

ESTTA Tracking number: **ESTTA349334**

Filing date: **05/25/2010**

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	Woot, Inc.		
Entity	Corporation	Citizenship	Texas
Address	4121 International Parkway Carrollton, TX 75007 UNITED STATES		

Attorney information	P. Weston Musselman, Jr. Fish & Richardson P.C. PO Box 1022 Minneapolis, MN 55440-1022 UNITED STATES tmdoctc@fr.com, bukovac@fr.com Phone:(214) 292-4030		
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### Applicant Information

Application No	77905119	Publication date	05/25/2010
Opposition Filing Date	05/25/2010	Opposition Period Ends	06/24/2010
Applicant	Ajay, Shamala 4 Millar Court West Windsor, NJ 08550 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Promoting the goods of others, namely, providing information regarding discounts, coupons, rebates, vouchers and special offers for the goods of others
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### 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.	3012788	Application Date	09/16/2004
Registration Date	11/08/2005	Foreign Priority Date	NONE
Word Mark	WOOT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2004/07/13 First Use In Commerce: 2004/07/13 Retail store services for electrical items; namely, speaker, gaming personnel computer, travel cooler/warmer, surveillance system, remote control robot, mouse, automatic electric mower, video card, fan, multifunction unit of copying, faxing and printing, CRT monitor, hard drive, video recorder, home theater, drive and scanner

U.S. Registration No.	3397587	Application Date	06/04/2007
Registration Date	03/18/2008	Foreign Priority Date	NONE

Word Mark	WOOT!
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 028. First use: First Use: 2006/12/08 First Use In Commerce: 2006/12/08 plush toys Class 035. First use: First Use: 2004/07/13 First Use In Commerce: 2004/07/13 on-line retail store services in the field of consumer electronics, house wares, home furnishings, home appliances, wine, T-shirts, plush toys, computers and computer accessories Class 038. First use: First Use: 2004/07/13 First Use In Commerce: 2004/07/13 Computer services, namely, providing on-line forums for transmission of messages among computer users concerning consumer products, and general interest
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U.S. Registration No.	3499780	Application Date	05/18/2007
Registration Date	09/09/2008	Foreign Priority Date	NONE

Word Mark	WOOT!
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Design Mark	<h1>WOOT!</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 T-shirts		

U.S. Registration No.	3372411	Application Date	05/18/2007
Registration Date	01/22/2008	Foreign Priority Date	NONE
Word Mark	WOOT CELLARS		
Design Mark	<h1>WOOT CELLARS</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/11/08 First Use In Commerce: 2005/11/08 Wines		

U.S. Application No.	77697860	Application Date	03/24/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEALS.WOOT!		

Design Mark	<b>DEALS.WOOT!</b>
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2009/10/14 First Use In Commerce: 2009/10/14 Promoting the goods and services of others through the advertising, promotion, and/or distribution of discount offers, special pricing promotions, coupons, and/or rebates; purchasing advice and information about products and prices on Internet sites in connection with purchases made over the Internet; providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the Internet; advertising and commercial information services via the Internet; advertising via electronic media and specifically the Internet; providing advertising space on the Internet</p> <p>Class 038. First use: First Use: 2009/10/14 First Use In Commerce: 2009/10/14 Providing an online forum for discussion of product deals, discounts, pricing, and promotions</p>

Attachments	76612253#TMSN.gif ( 1 page )( bytes ) 77196788#TMSN.jpeg ( 1 page )( bytes ) 77184866#TMSN.jpeg ( 1 page )( bytes ) 77184846#TMSN.jpeg ( 1 page )( bytes ) 77697860#TMSN.jpeg ( 1 page )( bytes ) 22519-0087pp1.pdf ( 5 pages )(2740232 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	/P. Weston Musselman, Jr./
Name	P. Weston Musselman, Jr.
Date	05/25/2010

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

WOOT, INC.

vs.

AJAY, SHAMALA

Opposition No.

In the matter of Application Serial  
No. 77/905,119

Mark: WOOOT

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, Woot, Inc., located and doing business at 4121 International Parkway, Carrollton, TX 75007, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/905,119, owned by Ajay, Shamala, and hereby opposes same.

