

ESTTA Tracking number: **ESTTA305932**

Filing date: **09/14/2009**

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	Dating DNA, LLC		
Entity	Corporation	Citizenship	Delaware
Address	13804 Torrey Del Mar Drive San Diego, CA 92130 UNITED STATES		

Attorney information	Diane L. Gardner Lexevia, PC 4139 Via Marina PH3 Marina Del Rey, CA 90292 UNITED STATES cole.stuart@lexevia.com, diane@mmip.com, olsonchadh@gmail.com, kevinc@xsmail.com Phone:310.746.6112
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Applicant Information

Application No	77715869	Publication date	08/18/2009
Opposition Filing Date	09/14/2009	Opposition Period Ends	09/17/2009
Applicant	Imagini Holdings Limited 7 Moor Street London, W1D 5EU UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 035. All goods and services in the class are opposed, namely: Provision of business information; organization, operation and supervision of customer loyalty programs and incentive award programs to promote the sale of products and services of others; public opinion polling; consumer research services, namely, profiling consumers based on their visual preferences of pictorial stimuli and by conducting questionnaires and tracking consumer purchases for commercial and business purposes, namely, advertising and purchase trends analysis and reports; consumer research services, namely, collection of consumer data and information for market segmentation and market clustering of consumers; computerized analysis of data, namely, analyzing consumer, business, and census data for measuring consumer purchasing trends and providing insight in the nature of marketing consulting based on the data analysis; marketing consultancy services in the nature of providing consulting advice based on analysis of consumer data; market research services; marketing consultancy services based on data, namely, creating purchasing trend analyses and reports for others; marketing consulting services, namely, consulting in the field of consumer trends based on visual and other sensory preference data accumulated via computerized facilities that enable consumers to create a profile of themselves based on their visual and other sensory preferences; production of commercials, namely, television, radio, and online advertisements; distribution of commercials, namely, television, radio, and online advertisements; advertising services, namely, promoting the goods and services of others over the Internet; providing on-line computer databases and on-line</p>

searchable databases regarding the purchase and sale of retail consumer goods and services of others; advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads; providing consumer information and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations

Class 038.

All goods and services in the class are opposed, namely: Providing online chat rooms and electronic bulletin boards for transmission of messages among computer users concerning classified advertisements, virtual community, social networking, photo sharing, transmission of photographic images, and video sharing; providing email and instant messaging services; mobile media services in the nature of electronic transmission of entertainment media content; communication services, namely, electronic transmission of data and documents among users of computers

Class 041.

All goods and services in the class are opposed, namely: Entertainment services, namely, providing online computer games and quiz games; television programming; television program format development for others in the nature of production of television programs; production of television programs; distribution of television programs for others; entertainment services, namely, production of game shows; entertainment services, namely, providing online computer games, production of video game software

Class 042.

All goods and services in the class are opposed, namely: Research, design and development of software that enables consumers to profile themselves visually and allows consumers to profile themselves based on sensory stimuli; hosting of websites for others; development of software tools to analyze data; development of software tools to capture and store visual profiles and associated other data; computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; providing customized online web pages featuring user-defined information, search engines and online web links to other websites; hosting computer software for data storage; providing customizable search engine services that perform searches and filter information based on visual attributes and content of a website; providing an interactive website featuring a search engine that matches products and services to consumers and groups of consumers based on user-defined visual preferences

Class 045.

All goods and services in the class are opposed, namely: Personal and social services rendered by others to meet the needs of individuals, namely, online social networking services, social introduction and dating services; Internet based social networking services; Internet based social networking services featuring profiles of users based on visual preferences of pictorial stimuli for networking, social networking and introduction, and personal networking and introduction purposes; Providing educational information in the field of self-development, self-awareness, and self-improvement; Providing educational information on-line in the field of self-development, self-awareness, and self-improvement

Grounds for Opposition

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

U.S. Registration No.	3496500	Application Date	01/25/2007
Registration Date	09/02/2008	Foreign Priority Date	NONE
Word Mark	DATING DNA		

Design Mark	<h1>Dating DNA</h1>
Description of Mark	NONE
Goods/Services	Class 045. First use: First Use: 2007/01/15 First Use In Commerce: 2007/01/15 Computer dating services; Dating services; Internet based social networking, introduction, and dating services; Marriage partner introduction or dating services; On-line identity reliability investigation in the field of on-line dating and claims made about age, gender; Reminder services in the area of upcoming important dates and events; Video dating services; Web site services featuring on-line dating club

