

ESTTA Tracking number: **ESTTA230284**

Filing date: **08/13/2008**

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	Shavlik Technologies, LLC
Granted to Date of previous extension	10/08/2008
Address	2665 Long Lake Road Suite 400 Roseville, MN 55113 UNITED STATES
Attorney information	Andrew S. Ehard MERCHANT & GOULD 3200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 UNITED STATES aehard@merchantgould.com, astyles@merchantgould.com, dockmpls@merchantgould.com Phone:612.332.5300

Applicant Information

Application No	77284706	Publication date	06/10/2008
Opposition Filing Date	08/13/2008	Opposition Period Ends	10/08/2008
Applicant	cipherOptics, Inc. Suite 125 701 Corporate Center Drive Raleigh, NC 27607 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer software for security and encryption over computer and communications networks; Computer hardware for security and encryption functions over computer and communications networks

Grounds for Opposition

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

U.S. Application No.	77479906	Application Date	05/21/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMPLY SECURE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: Computer software for use by system administrators and security professionals to manage security, vulnerability and compliance protocols within computer networks

Related Proceedings	None
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Attachments	77479906#TMSN.jpeg (1 page)(bytes) 2008 08 13 Notice of Opposition.pdf (8 pages)(62598 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	/Heather Kliebenstein/
Name	Heather Kliebenstein
Date	08/13/2008

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

<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;">Shavlik Technologies, LLC</div> <div style="width: 10%; text-align: center;">)</div> <div style="width: 50%;">Opposition No. _____</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;">v.</div> <div style="width: 10%; text-align: center;">)</div> <div style="width: 50%;">Mark: SIMPLY SECURE</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;">cipherOptics, Inc.,</div> <div style="width: 10%; text-align: center;">)</div> <div style="width: 50%;">Serial No.: 77/284706</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%; text-align: center;">Applicants.</div> <div style="width: 10%; text-align: center;">)</div> <div style="width: 50%;">Filing Date: September 20, 2007</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;"></div> <div style="width: 10%; text-align: center;">)</div> <div style="width: 50%;">Publication Date: June 10, 2008</div> </div>)	
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NOTICE OF OPPOSITION

Shavlik Technologies, LLC, a limited liability company duly organized and existing under the laws of Delaware, with a mailing address of Rosedale Corporate Plaza, Suite 400, 2665 Long Lake Road, Roseville, Minnesota, 55113, United States, believes that it will be damaged by the registration of the Mark shown in application Serial No. 77/284,706, filed September 20, 2007 by cipherOptics, Inc., a corporation duly organized and existing under the laws of North Carolina with a mailing address of Suite 125, 701 Corporate Center Drive, Raleigh, North Carolina, 27607, United States, and hereby opposes registration of the Mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark SIMPLY SECURE for "Computer software for security and encryption over computer and communications networks; Computer hardware for security and encryption functions over computer and communications networks" (International Class 09). The application was filed with the United States Patent and Trademark Office on September 20, 2007 based on an intent-to-use the mark subject to Section 1(b).

2. Applicant's mark published for opposition on June 10, 2008. Opposer filed with the Trademark Trial & Appeal Board a request to extend the time to oppose Application Serial No. 77/284706 on June 10, 2008. This Notice of Opposition is timely filed.
3. Since at least as June 2006, Opposer and its predecessors in interest have used the SIMPLY SECURE trademark in connection with computer software for use by system administrators and security professionals to manage security, vulnerability and compliance protocols within computer networks.
4. Opposer is also the owner of U.S. Application Serial No. 77/479,906 for the mark SIMPLY SECURE for computer software for use by system administrators and security professionals to manage security, vulnerability and compliance protocols within computer networks. Application Serial No. 77/479,906 was filed on May 21, 2008. (See Exhibit A for a USPTO Printout corresponding to said application.)
5. Opposer has advertised and promoted its SIMPLY SECURE mark extensively. Opposer has also made substantial sales under said mark. As a result of such use and promotion, Opposer's mark has developed and represents valuable goodwill inuring to the benefit of Opposer.
6. Upon information and belief, Opposer has priority with respect to the marks at issue in this opposition. Opposer has adopted and commenced use of its SIMPLY SECURE mark at least as early as June 2006, long before the September 20, 2007 effective filing date of Applicant's application. Upon information and belief, Applicant did not commence use of the SIMPLY SECURE mark in commerce until some time after the September 20, 2007 filing date of Application Serial No. 77/284,706. As such, Opposer's use of the SIMPLY SECURE mark commenced several months prior to the filing date of Applicant's application.

