

ESTTA Tracking number: **ESTTA32693**

Filing date: **05/10/2005**

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

<b>Proceeding</b>	91164633
<b>Party</b>	Defendant Neteller Inc. Neteller Inc. 323B - 41st Avenue NE CAX Alberta,
<b>Correspondence Address</b>	Neil F. Kathol; Brownlee Fryett 2000, 530 8th Ave. S.W. Calgary; ABC - ALBERTA T2P 3S8 CAX - CANADA,
<b>Submission</b>	Petition to Accept Answer Late
<b>Filer's Name</b>	Neil F. Kathol
<b>Filer's e-mail</b>	nkathol@brownleelaw.com
<b>Signature</b>	/neilkathol/
<b>Date</b>	05/10/2005
<b>Attachments</b>	c0190207.pdf ( 4 pages )

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

In the Matter of Application Serial No. 78/293,550  
For the Mark: INSTA CASH  
Filed: August 8, 2003  
Date of Publication: September 14, 2004

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WELLS FARGO & COMPANY

Opposer,

v.

Opposition No. 91164633

NETELLER, INC.

Applicant.

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Box TTAB  
FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
U.S.A.

I, NEIL F. KATHOL, SOLICITOR, CERTIFY THAT ON  
MAY 10, 2005 THIS PAPER WAS SERVED BY FAX TO  
THE ATTORNEY INDICATED, AT THE NUMBER  
INDICATED ON THE NOTICE OF OPPOSITION  
HEREIN.



Neil F. Kathol

**PETITION FOR LATE FILING OF ANSWER  
and ANSWER TO NOTICE OF OPPOSITION**

**PETITION**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

This Opposition is presently before the United States Patent and Trademark Office, Trademark Trial and Appeal Board (the "TTAB"). The Applicant, Neteller, Inc., petitions for the late filing of a the Answer for the reasons stated herein.

**BACKGROUND:**

1. The Notice of Opposition was sent by mail under letter from the TTAB. The letter is dated March 23, 2005 (herein, the "Letter"). The Letter was received by the offices of Brownlee LLP (formerly Brownlee Fryett) on April 22, 2005.
2. Brownlee's Mailroom placed a square 3 by 3 inch yellow sticky note over the portion of the sentence that specifies the Answer is due forty days *from the "mailing date hereof"*. Reproduced below is the first page of the Letter, as received by the undersigned from the Mailroom of the undersigned's office.

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: March 23, 2005

Opposition No. 91164633  
Serial No. 78293550

Neil F. Kathol: Brownlee Fryett  
2000, 530 8th Ave. S.W.  
Calgary: ABC - ALBERTA T2P 3S8  
CAX - CANADA,

WELLS FARGO & COMPANY

v.

Meteller Inc.

EUNICE P. DE CARVALHO  
FREGRE & BENSON LLP  
2200 WELLS FARGO CENTER 90 SOUTH  
MINNEAPOLIS, MN 55402-3901

James Scott Legal Assistant

A notice of opposition to the reg  
above-identified application has  
notice is attached.

ANSWER IS DUE FORTY DAYS after th  
(See Trademark Rule 2.195 for exp  
Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark  
Rules of Practice, set forth in Title 37, part 2, of the Code of  
Federal Regulations. The parties are reminded of the recent  
amendments to the Trademark Rules that affect the rules of  
practice before the TTAB. See Rules of Practice for Trademark-  
Related Filings Under the Madrid Protocol Implementation Act, 68  
Fed. R. 55,748 (September 26, 2003) (effective November 2,  
2003); Reorganization of Correspondence and Other Provisions, 68  
Fed. Reg. 48,236 (August 13, 2003) (effective September 12,



3. The Answer is being filed today, May 10, 2005.

4. The undersigned Attorney did read the Letter on the day it arrived or very shortly thereafter, but did not carefully examine the deadline stated therein since the phrase "ANSWER IS DUE FORTY DAYS after..." which phrase was visible (not covered by the yellow sticky note), suggested to him that there was a generous amount of time to deal with the matter. (The undersigned had not received a letter setting out deadlines in an Opposition Matter prior to this time). Accordingly the Letter remained in the undersigned's "in-mail" for about 10 days before the undersigned studied it more carefully on May 3, 2005 and the actual time limit was noted. The undersigned contacted the TTAB on May 4, 2005 to discuss the matter, and sought instructions from the Applicant.

5. The Letter's transmission displaced 30 of the 40 days intended to be provided to the Applicant to file an Answer, and on this basis and on the basis of the above, the Applicant seeks the allowance to file the Answer late.

### **ANSWER TO NOTICE OF OPPOSITION**

1. The Opposer is not the owner of the mark registrations indicated in paragraph 3 of the Notice of Opposition (herein such marks referred to as: "Norwest Marks" and the Notice of Opposition as the: "Notice"), rather, another corporate organization named "Norwest Corporation" is the owner.

2. The Opposer may not rely on the Norwest Marks in opposing the application herein.

3. The Applicant's Mark does not so resemble the Norwest Marks, or any of them, at all, and certainly not so as to be likely, when applied to the services of the Applicant, to cause confusion or mistake or to deceive purchasers.

4. The Applicant denies that the Opposer would or has suffered detriment and damage as alleged at paragraph 5 (and in the prayer for relief), of the Notice.

5. The Applicant submits that the Applicant's mark as shown below:



can be registered in accordance with the *Lanham Act*, 15 U.S.C. §1052(d).

**CONCLUSION**

The applicant respectfully requests that the TTAB consider all of the material contained herein and also the remarks in reply above.

**Dated: May 10, 2005**

**Respectfully submitted,  
BROWNLEE LLP**

A handwritten signature in cursive script that reads "Neil F. Kathol". The signature is written in black ink and is positioned above a horizontal line.

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