

ESTTA Tracking number: **ESTTA325054**

Filing date: **01/04/2010**

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	Wells Fargo & Company
Granted to Date of previous extension	01/06/2010
Address	Sixth and Marquette 1700 Wells Fargo Center, MAC N9305-176 Minneapolis, MN 55479 UNITED STATES
Correspondence information	Felicia J. Boyd 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3901 UNITED STATES trademarkmpls@faegre.com, fboyd@faegre.com, jcollins@faegre.com Phone:612-766-7430

Applicant Information

Application No	77448842	Publication date	09/08/2009
Opposition Filing Date	01/04/2010	Opposition Period Ends	01/06/2010
Applicant	Thompson, Brian 11 Holly Berry Ct Glen Arm, MD 21057 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Credit card and debit card services; Credit card and payment card services; Credit card payment processing services; Credit card services; Credit card transaction processing services

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.	3509656	Application Date	07/18/2007
Registration Date	09/30/2008	Foreign Priority Date	NONE
Word Mark	WAY2SAVE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2008/01/04 First Use In Commerce: 2008/01/04 banking services, namely, checking and savings account services

U.S. Registration No.	3624145	Application Date	02/15/2008
Registration Date	05/19/2009	Foreign Priority Date	NONE
Word Mark	GET PAID TO SAVE WITH WAY2SAVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2007/12/15 First Use In Commerce: 2007/12/15 banking services, namely, checking and savings account services		

Attachments	77232816#TMSN.jpeg (1 page)(bytes) 77398382#TMSN.jpeg (1 page)(bytes) WAY2PAY Notice of Opposition.pdf (5 pages)(146126 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	/Jennifer D. Collins/
Name	Jennifer D. Collins
Date	01/04/2010

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

In the Matter of Application Serial No. 77/448,842
For the Mark: WAY2PAY
Filed: April 15, 2008
Date of Publication: September 8, 2009

WELLS FARGO & COMPANY

Opposer,

v.

Opposition No. _____

Brian Thompson

Applicant.

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Wells Fargo & Company (“Opposer”), a corporation organized under the laws of the State of Delaware, located and having a place of business at 1700 Wells Fargo Center, MAC N9305-176, Minneapolis, MN 55479, believes that it will be damaged by the registration of the mark **WAY2PAY**, as depicted in Application Serial No. 77/448,842 (the “Mark”), and hereby opposes the registration of said application under the provisions of 15 U.S.C. § 1063.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant Brian Thompson (“Applicant”) applied for the Mark on April 15, 2008 and said application was assigned Serial No. 77/448,842.

2. Application Serial No. 77/448,842 seeks the registration of the Mark, depicted as follows:

WAY2PAY

3. Application Serial No. 77/448,842 seeks the registration of the Mark in connection with the following services:

“Credit card and debit card services; Credit card and payment card services; Credit card payment processing services; Credit card services; Credit card transaction processing services” in International Class 36.

4. The Mark was published for opposition in the Official Gazette on September 8, 2009.

5. On October 7, 2009, Opposer requested, and was granted, an extension of time in which to oppose Applicant’s Mark, to January 6, 2010. Accordingly, this Notice of Opposition is timely filed.

6. Opposer is the owner of the U.S. Registration No. 3,509,656 for WAY2SAVE for banking services. This registration is valid and enforceable.

7. Since at least January 4, 2008, Opposer has prominently used, and is now using, the trademark WAY2SAVE in connection with Opposer’s banking services, which is prior to the April 15, 2008 filing date of Applicant’s application.

8. Opposer is the owner of U.S. Registration No. 3,624,145 for GET PAID TO SAVE WITH WAY2SAVE for banking services. This registration is valid and enforceable.

9. Since at least December 15, 2007, Opposer has prominently used, and is now using, the trademark GET PAID TO SAVE WITH WAY2SAVE in connection with Opposer’s banking services, which is prior to the April 15, 2008 filing date of Applicant’s application.

10. Upon information and belief, notwithstanding Opposer’s prior use and registration of WAY2SAVE and GET PAID TO SAVE WITH WAY2SAVE (collectively the “WAY2SAVE Marks”), Applicant sought to register the Mark for use in connection with credit card and debit card services, which are related to the services offered in connection with the WAY2SAVE Marks.

11. Upon information and belief, because of the similarity of the Mark to the WAY2SAVE Marks, and the overlapping and related services offered in connection with the Mark, persons familiar with Opposer and its services are likely to be misled into believing that Applicant's services, if offered under the Mark, are sponsored by or otherwise affiliated with Opposer or Opposer's services, thereby damaging Opposer.

12. Upon information and belief, Applicant's use of the Mark in connection with Applicant's services is likely to cause confusion, mistake, or deception as to the source, origin, or sponsorship or approval of Applicant's services, in that consumers are likely to believe that Applicant's services are Opposer's services, or are in some way legitimately connect with, licensed, or approved by Opposer.

13. Upon information and belief, the Mark cannot be registered consistent with Sections 2(d) and 2(e) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's WAY2PAY mark, and respectfully prays that application Serial No. 77/448,842 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

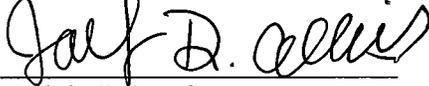
The required opposition fee of \$300 accompanies this Notice. If the amount submitted herewith is determined to be incorrect, the Commissioner may charge any additional fees or to credit any over payment to Deposit Account No. 06-0029.

Please address all correspondence to:

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Dated: January 4, 2010

Respectfully submitted,
WELLS FARGO & COMPANY

By 

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