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

Proceeding	91198102
Party	Plaintiff Wildfire Interactive, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WILDFIRE INTERACTIVE, INC.,)	
)	
Opposer,)	
)	Opposition No. 91198102
v.)	
)	Mark: WILDFIRE
MOBILIZATION LABS, LLC,)	
)	Serial No. 77/921,906
Applicant.)	
)	

OPPOSER’S MOTION TO SUSPEND PROCEEDING
PENDING DISPOSITION OF CIVIL ACTION AND MEMORANDUM IN SUPPORT

In accordance with 37 C.F.R. § 2.117(a) and T.B.M.P. § 510.02(a), Opposer Wildfire Interactive, Inc. (“Wildfire Interactive”) respectfully requests that the Board suspend the above-referenced opposition proceeding on the ground that the parties to the proceeding are engaged in an ongoing civil action in federal court that will dispose entirely of the issues raised in this opposition proceeding.

I. BACKGROUND

On September 22, 2010, Applicant Mobilization Labs, LLC (“Mobilization Labs”) filed a civil action against Wildfire Interactive in the United States District Court for the Northern District of Georgia, alleging trademark infringement, unfair competition, and deceptive trade practices based on its alleged priority of rights in the WILDFIRE mark and the alleged likelihood of confusion created by Wildfire Interactive’s WILDFIRE mark. A copy of the First Amended Complaint filed in the case, captioned *Mobilization Labs, LLC v. Wildfire Interactive, Inc.* (Civil Action. No. 1:10-CV-03043-TWT) (the “Civil Action”), is attached as **Exhibit A**. Two sections of Mobilization Labs’ First Amended Complaint, paragraphs 32-36 and paragraphs 57-59, explicitly reference and make allegations concerning the application at issue in this proceeding.

(See Ex. A.) The Civil Action is currently well into the discovery period, which is set to close on April 4, 2011. A copy of the court's Scheduling Order is attached as **Exhibit B**.

Counsel for Wildfire Interactive inquired whether Mobilization Labs would consent to the present Motion to Suspend in light of the ongoing Civil Action. Without explanation, counsel for Mobilization Labs responded that Mobilization Labs is unwilling to consent to a suspension of the proceeding.

II. ARGUMENT

To promote the interests of judicial economy and conservation of resources, “[i]t is the policy of the Board to suspend proceedings pursuant to Trademark Rule 2.117(a) when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board case.” *Vais v. Vais Arms, Inc.*, Opp. No. 91154485, 2004 WL 390936, at *1 (T.T.A.B. Feb. 26, 2004) (granting motion to suspend); *see also* 37 C.F.R. § 2.117(a) (“Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.”). Consequently, the Board routinely exercises its authority and adheres to this policy of granting suspensions where the same parties are involved in federal court litigation over issues related to those in the Board proceeding.¹

¹ *See, e.g., Tokaido v. Honda Assocs., Inc.*, 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973); *Townley Clothes, Inc. v. Goldring, Inc.*, 100 U.S.P.Q. 57, 58 (Comm’r Pat. & Trademarks 1953) (“[I]t would not seem to be in the interests of ‘judicial economy’ for the parties to proceed in two forums”); *Soc’y of Mexican Am. Eng’rs & Scientists, Inc. v. GVR Pub. Relations Agency, Inc.*, Opp. No. 121723, 2002 WL 31488947, at *5 (T.T.A.B. Nov. 6, 2002); 6 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* § 32:47 (4th ed. 2010) (“It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.”); 1 Jeffery A. Handelman, *Guide to TTAB Practice* § 14.15(A) (2008) (“Generally, it is the Board’s practice to suspend a Board proceeding when there is a pending civil action or another Board

