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Attorney Docket No. 049336

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

Applicant: Logniko, Igor
Serial No.: 78/612,360
Filed: April 19, 2005
Mark: **TEMPLATEMONSTER**
Classes: 35 and 42

Attorney: Jean V.J. Maciol
Law Office: 103

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

To the Commissioner of Trademarks:

Transmitted herewith for filing in the above-identified application are the following documents:

- NOTICE OF OPPOSITION;
- CHECK IN THE AMOUNT OF \$600; and,
- RETURN POSTCARD.

A check in the amount of \$600 is enclosed to cover any required fees. In the event any variance exists between the amount enclosed and the U.S. Patent and Trademark Office charges, please charge or credit the difference to our Deposit Account 02-0755, Reference No. 049336. A duplicate copy of this transmittal letter is attached.



09-27-2006

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #72

Mark: TEMPLATEMONSTER
Applicant: Logniko, Igor

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned at (202) 661-7650.

Respectfully submitted,

By: Brian J. Winterfeldt
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Date: September 27, 2006

Pursuant to 15 U.S.C. §§ 1052, 1063, and 1125 of the Lanham Act and 37 C.F.R. §§ 2.101 and 2.104, and predicated upon the following grounds, Opposer alleges as follows:

1. Opposer, MonsterCommerce, LLC, is a limited liability company duly organized and existing under the laws of California, having its principal place of business at One BronzePoint, Belleville, Illinois 62226.

2. Opposer is the owner of the MONSTERCOMMERCE mark, the subject of a federal registration, Registration No. 2,947,268 for:

Computer services, namely, providing on-line non-downloadable software that enables users to sell their products or services on-line, namely, software facilitating the practicing of e-commerce services and e-commerce shopping portal services, in International Class 42.

A copy of the registration is attached as Exhibit A.

Opposer is also the owner of a family of MONSTER marks, including MONSTERLOCAL (U.S. Application Serial No. 76/658,138), MONSTER MARKETPLACE, MONSTER, MONSTER WEB PROMOTION, MONSTER WEB DESIGN, MONSTER DOMAIN REGISTRATION, MONSTERSMALLBUSINESS, MONSTER SELLERS, the MONSTER logo, and the MONSTER EYE logo (the "MONSTER Family of Marks").

3. Opposer offers, *inter alia*, a broad range of online services, including providing use of e-commerce storefront software and systems, website design, promotion and hosting, merchant accounts, and domain name registration services.

Its on-line services include, but are not limited to, providing on-line shopping cart software which is used for the purpose of designing, hosting, implementing, and maintaining websites and specifically providing built-in and customizable website

templates and graphics, website optimization tools and plug-ins, web-based administration for on-line stores, email accounts, credit card processing, an order management system, and technical support services.

The Opposer, having been established in 1998, is a single-source e-commerce provider offering e-business clients the components needed to sell successfully online: e-commerce store building tools, design services, merchant accounts, and web site promotion services. The Opposer, therefore, is one of the leading providers of storefront and e-commerce solutions for on-line businesses.

4. Opposer is the owner of a federal registration for the MONSTERCOMMERCE mark and began promoting its services under the MONSTER Family of Marks as early as October 2001. Therefore, Opposer's first use of the MONSTER Family of Marks pre-dates Applicant's first use of the TEMPLATEMONSTER Mark, inasmuch as Applicant asserts dates of first use of April 15, 2002.

5. Since its initial adoption and use of the MONSTER Family of Marks, Opposer has made a substantial investment in advertising and marketing its services under the mark. Opposer has extensively used, advertised, promoted and offered for sale Opposer's services under the MONSTER Family of Marks through various channels of trade and commerce. As a result of Opposer's extensive use and promotion of the MONSTER Family of Marks and the extensive sales of services under the MONSTER Family of Marks, the Opposer has established valuable good will in the marks.

6. On information and belief, on April 19, 2005, Applicant filed Application Serial No. 78/612,360 for the mark **TEMPLATEMONSTER** pursuant to Lanham Act Section 1(a) for the following services:

Online retail services featuring downloadable software for website development comprising pre-formatted modifiable templates., in International Class 35.

Website development services, namely, providing website design services for others., in International Class 42.

The application was published for opposition in the *Official Gazette* on May 30, 2006.

7. Applicant's mark so closely resembles the **MONSTER** Family of Marks that Applicant's mark, when used in connection with the services set forth in Applicant's application, it is likely to cause confusion, or to cause mistake, or to deceive purchasers and potential purchasers of Applicant's services into erroneously believing that there is some relationship between Opposer and Applicant, or that Opposer has authorized, sponsored or licensed Applicant's use of the mark **TEMPLATEMONSTER**, in violation of 15 U.S.C. § 1052(d).

8. Applicant's mark, when used in association with the services identified in Applicant's application, is likely to cause dilution of Opposer's **MONSTER** Family of Marks in violation of 15 U.S.C. § 1125(c).

9. Registration of Applicant's mark will damage Opposer, as such registration will give color of exclusive statutory rights to the mark **TEMPLATEMONSTER** to Applicant in derogation and violation of the prior and superior rights of Opposer.

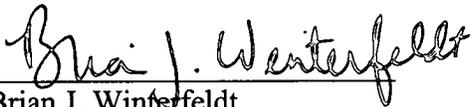
WHEREFORE, Opposer, MonsterCommerce, LLC, believes that it will be damaged by registration of U.S. Application Serial No. 78/612,360, and therefore

respectfully requests that the Trademark Trial and Appeals Board sustain this opposition and refuse registration of Applicant's mark.

All correspondence should be addressed to Brian J. Winterfeldt, Esq., c/o Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW, Suite 1000, Washington, DC 20005.

Respectfully submitted,

MONSTERCOMMERCE, LLC

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Attorneys for MONSTERCOMMERCE, LLC

Dated: September 27, 2006

Enclosures:

- Notice of Opposition (original)
- EXHIBIT A: U.S. Service Mark Registration No. 2,947,268 for MONSTERCOMMERCE
- Check in the amount of \$600.00 for the filing fee
- Authorization To Charge or Credit Deposit Account (original and one copy)
- Return receipt postcard