7. Applicant's mark is identical and confusingly and deceptively similar to Opposer's mark.
The marks have identical and confusingly similar meanings and the goods of the parties are closely related.
8. Due to the similarity between Applicant's claimed mark and Opposer's previously used mark, and the closely related nature of the goods of the respective parties, consumers and potential consumers are likely to believe that Applicant's goods originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.
9. Upon information and belief, the goods provided by Opposer under its SIMPLY SECURE marks and by Applicant under Applicant's SIMPLY SECURE mark in its application are promoted and sold in the same channels of trade to the same consumers or class of consumers.
10. Applicant's SIMPLY SECURE mark is identical and confusingly similar in sight, sound and commercial impression to Opposer's SIMPLY SECURE mark.
11. The use and registration by Applicant of the mark SIMPLY SECURE for Applicant's goods is likely to cause confusion or to cause mistake or deception among consumers and potential consumers, with Opposer's previously used SIMPLY SECURE mark, again resulting in damage to Opposer.
12. Applicant's mark dilutes and weakens Opposer's mark in violation of Opposer's rights, causing dilution of the distinctive qualities of the Opposer's mark.
13. Because of the related nature of the goods, and the confusing similarity in appearance, sound and commercial impression of the marks, use and registration of the mark SIMPLY SECURE by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.

14. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

15. Registration of the mark shown in Application Serial No. 77/284,706 will result in damage to Opposer under the provisions of §2 of the U.S. Trademark Act, 15 U.S.C. § 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its Opposition to this Application be sustained and that the registration of the mark SIMPLY SECURE set forth therein be refused.

Please direct all correspondence to the attention of:

Heather J. Kliebenstein
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Phone: 612-332.5300
Fax: 612-332-9081

Opposer hereby appoints Andrew S. Ehard; Heather J. Kliebenstein; William D. Schultz; Scott W. Johnston; John A. Clifford; Gregory C. Golla; Christopher J. Schulte and Danielle I.

Mattessich, and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Accompanying the signed copies of this Notice of Opposition is the required fee of \$300.00.

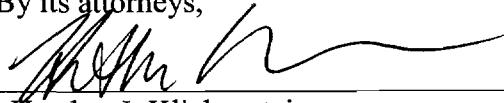
Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Opposer's counsel noted above.

Respectfully submitted,

Shavlik Technologies, LLC

By its attorneys,

Date: 8-13-08

A handwritten signature in black ink, appearing to read 'Heather J. Kliebenstein', written over a horizontal line.

Heather J. Kliebenstein

Andrew S. Ehard

MERCHANT & GOULD P.C.

P.O. Box 2910


Minneapolis, MN 55402-0910

Phone: (612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION
was served upon Applicants by Federal Express this 13th day of August, 2008:

cipherOptics, Inc.
Suite 125
701 Corporate Drive
Raleigh, North Carolina 27607



Heather J. Kliebenstein



United States Patent and Trademark Office

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SIMPLY SECURE

Word Mark	SIMPLY SECURE
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Computer software for use by system administrators and security professionals to manage security, vulnerability and compliance protocols within computer networks
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77479906
Filing Date	May 21, 2008
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Shavlik Technologies, LLC LTD LIAB CO DELAWARE Rosedale Corporate Plaza - Suite 400 2665 Long Lake Road Roseville MINNESOTA 55113
Attorney of Record	Andrew S. Ehard
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Exhibit A

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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