

ESTTA Tracking number: **ESTTA15197**

Filing date: **09/15/2004**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr. Erik Stoffel
Granted to Date of previous extension	09/15/2004
Address	Mr. Erik Stoffel 10350 Dover Street, # H31 Westminster, CO 80021 UNITED STATES

Attorney information	Stephen H. Sturgeon, Esquire Stephen H. Sturgeon & Associates, P.C. 11116 Hurdle Hill Drive Potomac, MD 20854-2526 UNITED STATES shs@sturgeonassociates.com Phone:301 983 6111
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Applicant Information

Application No	76485376	Publication date	05/18/2004
Opposition Filing Date	09/15/2004	Opposition Period Ends	09/15/2004
Applicant	Nicolas Stark Computing, AB		

Goods/Services Affected by Opposition

Class 009. First Use: 19991200 First Use In Commerce: 19991200

All goods and services in the class are opposed, namely: COMPUTER SOFTWARE RECORDED ON CD-ROM FOR USE IN SCANNING COMPUTER HARD DRIVES, MEMORY, AND OPERATING SYSTEM REGISTRIES TO DETECT AND REMOVE UNWANTED PROGRAMS; DOWNLOADABLE COMPUTER SOFTWARE FOR USE IN SCANNING COMPUTER HARD DRIVES, MEMORY, AND OPERATING SYSTEM REGISTRIES TO DETECT AND REMOVE UNWANTED PROGRAMS; DOWNLOADABLE ELECTRONIC PUBLICATIONS IN THE NATURE OF BROCHURES AND MANUALS IN THE FIELD OF COMPUTERS

Attachments	Opposition re 76485376.pdf (5 pages)
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Signature	/Stephen H. Sturgeon, Esquire/
Name	Stephen H. Sturgeon, Esquire
Date	09/15/2004

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

Mr. Erik Stoffel

Opposer

v.

Nicolas Stark Computing, AB

Applicant

Serial No.: 76485376

ESTTA TRACKING NO:ESTTA11694

NOTICE OF OPPOSITION

Opposer, Mr. Erik Stoffel, 10350 Dover Street, # H31, Westminster, CO 80021, UNITED STATES, an individual and a citizen of UNITED STATES hereby opposes registration of the mark AD-AWARE that is the subject of application Serial No. 76485376, published in the Official Gazette of May 18, 2004, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term ADWARE as a trademark for computer programs and other products which have been developed, manufactured, serviced, maintained and marketed by Opposer and the agents and principals of Opposer.
2. Applicant's mark so resembles Opposer's previously used mark ADWARE as to be likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

3. The term for which Applicant has applied for registration is a common descriptive name of a product reasonably related to the goods or services for which Applicant has applied for registration. In particular, without limitation, the term ADWARE is an extraordinarily generic term for certain types of software and other products. For example, the term ADWARE appears as a defined term in Webster's New Millennium™ Dictionary of English, © 2003 Lexico Publishing Group, LLC where the term is defined as "any software that covertly gathers information about a user while he/she navigates the Internet and transmits the information to an individual or company that uses it for marketing or other purposes;" Furthermore, as an additional example of the generic nature of the term, a recent search on the popular search engine GOOGLE for the term ADWARE returned results indicating that the search engine has located approximately 2,270,000 examples of the use of the term on the Internet. (Exhibit A attached hereto)
4. The term for which Applicant has applied for registration is merely descriptive (and deceptively misdescriptive) of the product for which the application for the trademark has been submitted. As one example, in particular, the terms Ad Aware are common terms which, when used in juxtaposition to one another describe the products for which the Applicant is seeking the registration of the term. Accordingly, the term AD-AWARE which is descriptive (and deceptively misdescriptive) of goods or services, should not be registered unless it has become distinctive of such goods or services in commerce.
5. The term is not distinctive. The applicant cannot prove that the primary meaning of the term in the relevant field is to designate source rather than to convey a characteristic of the goods or services.
6. Distinctiveness of the term has not been and cannot be established at the time of the commencement of the application proceeding or at any time thereafter.
7. Opposer (and numerous other individuals and entities) have used the term in a descriptive manner.
8. The Applicant's use is misdescriptive and deceptive since, in part, the usage creates a confusing similarity to terms used to designate other products.
9. The issuance of a trademark registration granting the Applicant certain exclusive rights to the use of the descriptive or misdescriptive mark would give the Applicant an unfair competitive advantage. If the Applicant were to be issued a registration for the term, the Applicant could intimidate competitors and utilize trademark laws to enhance unfairly its competitive position at the expense and to the detriment of Opposer and numerous other individuals and entities. Furthermore, Applicant would be able to dominate Internet search

engine results for products similar to the products for which Applicant may utilize the registered term.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,

Mr. Erik Stoffel

By: /Stephen H. Sturgeon/
Opposer's Attorney,

Stephen H. Sturgeon, Esquire
Stephen H. Sturgeon & Associates, P.C.
11116 Hurdle Hill Drive
Potomac, MD 20854

Date: September 15, 2004



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EXHIBIT A

Opposition of Eric Stoffel
in re Serial No: 76485376

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Adware is any software program in which advertising banners are displayed while the program is running. Search our IT-specific encyclopedia for: ...
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... Sick of Spam? Prepare for **Adware**. ... That's because spyware and **adware** developers often pay to have their programs bundled into unrelated software packages. ...
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Producers of high quality direct-x shareware games, such as Elektro Puzzle.
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... advertising? Ah, now is it free or is it spyware aka **adware**. Spyware is Internet jargon for
<http://www.google.com/search?sourceid=navclient&ie=UTF-8&q=adware>

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www.NoAdware.net

[Anti-Spyware Review 2004](#)

20 Anti-Spyware products reviewed. In-depth side-by-side comparisons.
www.TopTenReviews.com

[Remove Adware](#)

Complete **Adware** / Spyware Removal Huge database. Clean your system!
AdwareSpy.com

[Have Adware?](#)

The 5 Signs of **Adware** Infections and How to Eliminate Them For Good.
SpywareRemoversReview.com

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Destroy annoying computer **Adware**. Stop Popups & Hijackers too! (Aff)
www.Trojan-Scan.com

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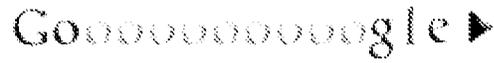
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EXHIBIT A

**Opposition of Eric Stoffel
in re Serial No: 76485376**



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