

ESTTA Tracking number: **ESTTA143498**

Filing date: **05/31/2007**

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                                  | WGBH Educational Foundation                        |
| Granted to Date of previous extension | 06/03/2007   |
| Address                               | 1Guest Street<br>Boston, MA 02135<br>UNITED STATES |

|                      |  |
|----------------------|--|
| Attorney information | Barbara A. Solomon, Esq.<br>Fross Zelnick Lehrman & Zissu, P.C.<br>866 United Nations Plaza<br>New York, NY 10017<br>UNITED STATES<br>bsolomon@frosszelnick.com Phone:212-813-5900 |
|----------------------|--|

### Applicant Information

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 78758628  | Publication date       | 12/05/2006 |
| Opposition Filing Date | 05/31/2007  | Opposition Period Ends | 06/03/2007 |
| Applicant              | Frontline News Service, Inc.<br>197 North Mountain Avenue<br>Montclair, NJ 07042<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|  |
|--|
| Class 041. First Use: 1982/03/00 First Use In Commerce: 1982/03/00<br>All goods and services in the class are opposed, namely: Entertainment services, namely, production of television shows and news programs; television programming; DVD production; television production; providing camera crews and video editing |
|--|

### Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

### Marks Cited by Opposer as Basis for Opposition

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2784335    | Application Date      | 11/05/2002 |
| Registration Date     | 11/18/2003 | Foreign Priority Date | NONE       |
| Word Mark             | FRONTLINE  |                       |            |
| Design Mark           |            |                       |            |

|                     |   |
|---------------------|---|
| Description of Mark | NONE  |
| Goods/Services      | Class 009. First use: First Use: 1983/01/17 First Use In Commerce: 1983/01/17 pre-recorded video cassettes featuring a television series on the subject of public affairs |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2756385  | Application Date      | 11/01/2002 |
| Registration Date     | 08/26/2003   | Foreign Priority Date | NONE       |
| Word Mark             | FRONTLINE  |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 041. First use: First Use: 1983/01/17 First Use In Commerce: 1983/01/17 Educational and entertainment services, namely, providing a television series on the subject of public affairs |                       |            |

|             |   |
|-------------|---|
| Attachments | Notice of Opposition against Frontline News Service, Inc. (F0061929).PDF ( 9 pages )(228244 bytes ) |
|-------------|---|

|           |                          |
|-----------|--------------------------|
| Signature | /Barbara A. Solomon/     |
| Name      | Barbara A. Solomon, Esq. |
| Date      | 05/31/2007               |

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

In the Matter of Application Serial No. 78/758,628  
For the Mark FRONTLINE NEWS  
Published in the *Official Gazette* on December 5, 2006

-----X  
: WGBH EDUCATIONAL FOUNDATION :  
: :  
: Opposer, : Opposition No.  
: :  
: -against- :  
: :  
: FRONTLINE NEWS SERVICE, INC., :  
: :  
: Applicant. :  
: :  
-----X

NOTICE OF OPPOSITION

Opposer WGBH Educational Foundation (“WGBH”), a Massachusetts non-profit corporation located at 1 Guest Street, Boston, Massachusetts 02135, believes that it will be damaged by registration of the mark shown in Application Serial Number 78/758,628 to register FRONTLINE NEWS for “entertainment services, namely, production of television shows and news programs; television programming; DVD production; television production; providing camera crews and video editing” in International Class 41 and therefore opposes the same.

As grounds for the opposition, WGBH, by its counsel Fross Zelnick Lehrman & Zissu, alleges as follows:

## FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. WGBH, a charitable non-profit educational corporation, is the leading producer of national programming for public television. The programming produced by WGBH is recognized for its excellence, quality and value.

2. Since 1983, WGBH has been producing FRONTLINE, public television's flagship public affairs series. The program is distributed throughout the United States on the Public Broadcasting Service network, through sales of DVDs and tapes, and through public libraries across the country who have copies of FRONTLINE programs available for rental.

FRONTLINE programs are also available online through the website *pbs.org/wgbh/pages/frontline*.

3. Opposer's FRONTLINE series is highly respected for its in-depth documentaries about a range of subjects and its programs have received numerous awards including Dupont-Columbia Awards, Peabody Awards, Emmy Awards, Edward R. Murrow Awards, and awards from the Television Critic's Association for Outstanding Achievement in News and Information. One FRONTLINE episode also is the recipient of a Pulitzer Prize.

4. To date, WGBH has produced over 400 FRONTLINE programs. It is estimated that each premier broadcast of a FRONTLINE television program reaches more than 3 million viewers in a given week with targeted series reaching upwards of 11 million viewers. In addition there have been over 13 million video views of FRONTLINE programs on line. During the October 2005-June 2006 broadcast season there were 36 million page views of FRONTLINE program-related material online at *pbs.org*.

