

ESTTA Tracking number: **ESTTA350330**

Filing date: **06/01/2010**

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. P.O. 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	77893346	Publication date	05/04/2010
Opposition Filing Date	06/01/2010	Opposition Period Ends	06/03/2010
Applicant	PowerPact Holdings LLC 2909 Polo Parkway, Suite 200 Midlothian, VA 23113 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. All goods and services in the class are opposed, namely: Computer services, namely, providing internet search engines

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

Related Proceedings	Opposition To VOOT, Serial No. 77/893,342 in Class 35
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Attachments	76612253#TMSN.gif (1 page)(bytes) 77196788#TMSN.jpeg (1 page)(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	06/01/2010

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

WOOT, INC.

vs.

POWERPACT HOLDINGS LLC

Opposition No.

In the matter of Application Serial
No. 77/893,346

Mark: VOOT

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. 77/893,346, owned by PowerPact Holdings LLC, and hereby opposes same.

Applicant's application for the mark VOOT was filed on December 14, 2009 for "computer services, namely, providing internet search engines" in International Class 42. The mark was published for opposition in the *Official Gazette* at TM 1152 on May 4, 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:

1. **Opposer's Standing to Oppose:** Opposer has standing to oppose the published application based on its common law rights and rights in its federal registration for the marks WOOT, WOOT!, 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; and 3) WOOT!, Reg. No. 3,499,780, Registered September 9, 2008, for "t-shirts" in International Class 25.

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. Opposer's date of first use of the mark DEALS.WOOT! is at least as early as October 14, 2009, prior to Applicant's filing date of December 14, 2009.

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 December 14, 2009, an intent to use the mark. Opposer's continuous use of a number of Opposer's Marks clearly precedes Applicant's constructive use date of December 14, 2009 by at least five 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 similar 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 similar 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. **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, Application 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.

8. **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"; such that the registration will issue in due course.

WHEREFORE, Opposer prays that this opposition be sustained in favor of Opposer, that Application Serial No. 77/893,346, for the mark VOOT, be rejected, and that no registration issue to Applicant.

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CLASS 42—(Continued).

SN 77-892,022. HEALTH INFORMATION TECHNOLOGY CARE, LLC, PETALUMA, CA. FILED 12-11-2009.

HITCare

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

FOR IT CONSULTING SERVICES (U.S. CLS. 100 AND 101).

FIRST USE 3-1-2008; IN COMMERCE 4-17-2008.
NICHOLAS ALTREE, EXAMINING ATTORNEY

SN 77-892,080. PACIFIC PARTNERS MANAGEMENT SERVICES, INC., FOSTER CITY, CA. FILED 12-12-2009.

HEALTH ACCESS SOLUTIONS

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 "HEALTH", APART FROM THE MARK AS SHOWN. SEC. 2(F).

FOR SOFTWARE AS A SERVICE (SAAS) SERVICES, NAMELY, HOSTING SOFTWARE FOR USE BY OTHERS FOR USE BY MEDICAL PRACTITIONERS, HEALTHCARE PROVIDERS, MANAGED HEALTHCARE ORGANIZATIONS, AND HEALTH PLAN PROVIDERS THAT ALLOWS USER TO COMMUNICATE BY MEANS OF SECURE MESSAGING, EXCHANGE RELEVANT CLINICAL INFORMATION, COORDINATE CARE OF PATIENTS, SUPPORT CLINICAL DECISIONS BASED ON PROVEN BEST PRACTICES, VIEW CLINICAL BUSINESS ANALYTICS THAT ALLOW DEVELOPMENT OF OUTCOMES METRICS AND REPORTS, AUTOMATE AUTHORIZATIONS FOR REFERRALS AND PROCEDURES TO MEET PRE-DEFINED CARE STANDARDS, SEND REMINDERS TO BOTH CARE PROFESSIONALS AND PATIENTS FOR ROUTINE CHECK-UPS, MANAGE THE WELLNESS OF THE SUBSCRIBER POPULATION THEREBY REDUCING EMERGENCY PROCEDURES AND MEDICAL COSTS (U.S. CLS. 100 AND 101).

FIRST USE 4-30-2004; IN COMMERCE 11-4-2004.
JILL PRATER, EXAMINING ATTORNEY

CLASS 42—(Continued).

SN 77-892,115. EVOLUTE GMBH, 2380 PERCHTOLDSBORF, AUSTRIA, FILED 12-12-2009.

Evolute

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

OWNER OF ERPN CMNTY TM OFC REG. NO. 006896971, DATED 10-21-2008, EXPIRES 5-8-2018.

FOR SCIENTIFIC AND TECHNOLOGICAL SERVICES AND RESEARCH IN THE FIELD OF GEOMETRY FOR ARCHITECTURAL AND MANUFACTURING APPLICATIONS; TECHNICAL ANALYSIS AND CONSULTING SERVICES IN THE FIELD OF GEOMETRY FOR ARCHITECTURAL AND MANUFACTURING APPLICATIONS; DESIGN AND DEVELOPMENT OF COMPUTER SOFTWARE (U.S. CLS. 100 AND 101).

HELENE LIWINSKI, EXAMINING ATTORNEY

SN 77-892,737. IDEANODE, INC., DENVER, CO. FILED 12-14-2009.

GIGBOT

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

FOR COMPUTER SERVICES, NAMELY, HOSTING ON-LINE WEB FACILITIES FOR OTHERS TO SHOWCASE LIVE MUSICAL PERFORMANCES AND ARTISTS, FOR CONDUCTING ONLINE SEARCHES FOR LIVE MUSICAL PERFORMANCES, FOR FACILITATING INTERACTIVE DISCUSSIONS ABOUT LIVE MUSICAL PERFORMANCES AND ARTISTS, AND FOR FACILITATING CONNECTIONS AMONG FANS OF LIVE MUSICAL PERFORMANCES AND ARTISTS (U.S. CLS. 100 AND 101).

FIRST USE 8-11-2007; IN COMMERCE 8-11-2007.
LYDIA BELZER, EXAMINING ATTORNEY

SN 77-893,346. POWERPACT HOLDINGS LLC, MIDLOTHIAN, VA. FILED 12-14-2009.

VOOT

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

FOR COMPUTER SERVICES, NAMELY, PROVIDING INTERNET SEARCH ENGINES (U.S. CLS. 100 AND 101).

MARGERY A. TIERNEY, EXAMINING ATTORNEY

Exhibit "A"