

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

UMAC, Inc.,

Opposer,

v.

Upside Software, Inc.,

Applicant.

Opposition No. 91160262

APPLICANT'S ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS

APPLICANT'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Applicant, Upside Software, Inc., answers Opposer UMAC, Inc.'s Notice of Opposition that was re-filed¹ on July 6, 2004, in accord with the Board's Order of July 22, 2004, in correspondingly numbered paragraphs as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph of the Notice of Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph of the Notice of Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph of the Notice of Opposition.



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U.S. Patent & TMO/TIA Mail Rpt Dt. #22

¹ Opposer's initial Notice of Opposition was dated February 25, 2004, but was not signed, in violation of Rule 11 of the Federal Rules of Civil Procedure. The Board ultimately allowed Opposer to re-file its Notice of Opposition, after the close of the opposition period, and after Opposer had left Applicant's Motion to Strike unopposed.

1 19. On information and belief, Opposer (including any and all predecessors or
2 successors in interest and related companies) has abandoned the UPSIDE mark in the United
3 States, since at least October 2002.

4 20. On information and belief, Opposer (including any and all predecessors or
5 successors in interest and related companies) has no intent to resume use of the UPSIDE
6 mark.

7 **Counterclaim Count I - Petition to Cancel Registration**

8 21. On information and belief, Opposer has abandoned any and all interest in the
9 UPSIDE mark, and lacks any enforceable rights in the UPSIDE mark.

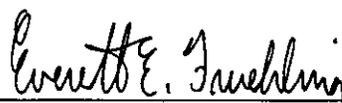
10 22. Applicant is injured by the Opposer's registration of the UPSIDE mark.

11
12 WHEREFORE, Applicant requests that the present Counterclaim be sustained and that
13 the subject registration be cancelled, or in the alternative, that the subject registration be
14 limited to goods and/or services such as to prevent further injury to applicant.

15 Applicant submits herewith payment of the \$300.00 U.S. government fee for the
16 petition to cancel in the aforesaid Counterclaim. The commissioner is authorized to charge to
17 Deposit Account No. 03-1740 any fees that are authorized by the undersigned, by telephone
18 or otherwise.

19 Respectfully submitted this 1st day of September 2004.

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21 CHRISTENSEN O'CONNOR
22 JOHNSON KINDNESS^{PLLC}

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25 _____
26 Everett E. Fruehling, Esq.
27 Gregory F. Wesner, Esq.
Attorneys for Applicant Upside
Software, Inc.

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CERTIFICATE OF MAILING

I hereby certify that Applicant's Answer, Affirmative Defenses and Counterclaims is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on the below date.

Date: September 1, 2004 Stacey K. Kalata

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September 2004, a true copy of the foregoing Applicant's Answer, Affirmative Defenses and Counterclaims was served on counsel for Opposer by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Simor L. Moskowitz, Esq.
Jacobson Holman, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004-2201

Executed on: September 1, 2004 Stacey K. Kalata

EEF/skk