

ESTTA Tracking number: **ESTTA194555**

Filing date: **02/25/2008**

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 | The Royal Bank of Scotland Group plc |
| Granted to Date of previous extension | 02/24/2008 |
| Address | 361 St. Andrew Square Edinburgh, EH2 2YB UNITED KINGDOM |

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| Domestic Representative | James A. Thomas Attorney Troutman Sanders LLP 434 Fayetteville Street Two Hannover Square, Ste. 1900 Raleigh, NC 27601 UNITED STATES trademarks@troutmansanders.com, james.thomas@troutmansanders.com Phone:(919) 835.4100 |
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Applicant Information

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|------------------------|-------------------------------------------------------------------------------|------------------------|------------|
| Application No | 78873488 | Publication date | 08/28/2007 |
| Opposition Filing Date | 02/25/2008 | Opposition Period Ends | 02/24/2008 |
| Applicant | CQG, Inc. Suite 2000 1050 17th Street Denver, CO 80265 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 009. First Use: 2006/04/25 First Use In Commerce: 2006/04/25 All goods and services in the class are opposed, namely: Downloadable software for analyzing financial markets |
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Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Mark Cited by Opposer as Basis for Opposition

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|-----------------------|---------------|-----------------------|------------|
| U.S. Registration No. | 3284108 | Application Date | 12/27/2004 |
| Registration Date | 08/28/2007 | Foreign Priority Date | 10/11/2004 |
| Word Mark | RBS TRADEFLOW | | |

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| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | <p>Class 009. First use: Computer programs and computer software, interactive computer software and interactive computer discs, downloadable computer software and software upgrades supplied on-line from computer databases, downloadable electronic publications, all of the aforementioned goods in the field of financial services and for the purpose of online financial document management and financial settlements to facilitate trade</p> <p>Class 035. First use: Business and commercial information services; collection, preparation, composition, storage, processing, acquisition and provision of business information; marketing services, marketing and trade information; research and study services; provision of information relating to foreign trade and business procurement services; information management services, namely, preparation and processing of business documents; business consultation</p> <p>Class 036. First use: Financial services, namely, financial supply chain and financial transaction management; insurance services, namely, financial evaluation for insurance purposes; banking services; arranging and issuing letters of credit; processing of application for letters of credit; bill payment services; bill payment administration services; collection and processing of debts; brokerage services, namely, insurance brokerage, stock brokerage, commodities brokerage and investment brokerage; financial forecasting and planning; financial management and information services; providing advice, consultation and information in the field of financial services</p> <p>Class 038. First use: Communication services, namely, electronic transmission of data and documents among users of computers and via electronic mail; telecommunication services, namely, data transmission and reception services via telecommunication means; message sending and delivery services; computer aided transmission of messages, images and information; communications by computer terminals; providing user access to computer databases, computer networks, global computer networks and the Internet; telecommunication of information, namely, online document delivery, providing information in the field of telecommunications</p> |

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| Attachments | 76625816#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (7 pages)(141078 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-----------------|
| Signature | /jat/ |
| Name | James A. Thomas |
| Date | 02/25/2008 |

3. Pursuant to 37 C.F.R. § 2.102, an additional 60-day extension of time to file a notice of opposition against the mark shown in application Serial No. 78/873488, to and including February 24, 2008, was requested with Applicant's consent by and duly granted to Opposer. February 24, 2008 is a Sunday, and therefore pursuant to 37 C.F.R. § 2.196, Opposer has until Monday, February 25, 2008 to file this Notice of Opposition.

4. Applicant CQG, Inc. (hereinafter "Applicant"), a Colorado corporation having a principal place of business in Denver, Colorado, seeks to register its TFLOW mark (hereinafter, "Applicant's Mark") as a trademark for goods in International Class 9 (hereinafter, "Applicant's Goods") for the following goods as evidenced by publication of Applicant's Mark in the *Official Gazette* dated August 28, 2007:

"Downloadable software for analyzing financial markets."

5. There is no issue as to priority. Upon information and belief, Applicant did not acquire any rights in the United States in Applicant's TFLOW Mark prior to April 25, 2006, Applicant's claimed date of first use for said mark as listed in its application Serial No. 78/873488 filed May 1, 2006.

6. On December 27, 2004, prior to Applicant's claimed first-use dates for Applicant's Marks, and any dates of use that Applicant can rely upon, Opposer filed in the USPTO its application, Serial No. 76/625816, for the mark RBS TRADEFLOW ("Opposer's Mark"). The registration for this application was issued as No. 3,284,108 on August 28, 2007 and remains in force for the following goods and services ("Opposer's Goods and Services"):

"Computer programs and computer software, interactive computer software and interactive computer discs, downloadable computer software and software upgrades supplied on-line from computer databases, downloadable electronic publications, all of the aforementioned goods in the field of financial services and for the purpose of online document management and financial settlements to facilitate trade" in International Class 9;

“Business and commercial information services; collection, preparation, composition, storage, processing, acquisition and provision of business information; marketing services, marketing and trade information; research and study services; provision of information relating to foreign trade and business procurement services; import-export agency and information services; information management services, namely, preparation and processing of business documents; business consultation” in International Class 35;

“Financial services, namely, financial supply chain and financial transaction management; insurance services, namely, financial evaluation for insurance purposes; banking services; arranging and issuing letters of credit; processing of application for letters of credit; bill payment services; bill payment administration services; collection and processing of debts; brokerage services, namely, insurance brokerage, stock brokerage, commodities brokerage and investment brokerage; financial forecasting and planning; financial management and information services; providing advice, consultation and information in the field of financial services” in International Class 36; and

“Communication services, namely, electronic transmission of data and documents among users of computers and via electronic mail; telecommunication services, namely, data transmission and reception services via telecommunication means; message sending and delivery services; computer aided transmission of messages, images and information; communications by computer terminals; providing user access to computer databases, computer networks, global computer networks and the Internet; telecommunication of information, namely, online document delivery, providing information in the field of telecommunications” in International Class 38.