Applicant's application for the mark WOOOT was filed on January 5, 2010 for "promoting the goods of others, namely, providing information regarding discounts, coupons, rebates, vouchers and special offers for the goods of others" in International Class 35. The mark was published for opposition in the *Official Gazette* at TM 1047 on May 25, 2010. See Exhibit "A" attached hereto and incorporated herein by reference. Consequently, this Notice of Opposition has been timely filed. The grounds for Opposition are as follows:

- Opposer's Standing to Oppose:** Opposer has standing to oppose the published application based on its common law rights in the marks WOOT, WOOT!, WOOT CELLARS and DEALS.WOOT! (collectively, "Opposer's Marks"). As set forth more particularly below, Opposer has adopted and used Opposer's Marks marks since at least as early as the dates shown in Opposer's federal trademark registrations and federal trademark application referenced herein to the present in connection with online retail store services, providing on-line forums and promoting the goods of others and distribution of discount offers and coupons. Opposer's Marks have become well known throughout the United States among consumers for almost six (6) years.

2. **Trademark/Service Mark Registrations:** Opposer is the owner of the following federal Registrations for Opposer's Marks in the United States: 1) WOOT, Reg. No. 3,012,788, Registered November 8, 2005, for "retail store services for electrical items; namely, speaker, gaming personnel computer, travel cooler/warmer, surveillance system, remote control robot, mouse, automatic electric mower, video card, fan, multifunction unit of copying, faxing and printing, CRT monitor, hard drive, video recorder, home theater, drive and scanner" in International Class 35; 2) WOOT!, Reg. No. 3,397,587, Registered March 18, 2008, for "plush toys" in International Class 28; "on-line retail store services in the field of consumer electronics, house wares, home furnishings, home appliances, wine, T-shirts, plush toys, computers and computer accessories" in International Class 35; and "computer services, namely, providing on-line forums for transmission of messages among computer users concerning consumer products, and general interest" in International Class 38; 3) WOOT!, Reg. No. 3,499,780, Registered September 9, 2008, for "t-shirts" in International Class 25; and 4) WOOT CELLARS, Reg. No. 3,372,411, Registered January 22, 2008, for "wines" in International Class 33.

3. **Trademark/Service Mark Application:** Opposer is the owner of a pending application for Opposer's Mark DEALS.WOOT!, Serial No. 77/697,860, filed March 24, 2009, for "promoting the goods and services of others through the advertising, promotion, and/or distribution of discount offers, special pricing promotions, coupons, and/or rebates; purchasing advice and information about products and prices on Internet sites in connection with purchases made over the Internet; providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the Internet; advertising and commercial information services via the Internet; advertising via electronic media and specifically the Internet; providing advertising space on the Internet" in International Class 035; and "providing an online forum for discussion of product deals, discounts, pricing, and promotions" in International Class 38.

4. **Commercial Damage:** Said Opposer's Marks are symbolic of extensive good will and consumer recognition built through effort and expense in advertising and promotion over at least a six-year period in the United States. Registration of Applicant's mark would deprive Opposer of the exclusive use of Opposer's Marks, would infringe said Opposer's Marks, would violate Opposer's rights therein, would expose Opposer to further violation of Opposer's Marks by others, and would diminish the commercial value of Opposer's Marks in various ways. In addition, such registration would be a source of damage and injury to Opposer's consumers.

5. **Priority of Use:** Opposer has clear priority of use. Opposer, since at least as early as July 13, 2004, has been, and is now, using Opposer's Marks in connection with the goods and services in Paragraph 2 above. Said use has been valid and continuous since said date of first use. Further, Opposer's application for its DEALS.WOOT! application was filed March 24, 2009. Applicant states, in its Application filed January 5, 2010, an intent to use the mark. Opposer's continuous use of Opposer's Marks clearly precedes Applicant's constructive use date of January 5, 2010 by at least six years and, therefore, Applicant's application should not be entitled to proceed to registration.

6. **Likelihood of Confusion:** The mark intended to be registered by the Applicant is virtually identical to Opposer's Marks. They are even more likely to be confused because Applicant's mark and Opposer's Marks are used in connection with the goods and services referenced above. Use and registration of Applicant's mark will cause confusion, mistake or deception. The public is likely to be deceived as to the source of Applicant's services and/or falsely infer a connection with or endorsement by Opposer. Therefore, Applicant's mark should not be registered.

7. **Unfair Competition:** On information and belief Applicant adopted a mark which is virtually identical to Opposer's Marks in order to trade on the good will acquired through the expense and efforts of the Opposer over at least a six-year period. On information and belief, Applicant intends to mislead the public into believing it is associated with or endorsed by the Opposer in order to gain an unfair advantage in the marketplace. Applicant should, therefore, not be entitled to registration of mark.

8. **Equity:** Opposer has accrued trademark and service mark rights in Opposer's Marks for at least the last six years. Opposer has invested a significant amount of time, effort and funds in the development of good will in the offering of its goods and services and in the protection of Opposer's Marks in the United States. On information and belief, it does not appear that Applicant has invested much time, effort or funds in developing its mark. Therefore, Applicant should choose a new mark, one which is not virtually identical or confusingly

similar and one that is not an unfair attempt to take advantage of Opposer's years of work and financial investment to develop the reputation of Opposer's Marks.

