

ESTTA Tracking number: **ESTTA297832**

Filing date: **07/28/2009**

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

Proceeding	91173105
Party	Defendant Michael Dalton
Correspondence Address	Michael Dalton P.O. Box 18137 670 Northland Blvd. Cincinnati, OH 45218-0137 UNITED STATES DALTONME@hotmail.com
Submission	Defendant's Notice of Reliance
Filer's Name	Michael Dalton
Filer's e-mail	DALTONME@hotmail.com
Signature	/ Michael Dalton /
Date	07/28/2009
Attachments	RelianceTrademarkOfficialRecordEE.pdf (8 pages)(996139 bytes)

TAB EE

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

Honda Motor Co. LTD

Opposer

vs.

Michael Dalton

Applicant

Opposition No. 91173105

Notice of Reliance

Now comes, Michael Dalton, Defendant – Applicant, pursuant to Trademark Rule 37 CFR 2.122(e) and gives his notice of reliance on copies of an official record of the Patent and Trademark Office. The documents are exact copies of the official record archived in the TESS system regarding opposition 91163349. The official record is relevant because it demonstrates that the term dealer dashboard within the automotive industry is viewed as unique with the ability of becoming a registered mark and is not generic in nature.

Respectfully submitted,



Michael Dalton, Applicant pro se
PO Box 18137
670 Northland Blvd.
Cincinnati, Ohio 45218-0137
(513)557-2901
DALTONME@hotmail.com



Search:

Opposition

Number: 91163349

Filing Date: 12/09/2004

Status: Terminated

Status Date: 12/09/2004

Interlocutory Attorney: ANDREW P BAXLEY

Defendant

Name: Nowcom Corporation

Correspondence: NATU J. PATEL

WANG HARTMANN & GIBBS PC
1301 DOVE STREET, SUITE 1050
NEWPORT BEACH, CA 92660

Serial #: 76530706

Application File

Application Status: Abandoned - After Inter-Partes Decision

Mark: DEALER DASHBOARD

Plaintiff

Name: Michael Dalton

Correspondence: Michael Dalton

P.O. Box 18137
Cincinnati, OH 45218-0137

Prosecution History

#	Date	History Text	Due Date
7	03/10/2005	TERMINATED	
6	03/10/2005	<u>BOARD'S DECISION: SUSTAINED</u>	
5	02/10/2005	<u>WITHDRAWAL OF APPLICATION</u>	
4	01/21/2005	<u>P'S MOTION FOR DEFAULT JUDGEMENT</u>	
3	12/09/2004	PENDING, INSTITUTED	
2	12/09/2004	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/18/2005
1	12/09/2004	<u>FILED AND FEE</u>	

Search:

ESTTA Tracking number: **ESTTA20969**

Filing date: **12/09/2004**

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	Michael Dalton
Granted to Date of previous extension	12/12/2004
Address	PO box 18137 Cincinnati, OH 45218-0137 UNITED STATES

Correspondence information	Michael Dalton PO box 18137 Cincinnati, OH 45218-0137 UNITED STATES DALTONME@hotmail.com , DealerDashboard@hotmail.com Phone:(513) 557-2901
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Applicant Information

Application No	76530706	Publication date	06/15/2004
Opposition Filing Date	12/09/2004	Opposition Period Ends	12/12/2004
Applicant	Nowcom Corporation 7451 Wilshire Blvd., Suite 115 Los Angeles, CA 90010		

UNITED STATES

Goods/Services Affected by Opposition

Class 035. First Use: 20030101 First Use In Commerce: 20030101
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All goods and services in the class are opposed, namely: Preparing business reports in a secure on-line environment to automobile dealerships

Related Proceedings

Application for Trademark (78339571) DealerDashboard, filed by opposer, that is currently pending.
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Attachments

Pleading.txt (3 pages)

Signature

/Michael Dalton/

Name

Michael Dalton

Date

12/09/2004

Trademark Trial and Appeal Board

Pleading

Pursuant to:

1503.01

Filing a Notice of Opposition

Any person who believes that he or she would be damaged by the registration of a mark on the Principal Register may oppose registration by filing a notice of opposition with the Trademark Trial and Appeal Board, and paying the required fee within thirty days after the date of publication or within an extension period granted by the Board for filing an opposition. See 15 U.S.C. §1063; 37 C.F.R. §§2.101 through 2.107; TBMP §§303 et seq.