5. Because of the broad range of topics that are addressed in FRONTLINE documentaries, the FRONTLINE documentaries have become a valuable resource for teachers

and students of current events, history, government and public policy. As a result, Opposer offers lesson plans and activities for middle school and high school teachers. These lesson plans use FRONTLINE materials in the classroom, including videotapes of the program.

6. WGBH owns the following trademark registrations for FRONTLINE:

| <b>MARK</b> | <b>REG. NO.</b> | <b>USE DATE</b>  | <b>REG. DATE</b>  | <b>GOODS</b>  |
|-------------|-----------------|------------------|-------------------|---|
| FRONTLINE   | 2784335         | January 17, 1983 | November 18, 2003 | Pre-recorded video cassettes featuring a television series on the subject of public affairs.                            |
| FRONTLINE   | 2756385         | January 17, 1983 | August 26, 2003   | Services educational and entertainment services, namely providing a television series on the subject of public affairs. |

These registrations are valid, subsisting and in full force and effect and provide prima face evidence of WGBH's exclusive right to use the FRONTLINE mark in connection with the services and goods set forth in the registrations.

7. As a result of WGBH's extensive use and promotion of the FRONTLINE mark and its registrations therefor the reputation and quality of the programming it provides under the FRONTLINE mark, and the industry recognition of the FRONTLINE series, the FRONTLINE mark is extremely well-known, has a significant reputation, recognition and goodwill and, in connection with entertainment services, is associated exclusively with WGBH.

8. Upon information and belief, Applicant Frontline News Service, Inc. ("Applicant") is a New Jersey corporation located and doing business at 197 North Mountain Avenue, Montclair, New Jersey 07042.

9. On November 21, 2005, Applicant filed Application S.N. 78/758,628 to register the mark FRONTLINE NEWS for “entertainment services, namely, production of television shows and news programs; television programming; DVD production; television production; providing camera crews and video editing” in International Class 41 claiming a date of first use of March, 1982. Applicant, through its Vice President, declared that all statements in the application were true.

10. Upon information and belief, Applicant maintains a website at *www.frontlinenews.com*. On that website Applicant describes its business as supplying footage to local television stations. Applicant also states that until recently it did not use the FRONTLINE NEWS mark in connection with any entertainment services provided to consumers or to the ultimate viewers and that it was prohibited from using the FRONTLINE NEWS mark in connection with news footage that it provided to local television stations. According to the website, Applicant “will begin distributing its new documentaries on DVD.” Thus by Applicant’s own statements, it did not produce television shows and news programs, it was not involved in television programming, and it was not involved in DVD production under the FRONTLINE NEWS mark as of the claimed date of first use of 1982.

11. Further, according to the specimen submitted with the application herein opposed as well as the application itself, as of the claimed first use date of March 1982, Applicant was producing news magazine segments and cover spot news all of which were being done under nondisclosure agreements which prevented or otherwise prohibited Applicant from using the FRONTLINE NEWS name for any goods or services provided to consumers. There was no use of the FRONTLINE NEWS mark on the production of actual television programs or the production of DVDs, among other services identified in the application.

12. The services identified in the application herein opposed are identical to the services that Opposer has been providing under the FRONTLINE name for over two decades, services that, upon information and belief, Applicant was not providing at any time prior to Opposer's first use of FRONTLINE.

13. Upon information and belief, prior to applying to register the mark FRONTLINE NEWS Applicant was on constructive if not actual notice of WGBH's use of and registrations for the FRONTLINE mark.

14. The mark Applicant seeks to register is essentially identical to Opposer's registered and famous FRONTLINE trademark. Applicant has disclaimed the term "news" in its application making the sole source identifying feature of its mark FRONTLINE which is identical to WGBH's registered mark.

15. Applicant seeks to expand its use of the FRONTLINE NEWS mark to television programming and DVD production. WGBH has been providing the identical services under the identical mark since 1983 and has acquired significant fame and recognition for its FRONTLINE television programming and documentaries. In addition, upon information and belief, while Applicant had previously provided its services exclusively to local television news stations, Applicant now seeks to use the FRONTLINE NEWS mark in connection with television programming provided to the identical consumers who are exposed to and who recognize WGBH's FRONTLINE mark and FRONTLINE documentary series and to make such programming available by the same means as Opposer and through the same channels of trade.

16. Applicant seeks to obtain a registration of its FRONTLINE NEWS mark by improperly relying on a date of first use that is knowingly and willfully fraudulent and incorrect.

By providing an improper date of first use, Applicant seeks to have the Patent and Trademark Office rely on this information in granting a registration.

17. Issuance of a registration to Applicant for the mark FRONTLINE NEWS based on the misrepresentation of Applicant's improper, fraudulent and inconsistent with WGBH's rights in its FRONTLINE mark as well as WGBH's statutory grant of exclusivity of rights in the FRONTLINE mark.

