

ESTTA Tracking number: **ESTTA307724**

Filing date: **09/23/2009**

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	Pathway Data, Inc.
Granted to Date of previous extension	09/23/2009
Address	3187 Redhill Avenue Suite 100 Costa Mesa, CA 92626 UNITED STATES

Attorney information	Howard J. Klein; Theodore P. Lopez KLEIN, O'NEILL & SINGH, LLP 43 Corporate Park Suite 204 Irvine, CA 92606 UNITED STATES hjklein@koslaw.com, tlopez@koslaw.com Phone:949-955-1920
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### Applicant Information

Application No	77594779	Publication date	05/26/2009
Opposition Filing Date	09/23/2009	Opposition Period Ends	09/23/2009
Applicant	Smart Credit USA, LLC 937 SW 87 Avenue Miami, FL 33174 UNITED STATES		

### Goods/Services Affected by Opposition

Class 036. First Use: 2008/08/18 First Use In Commerce: 2008/08/18 All goods and services in the class are opposed, namely: Credit and financial consultation; Financial advice; Financial advisory and consultancy services; Financial consultancy; Financial loan consultation; Financial research and information services; Financial risk management; Financial services, namely, credit repair and restoration; Financial services, namely, debt settlement; Financial services, namely, money lending
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	SMARTCREDIT.COM
Goods/Services	Credit monitoring, credit risk and financial management services, such as financial advisory and consultancy services; debt consolidation consultation; financial research and information services; financial risk management; debt settlement; and money lending.

Attachments	996-047.801--OppositionNoticeAsFiled09232009.pdf ( 3 pages )(288323 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 Facsimile or email (by agreement only) on this date.

Signature	/TPL/
Name	Theodore P. Lopez
Date	09/23/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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PATHWAY DATA, INC.	)	Serial No: 77/594779
	)	
Opposer,	)	
	)	
	)	Opposition No:
v.	)	
	)	Mark: SMARTCREDIT USA (with design)
Smart Credit USA, LLC	)	
Applicant	)	
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NOTICE OF OPPOSITION

Commissioner for  
Trademarks P.O. Box 1451  
Alexandria, VA 22313-  
1451

Sir:

Pathway Data, Inc., a corporation organized under the laws of the State of Nevada, with offices at 3187 Redhill Ave, Suite 100, Costa Mesa, California, 92626, United States (hereinafter "Pathway"), believes that it will be damaged by the registration of the referenced trademark application Serial No. 77/594779 of SMARTCREDIT USA (and design) filed on behalf of Smart Credit USA, LLC, and hereby opposes the same,

As grounds for opposition, it is alleged that:

1. On information and belief, application Serial No. 77/594,779 was filed October 17, 2008, with a date of first use and first use in commerce of August 18, 2008, for registration of the mark SMARTCREDIT USA (and design) on the Principal Register in the name of Smart Credit USA, LLC (hereinafter "Applicant") for services in International Class 036, namely the following: Credit and financial consultation; Financial advice; Financial advisory and consultancy services; Financial consultancy; Financial loan consultation; Financial research and information services; Financial risk management; Financial services, namely, credit repair and restoration; Financial

services, namely, debt settlement; Financial services, namely, money lending.

2. Prior to August 18, 2008, Opposer Pathway's immediate predecessor in interest, B-52 Media, LLC, was using the domain name and the mark SMARTCREDIT.COM in interstate commerce, on the Internet in connection with credit monitoring, credit risk and financial management services, such as financial advisory and consultancy services; debt consolidation consultation; financial research and information services; financial risk management; debt settlement; and money lending. In or about February, 2009, Opposer Pathway acquired the domain name and the mark SMARTCREDIT.COM from B-52 Media, LLC and is now using the domain name and mark SMARTCREDIT.COM in interstate commerce on the Internet in connection with the aforesaid services.

3. Opposer Pathway's mark SMARTCREDIT.COM is symbolic of extensive good will and consumer recognition built up by Opposer Pathway through substantial amounts of time and effort in advertising and promotion.

4. Opposer Pathway is informed and believes and thereon alleges that Applicant has commenced use of the mark SMARTCREDIT USA (and design) or intends imminently to do so.

5. Opposer Pathway is informed and believes and thereon alleges that Opposer Pathway has superior rights to the mark SMARTCREDIT USA (and design) based upon prior use of the mark SMARTCREDIT.COM by Opposer Pathway's predecessors in interest, which use inures to the benefit of Opposer Pathway, and which use has therefore afforded Opposer Pathway superior rights in the mark.

6. Applicant's mark SMARTCREDIT USA (and design) is so nearly identical to Pathway's trademark of SMARTCREDIT.COM in phonetic pronunciation and is so highly similar in appearance and connotation as to result in a likelihood of confusion.

7. The services for which the Applicant intends to use the mark SMARTCREDIT USA (and design) are identical to or closely related to the services provided by Pathway in commerce.

8. In view of the similarity of Applicant's mark SMARTCREDIT USA (and design) to Opposer Pathway's mark SMARTCREDIT.COM, and the close relationship of Applicant's services to Pathway's services, Pathway believes that Applicant's mark as applied to Applicant's services will so resemble Pathway's prior used mark, as applied to the services marketed and sold by Pathway in connection with that mark, as to be likely to cause confusion or cause mistake or to deceive and in violation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

9. The existence of the registration of SMARTCREDIT USA (and design) would dilute applicant's "famous" SMARTCREDIT.COM mark in violation of 15 U.S.C. 1125(c).

WHEREFORE, Opposer Pathway respectfully requests that this opposition be sustained and that application Serial No. 77/594,779 be refused registration. This opposition is submitted in triplicate.



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