7. Opposer may have pre-registration rights in Opposer’s Mark that will be damaged if Applicant is permitted to register Applicant’s Mark for Applicant’s Goods.

8. On information and belief, Applicant’s Mark and Opposer’s Mark are for overlapping goods. For instance, Applicant’s Mark is used in connection with “... software for analyzing financial markets”. Opposer’s Goods and Services include computer programs and computer software, interactive computer software and downloadable computer software, all in the field of financial services, supplied on-line from computer databases; various financial services; brokerage services including stock brokerage, commodities brokerage and investment brokerage; financial forecasting and planning; financial management and information services; and advice,

consultation and information in the field of financial services.

9. Applicant's TFLOW Mark and the "TRADEFLOW" portion of Opposer's Mark share the first letter "T" and the word "FLOW", which makes up the dominant part of Applicant's Mark.

10. Opposer's Mark and Applicant's Mark feature the letter "T" used in conjunction with the word "FLOW".

11. The word "FLOW", as used in Opposer's Mark and Applicant's Mark, is identical phonetically and visually.

12. On information and belief, the letter "T", as it appears in Applicant's TFLOW Mark, is an abbreviation for the word "TRADE".

13. The letter "T", as it appears in Applicant's TFLOW Mark, is suggestive of the word "TRADE".

14. The word "TRADE" is an important part of Opposer's Mark.

15. On information and belief, Applicant's Goods marketed under Applicant's Mark are marketed to the same potential purchasers as Opposer's Goods and Services.

16. On information and belief, Applicant's Goods marketed under Applicant's Mark are distributed through the same potential channels of distribution as Opposer's Goods and Services.

17. On information and belief, Applicant's Goods marketed under Applicant's Mark are ultimately purchased and used by the same members of the general public as those potential members of the general public who would purchase and use Opposer's Goods and Services.

18. If Applicant is permitted to register Applicant's Mark for Applicant's Goods, confusion among members of the general public would result by reason of the following: (a) the

substantial visual and phonetic similarity of Applicant's Mark and Opposer's Mark; (b) the overlapping nature of Applicant's Goods and Opposer's Goods and Services marketed and sold or intended to be marketed and sold under such marks; and (c) the common actual and/or potential channels of trade and classes of customers for Applicant's Goods under Applicant's Mark and Opposer's Goods and Services under Opposer's Mark.

19. Members of the general public who become familiar with Opposer's Goods and Services sold under Opposer's Mark would believe that Applicant's Goods available under Applicant's Mark were, contrary to fact, associated with, endorsed by, related to, or actually the goods of Opposer. Any fault or defect in Applicant's Goods would reflect upon and seriously injure Opposer's reputation and goodwill. Furthermore, members of the general public who become familiar with Opposer's Mark would confuse the same with Applicant's Mark and might purchase Applicant's Goods in the mistaken belief that they are purchasing the goods of Opposer. This confusion would damage Opposer's reputation and goodwill and potential revenue and income.

20. If Applicant is granted the registration herein opposed, Applicant would be placed in a position to harass Opposer, its affiliates, related entities or others permitted to use Opposer's Mark and cause annoyance to the public as the registration would give the Applicant *prima facie* exclusive rights to Applicant's Mark and all confusingly similar marks, thereby causing damage and injury to Opposer.

21. As a result of the substantial similarity in appearance between Applicant's Mark and Opposer's Mark, the overlapping nature of Applicant's Goods and Opposer's Goods and Services, and the fact that such goods are or are intended to be sold in common channels of commerce and to be directed to the same actual and/or potential classes of customers, registration

of Applicant's Mark would cause damage and injury to Opposer.

22. Because Applicant's Mark consists of a mark that is identical to and/or so resembles the senior mark of Opposer, it is likely, when used in connection with the goods of Applicant, to cause confusion, to cause a mistake, or to deceive. Registration of Applicant's Mark for Applicant's Goods, therefore, should be barred under 15 U.S.C. § 1052(d).

23. Opposer prays that said Application Serial Nos. 78/873488 be rejected and the registration of the mark therein shown for the goods therein specified be refused and denied. In addition, Opposer prays for such further or alternative relief as the Board may find appropriate.

This Notice of Opposition is herewith submitted together with the filing fee in the amount of \$300.00.

Respectfully submitted this 25th day of February 2008.

TROUTMAN SANDERS LLP

By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Notice of Opposition** has been served this day on Leslie P. Kramer, attorney of record for Applicant, via first class mail by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope and properly addressed as follows:

Leslie P. Kramer, Esq.
Special Counsel
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, VO 80203

This the 25th day of February, 2008.


James A. Thomas
Attorney For Opposer The Royal Bank of
Scotland Group Plc