It has in fact been the Board’s practice to suspend proceedings pending the outcome of a civil action even in situations where the civil action would not be dispositive of the issues raised in the Board proceeding, but instead would only have a “bearing” on those issues. *See, e.g., Solid 21 Inc. v. England*, Opp. No. 91162389, 2005 WL 376725, at *2 (T.T.A.B. Feb. 10, 2005) (“In this case, the parties to the civil action include the parties herein and the issues include ownership and priority of use of the mark at issue herein. As such, the civil action will, at the very least, have a bearing on the issues before the Board in this opposition. Accordingly, proceedings are suspended pending final disposition of the civil action between the parties.”); *Kearns-Tribune, LLC v. Salt Lake Tribute Publ’g Co.*, Opp. No. 151843, 2003 WL 22134916, at *3 (T.T.A.B. Sept. 11, 2003) (suspending Board proceeding; noting that “[s]uspension of a Board case is appropriate even if the civil case may not be dispositive of the Board case, so long as the ruling will have a bearing on the rights of the parties in the Board case.”); *Farah v. Topiclear Beauty Prods., Inc.*, Opp. No. 151334, 2003 WL 22022077, at *5 (T.T.A.B. Aug. 21, 2003) (granting suspension where civil action and Board action would “involve common legal and factual issues” and noting that “[s]uspension would avoid the undesirable result of the parties litigating the same issue in two forums, with potentially inconsistent results”). Here, because the outcome of Mobilization Labs’ civil trademark infringement action will have a direct bearing on the issue before the Board, and likely will conclusively and permanently resolve this issue, the outcome should be no different and the instant proceeding should be suspended pending disposition of the Civil Action.

The issue raised in the Board proceeding – whether Mobilization Labs was using the WILDFIRE mark in connection with all of the services listed in its application as of the filing

proceeding which may be dispositive of, or have a bearing on, the proceeding proposed to be suspended.”).

date of the application – is fully encompassed by the pending Civil Action. As part of the Civil Action, and in connection with determining priority of rights, the parties are in the process of taking discovery to establish the precise services Mobilization Labs offers under the WILDFIRE mark and, for each such service, when use in connection with the WILDFIRE mark first began. The fact finder’s conclusions as to when Mobilization Labs began use of the WILDFIRE mark in connection with each of its services will be binding on the parties and the United States Patent and Trademark Office, and therefore will conclusively resolve the issue in this opposition proceeding. The Civil Action is therefore the appropriate venue in which to resolve this issue. *See, e.g., Tokaido*, 179 U.S.P.Q. at 862 (“[W]hile a decision by the District Court would be binding upon the Patent Office, a decision by the Trademark Trial and Appeal Board would only be advisory in respect to the disposition of the case pending in the District Court.”); T.B.M.P. § 510.02(a) (“To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court.”). Even if the Civil Action would not conclusively resolve the issue in this opposition proceeding, the priority issues that necessarily must be resolved in the course of the Civil Action are so closely tied to the issue of whether Mobilization Labs was using the WILDFIRE mark for all the services recited in its application as of the filing date of the application that the Civil Action will, at a minimum, have a direct bearing on the issue in this opposition proceeding.

Additionally, the Civil Action is already well into the discovery phase of the litigation. (*See Ex. B.*) It would therefore require duplication of effort and unnecessary expenditure of resources to re-start the dispute in the recently filed opposition proceeding, which was instituted by Wildfire Interactive only after exhaustion of all available extensions of time to oppose and

instituted to ensure that Wildfire Interactive's rights are preserved pending the outcome of the Civil Action. Requiring the parties to litigate these issues in two forums simultaneously is a waste of the parties' time and resources and a needless imposition on the Board.

III. CONCLUSION

Considering the identity of the parties, the identity of the marks involved, and the similarity of the issues raised in the opposition proceeding and those in the pending Civil Action, suspension of the Board proceeding pending disposition of the Civil Action is warranted and should be granted in accordance with the Board's policy. For the foregoing reasons, Wildfire Interactive respectfully requests that this opposition proceeding be suspended pending final disposition of the Civil Action.

This 23rd day of February, 2011.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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WILDFIRE INTERACTIVE, INC.,)	
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Opposer,)	
)	Opposition No. 91198102
v.)	
)	Mark: WILDFIRE
MOBILIZATION LABS, LLC,)	
)	Serial No. 77/921,906
Applicant.)	
)	

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **Opposer's Motion to Suspend Proceedings Pending Disposition of Civil Action and Memorandum in Support** was served on Applicant's Attorney of Record and Correspondent Contact on February 23, 2011 via first class mail to:

Clifton Tunnell, Esq.
Anderson Dailey, LLP
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Suite 1250
Atlanta, Georgia 30319



Sabina A. Vayner
Attorney for Opposer

CERTIFICATE OF TRANSMITTAL

This is to certify that a true and correct copy of the foregoing **Opposer's Motion to Suspend Proceedings Pending Disposition of Civil Action and Memorandum in Support** is being filed electronically with the TTAB via ESTTA on this day, February 23, 2011.



