

ESTTA Tracking number: **ESTTA212582**

Filing date: **05/20/2008**

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	Galaxy Metal Gear, Inc.
Granted to Date of previous extension	05/21/2008
Address	5585 Daniels Street, # C Chino, CA 91710 UNITED STATES

Attorney information	Jen-Feng Lee WorldEsquire Law Firm LLP 80 South Lake Avenue, Suite 708 Pasadena, CA 91101 UNITED STATES jfllee@worldesquire.com, ktanji@worldesquire.com Phone:(626) 795-5555
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Applicant Information

Application No	78914975	Publication date	01/22/2008
Opposition Filing Date	05/20/2008	Opposition Period Ends	05/21/2008
Applicant	Direct Access Technology Inc 19957 East Harrison City of Industry, CA 91789 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2003/05/14 First Use In Commerce: 2003/05/14 All goods and services in the class are opposed, namely: enclosures for external computer hard drives

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Related Proceedings	TTAB Opposition No.: 91174214
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Attachments	Opposition-v2.pdf (3 pages)(124781 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	/jflee/
Name	Jen-Feng Lee
Date	05/20/2008

- 1 5. Opposer believes Applicant gave material false statement in its Application to
2 the effect that it is the first user of Metal Gear mark in commerce.
- 3 6. Both Opposer and Applicant purchased products with Metal Gear mark from a
4 foreign supplier known as Data Stor, who is the real owner and first user of Metal
5 Gear mark in U.S. Commerce.
- 6 7. Allowing Opposer to obtain its trademark registration by fraud would put
7 Applicant at a relative disadvantage and thus damaging Applicant's business
8 since many people perceive trademark registration issued by United States Patent
9 and Trademark Office as a form of authentication and validation to the
10 commercial activities.
- 11 8. Applicant committed fraud at the time it filed its application to United States
12 Patent and Trademark Office when it represented that it is the first user and real
13 owner of the Metal Gear mark. Applicant's application should be terminated,
14 with prejudice, for perpetuating the fraud committed against PTO.
- 15 9. Both words in the Metal Gear mark are held and conceded to be "merely
16 descriptive" in many registrations. As a result, this Metal Gear mark is merely
17 descriptive of the goods used in connection thereto, in violation of Trademark
18 Act section 2(e)(1), and it is thus not entitled to registration.
- 19

20 Respectfully submitted,

21 **Dated:** May 20, 2008

/jlflee/

22 _____
23 Kenneth Tanji, Jr.
24 Jen-Feng (Jeff) Lee
25 Aime M. Katambwe
26 Attorneys for Opposer
27 Galaxy Metal Gear Inc.
28 WorldEsquire Law Firm
80 S. Lake Ave., #708
Pasadena, CA 91101
Tel: 626-795-5555
Fax: 626-795-5533

Notice of Opposition

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a copy of the foregoing Notice of Opposition was served on the Applicant's attorney by mailing a true copy thereof by first class mail, postage prepaid to the following address on May 20, 2008.

Michael Olson, Esq.
Law Office of Michael C. Olson
1400 Bristol St. N.
Suite 270
Newport Beach, CA 92660

/jflee/

Jen-Feng Lee