U.S. Registration No.	3245349	Application Date	06/09/2004
Registration Date	05/22/2007	Foreign Priority Date	NONE

Word Mark	DATING BY DNA
Design Mark	<h1>Dating by DNA</h1>
Description of Mark	NONE
Goods/Services	Class 045. First use: First Use: 2006/09/26 First Use In Commerce: 2006/09/26 Dating and Matchmaking services

Related Proceedings	91185884
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Attachments	77091424#TMSN.jpeg (1 page)(bytes) 78432066#TMSN.jpeg (1 page)(bytes) 2009091401.pdf (6 pages)(261141 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	/Diane L. Gardner/
Name	Diane L. Gardner
Date	09/14/2009

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

Dating DNA, LLC,)	Serial No.	: 77/258,529
)	Mark	: VISUALDNA SHOPS
Opposer/Respondent,)	Opposition No.	: TBD
)		
v.)		
)		
Imagini Holdings Ltd.,)		
)		
Applicant/Petitioner)		
_____)		

NOTICE OF OPPOSITION

Dating DNA, LLC (hereinafter “Opposer”), a limited liability company duly organized and existing under the laws of the State of Delaware, and having its principal place of business at 13804 Torrey Del Mar Drive, San Diego, CA, 92130, believes it will be damaged by registration of the mark VISUALDNA SHOPS as shown in U.S. Trademark Application Serial No. 77/715,869, owned by Imagini Holdings Ltd., 7 Moor Street, London UK, W1D 5EU (hereinafter “Applicant”), and hereby opposes the same.

The grounds for the opposition are as follows:

1. Upon information and belief, Applicant is the owner of U.S. Application Serial No. 77/715,869 for the word mark VISUALDNA SHOPS for “provision of business information; organization, operation and supervision of customer loyalty programs and incentive award programs to promote the sale of products and services of others; public opinion polling; consumer research services, namely, profiling consumers based on their visual preferences of pictorial stimuli and by conducting questionnaires and tracking consumer purchases for commercial and business purposes, namely, advertising and purchase trends analysis and reports; consumer research services, namely, collection of consumer data and information for market segmentation and market clustering of consumers; computerized analysis of data, namely, analyzing consumer, business, and census data for measuring consumer purchasing trends and providing insight in the nature of marketing consulting

based on the data analysis; marketing consultancy services in the nature of providing consulting advice based on analysis of consumer data; market research services; marketing consultancy services based on data, namely, creating purchasing trend analyses and reports for others; marketing consulting services, namely, consulting in the field of consumer trends based on visual and other sensory preference data accumulated via computerized facilities that enable consumers to create a profile of themselves based on their visual and other sensory preferences; production of commercials, namely, television, radio, and online advertisements; distribution of commercials, namely, television, radio, and online advertisements; advertising services, namely, promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases regarding the purchase and sale of retail consumer goods and services of others. advertising and information distribution services, namely, providing classified advertising space via the global computer network; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads; providing consumer information and making referrals in the field of entertainment services for products, services, events, activities, facilities and locations” in International Class 35.

2. Upon information and belief, Applicant is the owner of U.S. Application Serial No. 77/715,869 for the word mark VISUALDNA SHOPS for “providing online chat rooms and electronic bulletin boards for transmission of messages among computer users concerning classified advertisements, virtual community, social networking, photo sharing, transmission of photographic images, and video sharing; providing email and instant messaging services; mobile media services in the nature of electronic transmission of entertainment media content; communication services, namely, electronic transmission of data and documents among users of computers” in International Class 38.

3. Upon information and belief, Applicant is the owner of U.S. Application Serial No. 77/715,869 for the word mark VISUALDNA SHOPS for “entertainment services, namely, providing online computer games and quiz games; television programming; television program format development for others in the nature of production of television programs; production of television programs; distribution of television programs for others; entertainment services, namely, production of game shows; entertainment services, namely, providing online computer games, production of video game software” in International Class 41.