Sabina A. Vayner
Attorney for Opposer

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOBILIZATION LABS, LLC,	:	
a Georgia limited liability company	:	
	:	CIVIL ACTION NUMBER:
Plaintiff,	:	1:10-CV-03043-TWT
	:	
v.	:	
	:	JURY DEMAND INCLUDED
WILDFIRE INTERACTIVE, INC.,	:	
a Delaware corporation,	:	
	:	
Defendant.	:	

FIRST AMENDED COMPLAINT

COMES NOW Mobilization Labs, LLC, Plaintiff (hereinafter referred to as "Mobilization Labs"), and for its First Amended Complaint respectfully shows the Court the following:

NATURE OF THE CASE

1. This is an action at law and in equity for trademark infringement, unfair competition and deceptive trade practices arising under the Trademark Act of 1946, 15 U.S.C. §1051 et seq. ("Lanham Act"), the Georgia Deceptive Trade Practices Act, O.C.G.A. §10-1-370 et seq. and the common law.

THE PARTIES

2. Plaintiff Mobilization Labs, LLC is a limited liability company organized and existing under the laws of the state of Georgia, which has its principal place of business located at 3384 Peachtree Rd., Suite 605, Atlanta, Fulton County, Georgia 30326.

3. Defendant Wildfire Interactive, Inc., is a corporation organized and existing under the laws of the state of Delaware which has an address and principal place of business at 3485 El Camino Real, Palo Alto, California 94306. Defendant Wildfire Interactive, Inc. has listed with the California Secretary of State's office as its registered agent for service of process: Corporation Service Company, 2730 Gateway Oaks Dr. STE 100, Sacramento, California 95833. Said Defendant is transacting business in the state of Georgia as that term is used and defined in O.C.G.A. Section 9-10-91(a). Said Defendant has committed tortious acts inside the state of Georgia which has resulted in injury within the state of Georgia. Said Defendant has committed tortious acts outside the state of Georgia which has resulted in damages occurring within the state of Georgia. Said Defendant is subject to the jurisdiction of this Court.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction of this action under Section 39 of the Trademark Act, 15 U.S.C. §1121 and under 28 U.S.C. §1331 and 1338. This Court has subject matter jurisdiction over Plaintiff's related state law claims pursuant to 28 U.S.C. §1338 and 1367.

5. This Court is the proper venue in which to adjudicate this action under and by virtue of 28 U.S.C. §1391(b)(1) and (2). A substantial portion of the conduct and events giving rise to Plaintiff's claims took place within this District and Division.

INTRODUCTION

6. As set forth below, Plaintiff Mobilization Labs is the leading publisher of the popular software service "WILDFIRE." Defendant Wildfire Interactive, a competitor, has introduced software services bearing the identical mark "WILDFIRE" that are confusingly similar to Plaintiff's services. Upon information and belief, Defendant Wildfire Interactive's actions in promoting, marketing, offering for sale and selling its software services under the mark WILDFIRE has misled and confused prospective purchasers and falsely designated the source of origin of its services, all to the harm of Plaintiff. Defendant's actions will continue to engender confusion and divert sales away from Plaintiff unless enjoined from the further improper use of the WILDFIRE mark by this Court.

FACTS UNDERLYING THIS DISPUTE

Plaintiff's Activities and Renown under the WILDFIRE Mark.

7. Plaintiff Mobilization Labs, which was formerly known as “We The Citizens, LLC” was formed on January 7, 2005. Prior to its founding and as early as July 2004, Mobilization Labs’ founder and principal, Caleb Clark, began marketing and selling software services under the trademark “WILDFIRE.”

8. Since its inception, Plaintiff Mobilization Labs’ popular software service bearing the mark WILDFIRE has been distributed nationally and continuously. Plaintiff’s common law rights in its mark WILDFIRE, as described above, are collectively referred to as the “WILDFIRE Mark.”