The notice of opposition must include a concise statement of the reasons for the opposer's belief that the opposer would be damaged by the registration of the opposed mark, and must state the grounds for opposition. A duplicate copy of the notice of opposition, including exhibits, must be filed. 37 C.F.R. §2.104(a); TBMP §312.01. A duplicate copy is required because the Board forwards notification of the opposition to applicant or its authorized representative. 37 C.F.R. §2.105.

A notice of opposition does not have to be verified, and it may be signed by either the opposer or the opposer's attorney. 37 C.F.R. §2.101(b); TBMP §312.

1.) The opposer, Michael Dalton, through the registration and ownership, of several domain name extensions containing the mark, DealerDashboard, or Dealer-Dashboard has establish rights in the mark, DealerDashboard, based on legitimate use of the mark and first use in commerce through the public publishing and copyright of the e-commerce web site DealerDashboard.com since October, 1999.

2.) The opposer, Michael Dalton, registered the mark, DealerDashboard, as DealerDashboard.com, with Network Solutions (<https://networksolutions.com>) on 10/05/1999 and publicly appears in the whois record as:

Domain Name: DealerDashboard.com

Michael Dalton

DealerDashboard

Po Box 18137

Cincinnati, OH 45218

US

Phone: (513) 557-2901

Fax: (309) 215-9770

Record expires on 05-Oct-2005

Record created on 05-Oct-1999

Thus; opposer, has a first use in commerce claim and would suffer dilution since the applicant Nowcom.com is within the same:

Industry - Automotive

Architectural platform - web / Internet

Customer Base - Automotive Dealers

Products and Services - Dealer Solutions, Special finance, web development, etc.

3.) Constructive notice to the public of the opposer's claim of ownership of the mark, DealerDashboard and Dealer Dashboard was published at:

<http://www.DealerDashboard.com>

As such, the opposer has a legal presumption of and ownership of the mark, DealerDashboard, and exclusive right to use the mark nationwide, and worldwide, on or in connection with the goods and/or services listed in the registration and, the opposer has the ability to bring an action concerning the mark in federal court pursuant to:

Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036 (9th Cir. 1999)

West Coast, a video retailer, used the term "moviebuff" in its metatags. Brookfield, which runs a movie database site, "MovieBuff.com," alleged trademark infringement. Court held that West Coast's use of term in metatags led to "initial interest confusion," in which search engine users looking for MovieBuff.com's site might visit West Coast's site and stop looking for MovieBuff.com, despite no confusion over sponsorship of the two sites. Court distinguished both Niton and Welles.

The opposer would argue, granting a service mark, Dealer Dashboard, to the applicant, Nowcom.com, who markets services at:

<http://nowcom.com/dealerdashboard.htm>

circumvents the above decision, results in "reverse domain hijacking" and unjustly enriches the applicant, Nowcom.com, causing dilution of the extensive marketing, search optimization, goodwill, and brand loyalty the opposer has invested in the DealerDashboard brand.

4.) The applicant and parent company, of applicant, has repeatedly attempted to boost their credibility by exploiting the brand of others, in that, they supper imposed their marketing efforts on an identical replica of the WD-40 brand. The opposer notified the WD-40 company and was able to stop their marketing attempts which is archived at the independent web site (<http://www.archive.org/web/web.php>)

at:

<http://web.archive.org/web/20030811135820/westlakefinancial.com/adcampaign.asp>

which states as follows:

WDC.NET ad not yet released:

Still in the works, this final ad in the "DealerCenter" campaign uses a "retro" feel to show a lighter side in the ads. Reminiscent of the Scratcher and Dice ads of the first campaign, this one takes a familiar product (in this case, WD40), and tweaks it to promote the new DealerCenter website.

As such, originality of the applicant, Nowcom.com, and combined parent lacks credibility and an effort by the opposer to encourage the applicant to voluntarily cease the brand and Meta theft of the opposer's, dealerdashboard, has failed.

Therefore:

The opposer, Michael Dalton, request that the application of Nowcom.com be denied as similar in nature to the opposer's first use of the dealerdashboard mark and would result in the dilution of the opposers brand and open the backdoor for well financed operations to circumvent entry level entrepreneurs in the e-commerce industry by granting marks to registered and published domain names.

Respectfully submitted,

Michael E. Dalton

DealerDashboard

DealerDashboard.com

PO box 18137

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 10, 2005

Opposition No. 91163349

Michael Dalton

v.

Nowcom Corporation

On February 10, 2005, applicant filed an abandonment of its application Serial No. 76530706.¹

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.²

***By the Trademark Trial
and Appeal Board***

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

² All pending motions and matters are hereby deemed moot.