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UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

TALENT PLUS, INC.,)
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 Opposer,)
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 v.)
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 MANPOWER, INC.,)
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 Applicant.)
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Opposition No. _____



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NOTICE OF OPPOSITION

Talent Plus, Inc., d/b/a Talent+, a Nebraska corporation located at 5220 S. 16th St., Lincoln, Nebraska 68512 (hereinafter "Opposer"), hereby opposes the application filed on July 16, 2002, by Manpower, Inc., a Wisconsin corporation located at North Ironwood Road, Milwaukee, WI 53201 (hereinafter "Applicant"), for registration of "TALENTPORT," U.S. Application Serial No. 78/144,217, in connection with employment agency services; temporary employment agency services; job placement services; career development; employment recruitment services; employment counseling and recruiting; employment hiring, recruiting, placement, staffing and career networking services; employment outplacement services; providing and managing contract personnel resourcing programs; analyzing and consulting on personnel needs; providing contract and temporary contract personnel staffing services; arranging for and managing the provision of temporary contract personnel; personnel management and personnel resourcing consultancy services; providing information and consultancy services on the procurement of temporary and contract personnel; computer on-line ordering, and providing computer on-line reports, both via a global information network, in the fields of personnel procurement and personnel resourcing; human resources

consulting on recruiting, training and testing of employees; testing to determine employment skills; employment counseling for others; providing career information via a website on a global information network; providing information on jobs via a website on a global information network; providing information on employee pay and benefits in connection with contract personnel staffing, on-line via a global information network; providing an on-line computer database in the fields of jobs and contract personnel staffing, in Class 35; and providing training in business and job skills and office technology; providing on-line courses of study in the following - information technology, software use, job, office and business skills - via a website on a global information network, in Class 41.

As grounds for this Opposition, Opposer states as follows:

(1) Applicant's mark depicted above is prohibited from registration under Section 2(d) of the Federal Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1052(d), because it is likely to be confused with one or more of the marks depicted in the following United States registrations owned by Opposer and duly registered on the Principal Register of the Patent and Trademark Office (PTO):

Opposer's Marks

Reg. No.	Mark	Goods/Services & Date of First Use
U.S. Reg. No. 2,457,968, registered 6/5/2001	TALENT PLUS	Business personnel consultation, namely, developing and providing employers with methods and procedures to identify productive current and prospective employees, in Class 35 (first use 5/0/2000)
U.S. Reg. No. 1,694,765, registered 6/16/1992	TALENT+	Business personnel consultation, namely, developing and providing employers with methods and procedures to identify productive current and prospective employees, in Class 35 (first use 7/17/89)

Reg. No.	Mark	Goods/Services & Date of First Use
U.S. Reg. No. 2,643,789, registered 10/29/2002	TALENTBANK	Computer programs used by employers for monitoring and evaluating the performance of employees, in Class 9 (first use September 2001)
U.S. Reg. No. 2,716,938, registered 5/20/2003	TALENT BENCHMARK	Employment consulting services, namely evaluating employees and prospective employees, in Class 35 (first use 1991)
U.S. Reg. No. 2,551,962, registered 3/26/2002	TALENT INTENSITY INDEX	Employment consulting services, namely, evaluating employees and prospective employees, in Class 35 (first use 1/1/1991)
U.S. Reg. No. 2,492,575, registered 9/25/2001	TALENT CARD	Certificates recognizing employee qualities and achievements, in Class 16 (first use 1/1/1990)
U.S. Reg. No. 2,682,377, registered 2/4/2003	TALENTFIT	Employee recruiting services, namely, assisting in evaluating prospective employees, in Class 35 (first use 5/1/2000)
U.S. Reg. No. 2,642,089, registered 10/29/2002	TALENT PREDICTION	Business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989)
U.S. Reg. No. 2,624,108, registered 9/24/2002	TALENT PROFILE	Business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989)
U.S. Reg. No. 2,032,573, registered 1/21/1997	TALENT ONLINE	Employment recruiting services, in Class 35 (first use 9/1/95)
U.S. Reg. No. 2,638,760, registered 10/22/2002	TALENT GRAPH	Business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989)
U.S. Reg. No. 2,726,929, registered 6/17/2003	TALENT+ MASTER TRAINER	Business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1995)

(2) In addition to the United States registrations owned by Opposer pleaded above, Opposer has common law rights in the "TALENT" mark represented by the following application currently pending at the PTO:

Applic. No.	Mark	Goods/Services & Date of First Use
U.S. App. Ser. No. 76/492,177, filed 2/24/2003	TALENT+ VIEWPOINT	Business management, personnel and human resources consulting services, namely, development and application of proprietary structured processes, validated questionnaires and instruments for psychometric testing; development and support of related software; and associated personnel services, in Class 35 (first use 3/5/2001)

Description of Opposer

(3) Opposer is a consultant to businesses across the United States in the field of psychometrics – the use of validated testing instruments to identify personal traits that lead to success in specific jobs.