9. Plaintiff Mobilization Labs’ has maintained Internet sales and an Internet web site for the sale of its WILDFIRE software service since calendar year 2005. Plaintiff’s current website, wherein its mark is prominently displayed, is available at www.wildfireplatform.com.

10. Plaintiff Mobilization Labs’ use of the WILDFIRE Mark on its website and in the advertisement and promotion of its software services is often accompanied by a flame logo in the format depicted below.



11. Plaintiff Mobilization Labs' WILDFIRE software provides its clients with the ability to create a variety of networking, organizing, motivating, and marketing services.

12. Examples of the services provided by Plaintiff's software include, but are not limited to: creating an on-line community for users to participate in discussions and get feedback from their peers; engaging in social networking opportunities; leveraging social relationships to locate and recruit supporters and donors; and providing motivational systems for organizing and engaging recruited supporters such as coupons, product giveaways, and custom contests. Further, the software provides a client with a number of data collection and analytic tools which can be employed to track, aggregate, and examine data generated by the client's target users, audience, customers, or supporters. These services are hereinafter collectively referred to as "Mobilization Software."

13. Users are able to use said mobilization software across a variety of online venues including websites, software platforms, and social media sites such as Twitter and Facebook, or through custom widgets.

14. Plaintiff has aggressively promoted its WILDFIRE Mark. Between calendar years 2005 and 2010, Mobilization Labs has spent approximately \$1,038,000.00 on promoting brand awareness of the WILDFIRE Mark through its websites, advertising, printed publications, and direct sales.

15. Through its consistent promotions, Plaintiff has raised in excess of 3.1 million dollars in angel investor capital since its founding.

16. Plaintiff's software has been described and discussed in news articles, periodicals, and online forums. A true and correct copy of media discussing Mobilization Labs' WILDFIRE software is attached as "Exhibit B."

17. Plaintiff's WILDFIRE software has been used in a number of widely publicized political campaigns, including, but not limited to the following:

- Oklahoma Senator Tom Coburn used Plaintiff's WILDFIRE software during his 2004 campaign to track his volunteers and host competitions. A true and correct copy of advertising material from the Coburn campaign website and email correspondence regarding the use of the WILDFIRE software in Coburn's political campaign is attached as "Exhibit C."
- Georgia Governor Sonny Perdue used Plaintiff's WILDFIRE software in his re-election campaign from Fall 2005 through December 2006 in order to mobilize his volunteers, track their progress, and organize competitions with prizes such as signed footballs and t-shirts, or a dinner with the governor. A true and correct copy of advertising material from the Perdue campaign site is attached as "Exhibit D."
- Rudy Giuliani for President, headquartered in New York, used Plaintiff's WILDFIRE software in the national presidential campaign from Summer 2007 through January 2008 to host a social network, mobilize supporters, and run contests and award prizes.
- Ohio Congressman John Boehner used Plaintiff's WILDFIRE software in his 2009 congressional campaign to mobilize volunteers and donors and reward said volunteers for the impact their actions had on the campaign.

18. Plaintiff's WILDFIRE software has been used in marketing efforts and fan promotions on national levels for such well-known clients as:

- Warner Brothers Records, headquartered in California, uses Plaintiff's WILDFIRE software for its international operations to mobilize and measure its fans and to host competitions and award prizes.
- The Jonas Brothers, a musical group headquartered in California, uses Plaintiff's WILDFIRE software to connect with their fan base in 192 countries, to mobilize said fan base and measure their fans interactions, and to host competitions and award prizes.
- The National Urban League, headquartered in New York, uses Plaintiff's WILDFIRE software for its nationwide campaign to mobilize and track their supporters, drive petitions, and organize competitions and award prizes.
- Chick-fil-A, headquartered in Georgia, uses Plaintiff's WILDFIRE software to launch new products and services in marketing campaigns across thirty- eight states, to mobilize their fans, to virally spread its marketing messages, to organize competitions, and to track the results of its marketing efforts.

19. Due to continuous its advertising and sales, Plaintiff has developed a reputation as a pioneer trendsetter in the Mobilization Software market.

20. The trademark WILDFIRE is highly distinctive as applied to Mobilization Software services, and as a direct result of its widespread use and display of its mark in interstate commerce, the public has come to associate the WILDFIRE trademark as identifying software services provided by Plaintiff.