9. **Notice:** Opposer hereby gives notice that at any hearing and on any appeal of this opposition proceeding he will rely on any common law rights, federal registrations and the pending application, the current status of which is "Registration Review Complete".

**WHEREFORE**, Opposer prays that this opposition be sustained in favor of Opposer, that Application Serial No. 77/905,119, for the mark WOOOT, be rejected, and that no registration issue to Applicant.

MAY 25, 2010

U.S. PATENT AND TRADEMARK OFFICE

TM 1047

**CLASS 35—(Continued).**

SN 77-904,048. APIAN SOFTWARE, INC., SEATTLE, WA.  
FILED 1-3-2010.

## SURVEYHOST

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

FOR MARKET OPINION POLLING FOR BUSINESS OR ADVERTISING PURPOSES; CONDUCTING BUSINESS AND MARKET RESEARCH SURVEYS; BUSINESS CONSULTATION, NAMELY, MARKETING SURVEY DESIGN AND ANALYSIS FOR OTHERS (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-0-1997; IN COMMERCE 9-0-1997.

MATTHEW MCDOWELL, EXAMINING ATTORNEY

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SN 77-904,219. LUXURY BRAND ADVISORS, LLC, FAIRFIELD, CT. FILED 1-4-2010.

## RARITIES: FINE JEWELRY WITH CAROL BRODIE

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FINE JEWELRY", APART FROM THE MARK AS SHOWN.

THE NAME "CAROL BRODIE" IDENTIFIES A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.

FOR ONLINE RETAIL STORE SERVICES FEATURING JEWELRY, WATCHES, PRECIOUS AND SEMI-PRECIOUS STONES, STONE PENDANTS, PRECIOUS METALS AND THEIR ALLOYS, SILVER AND ALLOYS (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-0-2009; IN COMMERCE 6-0-2009.

NANCY CLARKE, EXAMINING ATTORNEY

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SN 77-904,225. VIRGIN MOBILE USA, L.P., WARREN, NJ.  
FILED 1-4-2010.

## FREE.I.P.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR CHARITABLE SERVICES, NAMELY, ENCOURAGING PARTICIPATION IN VOLUNTEER PROGRAMS AND COMMUNITY SERVICE PROJECTS AND PROVIDING INCENTIVES FOR PARTICIPATION IN VOLUNTEER PROGRAMS AND COMMUNITY SERVICE PROJECTS (U.S. CLS. 100, 101 AND 102).

FIRST USE 5-1-2009; IN COMMERCE 6-15-2009.

LINDA ESTRADA, EXAMINING ATTORNEY

**CLASS 35—(Continued).**

SN 77-904,295. GRANNAN, JIM, ALPHARETTA, GA. FILED 1-4-2010.

## BONST

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR WHOLESALE DISTRIBUTORSHIPS FEATURING INSULATING CONCRETE FORMS (U.S. CLS. 100, 101 AND 102).

SUSAN RICHARDS, EXAMINING ATTORNEY

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SN 77-905,119. AJAY, SHAMALA, DBA WOOOT, WEST WINDSOR, NJ. FILED 1-5-2010.

## WOOOT

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR PROMOTING THE GOODS OF OTHERS, NAMELY, PROVIDING INFORMATION REGARDING DISCOUNTS, COUPONS, REBATES, VOUCHERS AND SPECIAL OFFERS FOR THE GOODS OF OTHERS (U.S. CLS. 100, 101 AND 102).

HOWARD B. LEVINE, EXAMINING ATTORNEY

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SN 77-905,128. FOCUSDRIVEN - ADVOCATES FOR CELL-FREE DRIVING, INC., GRAPEVINE, TX. FILED 1-5-2010.

## FOCUSDRIVEN ADVOCATES FOR CELL-FREE DRIVING

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ADVOCATES FOR CELL-FREE DRIVING", APART FROM THE MARK AS SHOWN.

FOR ADVOCACY SERVICES, NAMELY, PROMOTING AND RAISING PUBLIC AWARENESS OF THE ISSUES AND DANGERS ASSOCIATED WITH DISTRACTED DRIVING AND PROMOTING THE INTERESTS OF VICTIMS OF DISTRACTED DRIVING (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-0-2009; IN COMMERCE 11-0-2009.

REBECCA POVARCHUK, EXAMINING ATTORNEY

*Exhibit "A"*