(4) Since its incorporation in 1989, Opposer has invested substantially in the development of a family of marks that link the word "Talent" with another word, e.g., TALENT PLUS, TALENT+, TALENTBANK, TALENT BENCHMARK, TALENT INTENSITY INDEX, TALENT CARD, TALENTFIT, TALENT PREDICTION, TALENT PROFILE, TALENT ONLINE, TALENT GRAPH, TALENT+ MASTER TRAINER, and TALENT+ VIEWPOINT, as depicted in Paragraphs 1 and 2 above.

(5) Since adopting its "TALENT" marks, Opposer has made substantial, continuous and exclusive use of those marks in sales to business corporations, associations, executives, and human resources professionals in the specialized market for the development and application of proprietary structured interview processes, validated questionnaires and testing instruments, supporting software and related personnel services.

(6) Opposer currently has approximately 65 employees engaged in the specialized services described above and annual revenues of around \$8 million.

(7) In its specialized field, Opposer's "TALENT" marks have acquired secondary meaning and are familiar to the purchasing public in that they identify Opposer as the source of products and services offered under Opposer's family of "TALENT" marks.

Acquired Secondary Meaning of Opposer's "TALENT" Marks

(8) Opposer's "TALENT" marks may be described as "suggestive" of Opposer's goods and services within the meaning of the trademark law, as they connote a quality, ingredient, or characteristic of Opposer's goods and services. However, they are not descriptive, because imagination is required to reach a conclusion as to the actual goods and services or to connect the marks with the goods and services. A person without knowledge of Opposer's products and services would not likely know that Opposer is exclusively engaged in the specialized market for the development and application of proprietary structured interview processes, validated questionnaires and testing instruments, supporting software and related personnel services. Opposer's "TALENT" marks are "suggestive" because they conjure up images of Opposer's products and services without actually describing them.

(9) While Opposer's "TALENT" marks may be suggestive on their face, as a family of marks they have acquired secondary meaning as the result of many years of use, advertising and promotion. As a result of such use, advertising and promotion, Opposer and its "TALENT" marks are well known in the market for the services offered by Opposer.

PTO Recognition of Secondary Meaning in Opposer's Marks

(10) The PTO has recognized the acquired secondary meaning associated with the word "TALENT" as used in Opposer's marks. Specifically, the PTO has registered the following marks of Opposer pursuant to Section 2(f) of the Lanham Act, 15 U.S.C. §1052(f), based on a finding that the word "TALENT" has acquired distinction as used in connection with Opposer's goods and services:

- **TALENT GRAPH**, U.S. Reg. No. 2,638,760, Oct. 22, 2002, for business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989);
- **TALENT PREDICTION**, U.S. Reg. No. 2,642,089, Oct. 29, 2002, for business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989);
- **TALENT PROFILE**, U.S. Reg. No. 2,624,108, Sept. 24, 2002, for business personnel consultation, namely, developing and providing employers with methods and procedures to assess and develop productive current and prospective employees, in Class 35 (first use 1989); and
- **TALENT BENCHMARK**, U.S. Reg. No. 2,716,938, registered May 20, 2003, for employment consulting services, namely evaluating employees and prospective employees, in Class 35 (first use 1991).

Incontestability

(11) Opposer's registrations for **TALENT ONLINE**, U.S. Reg. No. 2,032,573, registered Jan. 21, 1997, and **TALENT+**, U.S. Reg. No. 1,694,765, registered June 16, 1992, are "incontestable" under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of the validity of the registered marks pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

Enforcement History

(12) Opposer has consistently and vigorously enforced its rights in the "TALENT" marks alleged in this Notice of Opposition by protesting against confusingly

similar uses by third parties. In 2000, Opposer filed a suit that led to a third party's agreement to terminate its use of the name "TalentPoint." In addition, Opposer is presently prosecuting a federal trademark infringement action involving Opposer's family of "TALENT" marks.

Overlapping Recitations

(13) The recitation in the opposed application is drawn in a manner that could be interpreted to encompass the development and application of proprietary structured interview processes, validated questionnaires and testing instruments, supporting software and related personnel services, in which Opposer's family of "TALENT" marks is especially well known. As the recitation in the opposed application is not limited to exclude that possibility, registration of Applicant's mark would allow Applicant to compete directly with Opposer in the specialized market where Opposer's family of "TALENT" marks is especially well known.

Conclusion

(14) Applicant's proposed mark so resembles Opposer's family of "TALENT" marks in appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's goods and services, to cause confusion, mistake and/or deception. Registration of Applicant's mark is therefore prohibited under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and would be damaging to Opposer's exclusive rights in its registered and unregistered marks pleaded above.

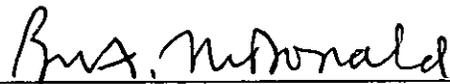
WHEREFORE, Talent Plus, Inc., opposes the application cited in the preamble above, and moves the Board to sustain this opposition and to refuse registration of the mark depicted in that application.

Opposer hereby authorizes the filing fee of SIX HUNDRED DOLLARS (\$600.00) and any additional charges necessary to institute this proceeding in two classes to be debited from the deposit account of Wiley Rein & Fielding LLP, Account No. 501129.

This Notice of Opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

TALENT PLUS, INC., d/b/a Talent+

By: 

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Dated: October 22, 2003

WRFMAIN 12133995.1