21. Plaintiff owns valuable goodwill symbolized by the WILDFIRE trademark, and said mark is the subject of common law rights within the state of Georgia and throughout the United States.

DEFENDANT'S UNLAWFUL CONDUCT

22. Upon information and belief, on May 29, 2008, more than three years after the adoption and use of the trademark WILDFIRE by Mobilization Labs, Defendant commenced publication of software bearing the mark “WILDFIRE.”

23. Defendant uses the mark WILDFIRE for selling mobilization software that is confusingly similar to the software published by Plaintiff under the same mark. Both software services share a significant number of features such as:

1. Providing clients with the ability to build their supporter, customer, and/or fan bases through friend recruitment;
2. Providing clients with the ability to create motivational systems for their users, including generating coupons, holding contests, and creating product giveaways;
3. Providing technology that allows their clients to integrate their features into Facebook, Twitter, client websites, and through widgets;
4. Providing technology that allows clients to collect data such as a user's name, age, gender, email address, mailing address, and other relevant fields;
5. Providing clients with the ability to create user signup forms with built in notifications to remind users to return to the client's site;
6. Providing technology that allows clients to create user activity streams to share and promote what users are doing with their friends;
7. Providing technology that allows commenting features where clients' users can discuss and interact with each other;
8. Providing clients with a number of performance measurement tools and analytics to help said clients gauge the effectiveness of their campaign; and
9. Providing clients with branding features that allow them to white label their offerings.

24. Upon information and belief, Plaintiff Mobilization Labs' WILDFIRE software services and Defendant WILDFIRE Interactive's WILDFIRE software services are sold in the same channels of trade including: corporations, non-profits, entertainment agencies, and political campaigns.

25. Upon information and belief, subsequent to its adoption of the WILDFIRE Mark, Defendant has proceeded to distribute its software services on a national basis.

26. Upon information and belief, Defendant WILDFIRE Interactive has had substantial contacts in the state of Georgia. Defendant has advertised services and transacted business with clients within the state of Georgia. A true and correct copy of examples of clients that Defendant has provided with its software services bearing the WILDFIRE mark in the State of Georgia are attached as "Exhibit E."

27. The marketing and display of Defendant's software service through the mark WILDFIRE is confusingly similar to the marketing and display of Plaintiff Mobilization Labs' WILDFIRE Mark for its software service. Not only does Defendant use the identical word mark WILDFIRE, it also imitates Plaintiff's use of a flame logo its mark as shown below:



28. In marketing its software services, Defendant prominently displays the mark WILDFIRE and accompanying flame logo on the website www.wildfireapp.com. Defendant's website describes Mobilization Software services that are confusingly similar to those provided by Plaintiff. A true and correct copy of a sample of Defendant's website is attached as "Exhibit F."

Consumer Confusion Caused By Defendant

29. Defendant's use of a word mark and logo that are confusingly similar to Plaintiff's WILDFIRE Mark has caused substantial confusion in the marketplace. Plaintiff regularly receives calls and correspondence from consumers mistaking them for Defendant. A true and correct copy of examples of consumer confusion received by Plaintiff is attached as "Exhibit G."

30. Upon information and belief, Defendant intentionally and in bad faith imitated Plaintiff's word mark and flame logo and did so with an awareness of Plaintiff's prior use and rights in the WILDFIRE Mark. Defendant's actions are intended to and are likely to continue to cause confusion, mistake or deception as to the source of Plaintiff's software services.

31. Defendant's actions have caused and will continue to cause irreparable harm to Plaintiff and their valuable trademark, and to the business and substantial goodwill represented thereby. Defendant's actions and the resulting damage will continue unless restrained by this Court.

Federal Registration Of The Wildfire Marks

32. On January 27, 2010, Plaintiff filed an application for federal registration of the word mark WILDFIRE for its software services. Plaintiff's application was assigned serial number 77921906.

33. On February 3, 2010, eight days after Plaintiff filed its application, Defendant filed an application for federal registration of the word mark WILDFIRE for its software services. Defendant's application was assigned serial number 77926726.