4. Upon information and belief, Applicant is the owner of U.S. Application Serial No. 77/715,869 for the word mark VISUALDNA SHOPS for “research, design and development of software that enables consumers to profile themselves visually and allows consumers to profile themselves based on sensory stimuli; hosting of websites for others; development of software tools to analyze data; development of software tools to capture and store visual profiles and associated other data; computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; providing customized online web pages featuring user-defined information, search engines and online web links to other websites; hosting computer software for data storage; providing customizable search engine services that perform searches and filter information based on visual attributes and content of a website; providing an interactive website featuring a search engine that matches products and services to consumers and groups of consumers based on user-defined visual preferences” in International Class 42.

5. Upon information and belief, Applicant is the owner of U.S. Application Serial No. 77/715,869 for the word mark VISUALDNA SHOPS for “personal and social services rendered by others to meet the needs of individuals, namely, online social networking services, social introduction and dating services; Internet based social networking services; Internet based social networking services featuring profiles of users based on visual preferences of pictorial stimuli for networking, social networking and introduction, and personal networking and introduction purposes; Providing educational information in the field of self-development, self-awareness, and self-improvement; Providing educational information on-line in the field of self-development, self-awareness, and self-improvement” in International Class 45.

6. Upon information and belief, Applicant filed U.S. Application Serial No. 77/715,869 in the U.S. Patent & Trademark Office on April 16, 2009, relying on a claim of intent to use the VISUALDNA SHOPS in commerce in the U.S. under Trademark Act Section 1(b).

7. Upon information and belief, U.S. Application Serial No. 77/715,869 was published for opposition in the *Official Gazette* of the U.S. Patent & Trademark Office on August 18, 2009.

8. Opposer is the owner of U.S. Trademark Registration No. 3,496,500 for the mark DATING DNA, for *inter alia*, computer dating services, Internet based social networking, on-line identity reliability investigations, reminder services and on-line dating clubs.

9. Opposer is the owner of U.S. Trademark Registration No. 3,245,349 for the mark DATING BY DNA, for dating and matchmaking services.

10. Opposer and its predecessor in interest have continuously used the DATING DNA and DATING BY DNA marks in interstate commerce since at least as early as January 15, 2007 and September 26, 2006, respectively, long prior to the effective filing date of April 16, 2009 established by Applicant. Consequently, priority belongs to Opposer.

11. Through its widespread exposure, Opposer's marks have become well recognized in the U.S. Opposer has invested a great deal of money and effort in promoting its services sold under the DATING DNA and DATING BY DNA marks and is continuing to invest significant resources in like promotion. Services sold by Opposer in association with Opposer's marks have been widely promoted and sold throughout the country. By the aforesaid extensive use of Opposer's marks, and by the promotional efforts in connection therewith, Opposer has built up valuable goodwill in its DATING DNA and DATING BY DNA marks. Because of such use and promotion, the marks have acquired secondary meaning in the minds of the public in connection with Opposer and its services.

12. Applicant's VISUALDNA SHOPS mark, as applied to the services identified in U.S. Trademark Application Serial No. 77/715,869, is confusingly similar to Opposer's marks as applied to Opposer's services, and is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods originate with Opposer, or are licensed, authorized, or sponsored by Opposer, or are promoted with Opposer's approval.

13. By reason of the foregoing, Opposer will be damaged by Applicant's registration of the VISUALDNA SHOPS mark.

WHEREFORE, Opposer respectfully requests that Applicant's U.S. Trademark Application Serial No. 77/715,869 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer herein appoints Colburn C. Stuart III and Diane L. Gardner, members of the Bar of the State of California, its attorneys to prosecute the above opposition with full powers

of substitution and revocation and to transact all business in the U.S. Patent & Trademark Office connected therewith; correspondence address: Lexevia, PC, 4139 Via Marina PH3, Marina Del Rey, CA 90292, tel. 310.746.6112, fax. 424.228.5272, e-mail cole.stuart@lexevia.com.

Please apply any additional charges or credits to Deposit Account No. 50-3137.

Respectfully submitted,

Date: 14 SEPT 2009

Diane L. Gardner
Colburn C. Stuart, III, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE OF OPPOSITION upon Applicant by depositing one copy thereof in a sealed envelope in the United States mail, first class, postage pre-paid, on September 14, 2009, addressed as follows:

Beth Goldman
Orrick Herrington & Sutcliffe LLP
4 Park Plaza, Suite 1600 IP Prosecution
Irvine, CA 92614



Kim Nelson