**AS AND FOR A CLAIM FOR RELIEF  
ON THE GROUNDS OF FRAUD**

18. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 17 above as if fully set forth herein.

19. In its application, Applicant stated a date of first use of March 1982 on or in connection with each of the services identified in the application. The statement of first use is a material statement of fact and one on which the PTO relies.

20. Upon information and belief, Applicant did not begin using the FRONTLINE NEWS mark in connection with all of the services listed in the application until after 1982 and after WGBH's date of first use of the FRONTLINE mark.

21. Applicant's claimed date of first use in its application in connection with the services identified therein was a material statement of fact that was false and known to be false when made.

22. Upon information and belief, Applicant knew or should have known that the statement it provided as its first use date in the application was false and/or misleading.

23. Applicant knowingly, willfully and in bad faith made a false statement concerning its date of first use in connection with its application in an attempt to deceive the PTO and in order to obtain a federal trademark registration and the rights flowing therefrom.

24. Further, upon information and belief, Applicant made a false and fraudulent statement of the date of first use of the FRONTLINE NEWS mark in connection with its application in order to avoid a claim by WGBH, owner of the FRONTLINE mark whose use dates back to 1983. By asserting a false date of first use of 1982, Applicant has attempted to prohibit WGBH from seeking to oppose on the basis of WGBH's priority.

25. As a result of Applicant knowingly making false material representations of fact in connection with the opposed application, Applicant has committed fraud in procuring the trademark registration.

26. Opposer, as the owner of the famous and registered FRONTLINE mark which has been in use for more than two decades, will be damaged by the issuance of a registration for the FRONTLINE NEWS mark since such registration is based on false information and is inconsistent with Opposer's valid trademark rights and the reputation Opposer has established in the FRONTLINE mark.

27. Based on the above, Applicant has committed fraud, the application is invalid, and registration sought by Application S.N. 78/758,628 should be denied.

**AS AND FOR A SECOND CLAIM FOR RELIEF FOR  
LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. §1052(d)**

28. Opposer repeats and realleges each and every allegation contained in paragraphs 1 through 17 above as if fully set forth herein.

29. The FRONTLINE mark when used in connection with television production, entertainment services, DVDs and other programming shown to and available to consumers is associated exclusively with Opposer and has been continuously used by Opposer since 1983.

30. Upon information and belief, Applicant has not used the FRONTLINE NEWS mark on or in connection with any television programming, DVDs, documentaries or any other entertainment services made available to the consuming public and, upon information and belief, was prohibited from making use of the FRONTLINE NEWS mark in connection with any television programming pursuant to nondisclosure agreements that it signed with local television stations.

31. By virtue of the use of the FRONTLINE mark by WGBH, the goodwill associated with Opposer's FRONTLINE mark and the registrations owned by Opposer for FRONTLINE, Applicant's attempt to register FRONTLINE NEWS, a mark essentially identical to WGBH's prior used FRONTLINE mark, for services identical to those provided by WGBH under the FRONTLINE mark, provided through the same channels of trade and to the same consumers is likely to create the erroneous impression that Applicant's entertainment services originate from, come from or are otherwise associated with Opposer or that Applicant's services are endorsed, sponsored or in some way connected with Opposer. Any use of the mark FRONTLINE NEWS in connection with the services set forth in Application S.N. 78/758,628 is likely to cause confusion, cause mistake or to deceive the public into the belief that the services offered by Applicant under the FRONTLINE NEWS mark come from or are otherwise sponsored by Opposer in violation of Section 2(d) of the Lanham Act 15 U.S.C. §1052(d).

32. By reason of the foregoing Opposer will be harmed by registration of the FRONTLINE NEWS mark as sought for in Application S.N. 78/758,628.

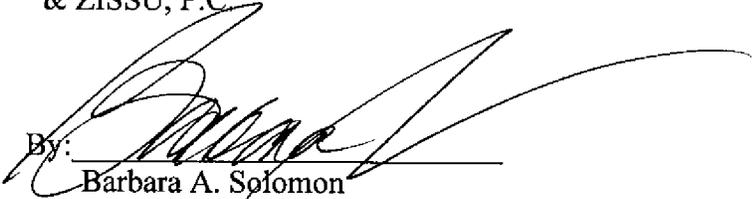
WHEREFORE, it is respectfully requested that the opposition be sustained and that the registration sought by Applicant in Application S.N. 78/758,628 be denied.

Opposer authorizes the opposition fee in the amount of \$300.00 for one class to be debited from Opposer's attorneys' Deposit Account No. 23-0825-0576900.

Dated: New York, New York  
May 31, 2007

Respectfully submitted,

FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.



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Attorneys for Opposer  
WGBH Educational Foundation