34. On May 5, 2010 Defendant's application received an office action refusing to register its mark under Section 2(d) for Likelihood of Confusion. On May 28, 2010, Defendant submitted a request to divide its application pursuant to 37 CFR §287. On June 4, 2010 Defendant's divisional request was completed. Defendant now has two pending applications for the mark WILDFIRE: parent application serial number 77926726 and child application serial number 77979726.

35. Plaintiff's application was successfully reviewed by the USPTO, and on July 13, 2010, Plaintiff's application was published for opposition. On August 11, 2010, Defendant filed an extension of time to oppose Plaintiff's registration.

36. On August 17, 2010, Defendant's parent application was published for opposition. On September 13, 2010, Plaintiff filed an extension of time to oppose Plaintiff's registration.

COUNT ONE

(Federal Law Claim For Unfair Competition Under 15 U.S.C. § 1125(a))

37. The allegations contained in paragraphs 1 through 36 of Plaintiff's Complaint are incorporated herein by reference as if each of said paragraphs was restated and re-alleged in its entirety.

38. Defendant's acts as alleged have caused and are likely to continue to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's software is created or distributed by Plaintiff, that Defendant is affiliated, connected or associated with Plaintiff, and/or that Defendant possesses the sponsorship, endorsement or approval of Plaintiff in violation of 15 U.S.C. § 1125(a).

39. Defendant's activities have caused, and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public. Further, Defendant's actions constitute an intentional attempt to trade on the goodwill which Plaintiff has developed in the WILDFIRE Mark.

40. Defendant's conduct has caused, and is likely to continue to cause, serious and substantial injury to the public and irreparable harm to Plaintiff for which Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive relief and to the recovery of actual damages, profits, enhanced profits, costs, and reasonable attorneys' fees, all as provided by 15 U.S.C. §§ 1125(a), 1116 and 1117.

COUNT TWO

(Trademark Infringement Under Georgia Common Law)

41. The allegations contained in paragraphs 1 through 40 of Plaintiff's Complaint are incorporated herein by reference as if each of said paragraphs was restated and re-alleged in its entirety.

42. The acts of Defendant have created, and unless restrained by this Court, will continue to create a likelihood of confusion, or to cause mistake, or to deceive the purchasing public and others, whereby they would be led to mistakenly believe that Defendant is affiliated with, sponsored by, or connected with Plaintiff.

43. The acts of Defendant as alleged constitute common law trademark infringement in violation of the common law of the state of Georgia.

44. As a result of its conduct, Defendant has caused, and, unless enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff for which it has no adequate remedy at law.

45. Defendant's acts evidence bad faith, willful misconduct, and an entire want of care sufficient to demonstrate conscious indifference to consequences. Under and by virtue of O.C.G.A. Section 51-12-5.1, Plaintiff is entitled to recover punitive damages in an amount to be determined by the enlightened conscience of the jury.

COUNT THREE

(Unfair Competition Under Georgia Common Law)

46. The allegations contained in paragraphs 1 through 45 of Plaintiff's Complaint are incorporated herein by reference as if each of said paragraphs was restated and re-alleged in its entirety.

47. The Defendant's conduct constitutes misappropriation of valuable property rights of Plaintiff and trading on the goodwill symbolized by the distinctive and famous WILDFIRE Mark.

48. The Defendant's conduct as alleged is thereby likely to confuse and deceive members of the purchasing public as to the source of the software and related services of Defendant.

49. By virtue of the Defendant's acts as alleged, Defendant has engaged in unfair competition in violation of the common law of the state of Georgia.

50. As a result of the Defendant's conduct as alleged, Defendant has caused and unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff, for which it has no adequate remedy at law.

COUNT FOUR

(Claim For Deceptive Trade Practices Under O.C.G.A. § 10-1-370 et seq.)

51. The allegations contained in paragraphs 1 through 50 of Plaintiff's Complaint are incorporated herein by reference as if each of said paragraphs was restated and re-alleged in its entirety.

52. Through its continuous and unauthorized use of the WILDFIRE mark, Defendant has engaged in deceptive trade practices by: (i) passing off its software services as those of Plaintiff; (ii) causing a likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective services; (iii) causing a likelihood of confusion or of misunderstanding as to the affiliation, connection, or association of Defendant with Plaintiff; (iv) using deceptive representations or designations of origin in connection with Defendant's services; and (v) engaging in other conduct that similarly creates a likelihood of confusion or of misunderstanding of the public and the trade.

53. Defendant's acts constitute unfair and deceptive practices, in violation of the Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq.

54. Plaintiff has suffered, and is likely to continue to suffer, irreparable damage and injury to its business reputation and goodwill as a direct and proximate result of Defendant's unlawful activity, for which Plaintiff has no adequate remedy at law.

55. Defendant has acted in bad faith, intentionally and with knowledge that its activities are deceptive. Defendant has put Plaintiff to unnecessary trouble and expense. Plaintiff is entitled to injunctive relief and to the recovery of its costs and attorneys' fees as provided by O.C.G.A. 10-1-373.

56. Defendant's actions evidence bad faith, willful misconduct, and want of care sufficient to demonstrate a conscious indifference to the consequences of its actions. Under O.C.G.A. Section 51-12-5.1, Plaintiff is entitled to recover punitive damages in an amount to be determined by the enlightened conscience of the jury.

COUNT FIVE
(Notice Of Opposition)

57. The allegations contained in paragraphs 1 through 56 of Plaintiff's Complaint are incorporated herein by reference as if each of said paragraphs was restated and re-alleged in its entirety.

58. Plaintiff was the first to use the WILDFIRE mark in commerce in Georgia and throughout the nation, and has therefore developed nationwide common law rights to the exclusive use of said mark.

59. Defendant's applications 77926726 and 77979726 are confusingly similar to Plaintiff's application 77921906. Accordingly, Plaintiff is entitled to a successful opposition to Defendant's applications for the mark WILDFIRE.

WHEREFORE, Plaintiff Mobilization Labs respectfully prays and demands:

- (1) that process issue as provided by law;
- (2) that this Court enter a preliminary and permanent injunction prohibiting Defendant and all affiliated or related entities, agents, officers, employees, successors, assigns, attorneys, and all other persons acting in concert or participation with Defendant; more specifically from:
 - A. using the WILDFIRE name and mark in any way, in connection with Defendant's software services;
 - B. using any mark which is a copy, or colorable imitation, or is confusingly similar to Plaintiff's WILDFIRE mark or logo;
 - C. further publishing, distributing, disseminating, or advertising promotional materials containing the WILDFIRE mark or logo; or
 - D. otherwise unfairly competing with, engaging in deceptive trade practices, or damaging the goodwill of Plaintiff in any manner.
- (3) that this Court enter a preliminary and permanent injunction requiring Defendant and all affiliated or related entities, agents, officers, employees, successors, assigns, attorneys, and all other persons acting for, or in concert or participation with Defendant to take appropriate remedial measures with respect to any advertising or promotional material that incorporate the WILDFIRE mark or logo that has already been created, including delivering up for destruction all labels, signs, packages, receptacles, brochures, and advertising or other promotional material;

- (4) that this Court issue an order to the Trademark Trial and Appeal Board canceling Defendant's applications 77926726 and 77979726 for the mark WILDFIRE.
- (5) That this court direct Defendant to file with the Court and serve on counsel for Plaintiff, within thirty days after entry of any injunction issued by the Court in this action, a sworn statement as provided in 15 U.S.C. §1116 setting forth in detail the manner in which Defendant has complied therewith;
- (6) that this Court enter judgment in Plaintiff's favor for its actual damages and Defendant's profits, in an amount to be determined at the trial of this action;
- (7) that Plaintiff recover its reasonable attorneys' fees and expenses of litigation;
- (8) that Plaintiff be awarded punitive damages in an amount to be determined by the enlightened conscience of the jury;
- (9) that all costs of this action be cast upon Defendant;
- (10) that Plaintiff have a trial of this action before a jury; and
- (11) that Plaintiff have such further relief as this Court may deem just.

Respectfully submitted:

/C. Travis Tunnell/
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOBILIZATION LABS, LLC

Plaintiff

v.

WILDFIRE INTERACTIVE, INC.,

Defendants

CIVIL ACTION NO.

1:10cv3043-TWT

SCHEDULING ORDER

The above entitled action is presently before the Court pursuant to the filing of the parties' