

TTAB

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

Nexx Online, Inc.)
)
 Opposer,)
)
 v.)
)
 Nexx LLC)
)
 Applicant.)

Opposition No. _____
Serial No. 76/404,828

Commissioner for Trademarks
Box TTAB - FEE
2900 Crystal Drive
Arlington, VA 2202-3513


02-24-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

NOTICE OF OPPOSITION

Nexx Online, Inc. a corporation of Canada, having an office and place of business at 5255 Young Street, Suite 800, Toronto, Ontario M2N 6P4 Canada (hereinafter "OPPOSER") believes it will be damaged by registration of the mark shown in Application Serial No. 76/404,828 in International Class 35 and hereby opposes the same.

As grounds for opposition, OPPOSER alleges that:

1. Applicant, Nexx LLC, a corporation of Nevada, having an address of 3291 N. Buffalo Drive, Las Vegas, Nevada 89129 (hereinafter "APPLICANT"), seeks to register **NEXX** & Design as a trademark for "training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services" in

03/10/2003 K6IBBONS 00000034 76404828

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300.00 GP

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International 41. The application was published for opposition at page TM 441 of the *Official Gazette* of February 11, 2003.

2. OPPOSER is an established leader in delivering web hosting infrastructure for companies and businesses around the world. OPPOSER offers its customers and clients high quality web site development and web hosting services under its NEXX trademark. The OPPOSER'S web hosting and web development services which are sold under the NEXX trademark are known to members of the general public in the United States, Canada and in many countries around the world.

3. OPPOSER has filed an application to register its NEXX trademark in the United States Patent and Trademark Office, Serial No. 75/700,372. The application was filed June 2, 1999, asserting a priority date of March 9, 1999, for the following services in International Class 42: "Hosting the web sites of others on a computer server for a global computer network; and designing and implementing web sites for others with electronic commerce capabilities." As set forth in its application, OPPOSER'S NEXX trademark was first used anywhere on March 20, 1996, and first used in commerce on December 1, 1996.

4. Opposer has superior rights in and to the NEXX trademark because its priority date and usage for the mark long predate the filing date of Applicant's intent-to-use application.

5. The OPPOSER has been using its trademark and trade name NEXX continuously for more than six years in the United States and has spent considerable time, effort and money in advertising and promoting its web hosting services as well as a variety of promotional goods under the NEXX trademark, via the internet and in global computer networks. By virtue of its extensive use and promotional activities, Opposer has established extremely valuable goodwill in its NEXX trademark. Moreover, the NEXX trademark has through years of usage become a famous trademark.

6. APPLICANT'S trademark application (Serial No. 76/404,828) is based upon an intent to use **NEXX** & Design for "training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services." APPLICANT has also filed three other trademark applications which incorporate OPPOSER'S NEXX trademark:

LIVE LIFE AT THE **NEXX** LEVEL, Serial No. 76/404,827 -- This ITU application was filed on May 6, 2002, in Class 41 for "Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services."

LIVE LIFE AT THE **NEXX** LEVEL, Serial No.76/404,826 -- This ITU application was filed on May 6, 2002, in Class 35 for "multi-level marketing business services."

NEXX & design, Serial No.76/404,829 -- This ITU application was filed on May 6, 2002, in Class 35 for "Multi-level marketing business services."

A review of these applications shows that APPLICANT is using OPPOSER'S NEXX word mark alone and in combination with other words or designs as applied to services which are confusingly similar to those offered by Opposer.

7. APPLICANT'S alleged mark NEXX & Design incorporates OPPOSER's well-established NEXX trademark in its entirety. Therefore, actual and prospective purchasers of multi-level marketing business services are likely to be confused, mistaken or deceived as to the source of origin, sponsorship, affiliation or approval of those services. APPLICANT'S use of its alleged mark has already caused actual confusion in the market place.

8. APPLICANT's use and registration of the alleged mark **NEXX** & Design is also likely to cause a dilution of the distinctive quality of Opposer's famous NEXX trademark.

9. Upon information and belief, APPLICANT has not used its alleged mark NEXX & Design in commerce before the May 6, 2002 filing date of its intent-to-use application.

10. Upon information and belief, at the time APPLICANT filed Application Serial No. 76/404,828, it had or should have had full knowledge of the prior adoption and extensive use of the trademark NEXX by OPPOSER and its pending application for federal trademark registration.

11. Upon information and belief, APPLICANT incorporated its business under the designation NEXX LLC on or about November 7, 2001.

WHEREFORE, OPPOSER prays that this opposition be sustained.

OPPOSER hereby designates and appoints the firm of Holland & Knight LLC, 55 West Monroe Street, Suite 800, Chicago, Illinois 60603, Telephone 312.578.6689 or 312.263.3600 to act as its domestic representative on whom may be served notices or process in this proceeding and to act as its attorneys in the matter of the above-identified Opposition with full power of substitution and revocation to prosecute this Opposition and to transact all business in the United States in connection with this Opposition and to transact all business in the United States courts in connection with this Opposition; to sign its name to all papers which may hereafter be filed in connection with said Opposition; to receive all official communications related to the same; and further directs that all correspondence be forwarded to: Scott W. Petersen, Holland & Knight LLC, 55 West Monroe Street, Suite 800, Chicago, IL 60603.

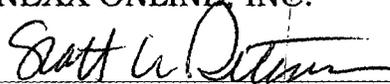
The Opposition filing fee in the amount of \$300.00 is submitted herewith along with two extra copies of this Opposition.

Respectfully submitted,

NEXX ONLINE, INC.

Date: February 20, 2003

By: _____


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Lewis T. Steadman Jr.
Holland & Knight LLC
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Chicago, Illinois 60603
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312.578.6540 Fax
Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this NOTICE OF OPPOSITION is being deposited in triplicate with the United States Postal Service as First Class Mail in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
BOX TTAB FEE
Arlington, VA 22202-3513

on February 20, 2003

By: 

Scott W. Petersen
Attorneys for Opposer

CHI1 #177599 v5



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Thu Jan 9 04:31:17 EST 2003

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	Show/Hide	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Please logout when you are done to release system resources allocated for you.

List At:

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to record:

Record 4 out of 18

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Word Mark NEXX
Goods and Services IC 041. US 100 101 107. G & S: Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 76404828
Filing Date May 6, 2002
Filed ITU FILED AS ITU
Owner (APPLICANT) Nexx LLC LIMITED LIABILITY COMPANY NEVADA 3291 N. Buffalo Drive Las Vegas NEVADA 89129
Attorney of Record Jacqueline S. Ackerman, Esq.
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2003-01-09 17:10:16 ET

Serial Number: 76404828

Registration Number: (NOT AVAILABLE)

Mark



(words only): NEXX

Current Status: Final review prior to publication has been completed, application will be published for opposition.

Date of Status: 2003-01-02

Filing Date: 2002-05-06

The Information will be/was published in the Official Gazette on 2003-02-11

Registration Date: (DATE NOT AVAILABLE)

Law Office Assigned: TMEG Law Office 101

Attorney Assigned:
KING LINDA M Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2003-01-02

CURRENT APPLICANT(S)/OWNER(S)

1. Nexx LLC

Address:
Nexx LLC
3291 N. Buffalo Drive
Las Vegas, NV 89129
United States
State or Country Where Organized: Nevada

Legal Entity Type: Other

GOODS AND/OR SERVICES

Training services in the field of multi-level marketing business services; and providing on-line training information in the field of multi-level marketing business services

International Class: 041

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-11-06 - Approved for Pub - Principal Register (Initial exam)

2002-11-01 - Examiner's amendment mailed

2002-10-25 - Non-final action mailed

2002-10-08 - Case file assigned to examining attorney

2002-09-25 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Jacqueline S. Ackerman, Esq. (Attorney of record)

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