerage.com, and redskycapital.com.

10. Opposer has expended substantial amounts of money, time and effort in marketing, promoting and popularizing its REDSKY trade name and mark and developing the goodwill associated therewith. The trade and purchasing public have come to know Opposer's mark and recognize that any services so marked originate with Opposer.

11. On information and belief, RedSky Partners, LLC is a Limited Liability Company formed under the laws of the State of Delaware and having its principal place of business at 1730 41st Place North, Plymouth, Minnesota 55446.

12. On information and belief, Mr. Gregg Groechel and Mr. Bill Miller formed RedSky Partners, LLC no earlier than August, 2001, as indicated in an article dated 06 March 2002 and entitled "Amex Alumni on Hiring Spree," published in *Hedge Fund Alert* (www.HFAlert.com), page 3. (Exhibit D).

13. On information and belief, Applicant did not use the mark REDSKY until after the filing date of 01 October 2001.

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14. On information and belief, Applicant did not use the mark REDSKY in commerce until after the filing date of 01 October 2001.

15. The services in connection with which Applicant seeks registration of its mark hereby opposed, and the service mark sought to be registered by Applicant, are so related to Opposer's business, services, trade name and mark that use and registration by Applicant of the mark sought to be registered as set forth in its application for registration will tend to cause confusion, cause mistake, or will deceive purchasers into the erroneous belief that Applicant's services are the services of Opposer, or that such services are authorized and/or sponsored by or are otherwise connected with the business or services of Opposer, and thus, such use and registration will appropriate to Applicant substantial aspects of the goodwill which Opposer has established for Opposer's trade name and mark and substantially damage Opposer in the conduct of Opposer's business.

16. Opposer has no control over the nature and quality of Applicant's services under the mark it seeks to register, and any dissatisfaction with Applicant's services by the affected public would reflect adversely on Opposer, thus damaging Opposer's valuable and established goodwill and reputation.

17. The mark REDSKY shown in U.S. Service Mark Application Serial No. 78/086,328 so resembles the trade name and mark previously used by Opposer in the United States, and not abandoned, as to be likely, when used in

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connection with the services of Applicant, to cause confusion, to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act.

18. The mark REDSKY shown in U.S. Service Mark Application Serial No. 78/086,328 so resembles Opposer's trade name and mark as to falsely suggest a connection with Opposer within the meaning of Section 2(a) of the Lanham Act.

19. Applicant's use of the mark REDSKY and the association created in the minds of customers arising out of that use, will cause specific irreparable harm to Opposer and the goodwill associated with Opposer's trade name and mark, and would inhibit Opposer's continuing marketing ability.

20. If registration of the mark here sought to be registered by Applicant were to be granted to Applicant, the effect would be to create in favor of Applicant statutory rights under the Trademark Act of 1946, and such registration would tend to restrict, interfere with, and damage Opposer in the unhampered conduct of his business and protection of his legitimate business.

21. The contemporaneous use by Applicant of the mark REDSKY will dilute or impair Opposer's trade name, service mark and service mark rights. If Applicant is permitted to register the mark REDSKY, such registration will eventually result in the inability of Opposer's mark to function as an indication of origin, as well as the loss of distinctiveness and exclusivity of Opposer's mark.

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WHEREFORE, Opposer respectfully requests that registration of the mark REDSKY shown in U.S. Service Mark Application Serial No. 78/086,328 be rejected under Sections 2(d) and 2(a) of the Lanham Act, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Accompanying the original Notice of Opposition is our check for the required filing fee of \$300.00 under 37 C.F.R. §2.6(a)(17). Please charge any additional fees to Pauley Petersen Kinne & Erickson's Deposit Account, No. 19-3550, the account of Opposer's Counsel noted below.

Please direct all correspondence to Eric T. Krischke, Esq., of Pauley Petersen Kinne & Erickson, 2800 W. Higgins Road, Suite 365, Hoffman Estates, Illinois 60195, and kindly direct all calls to the same at (847) 490-1400.

Date: 02 August 2002

Respectfully submitted,



Eric T. Krischke
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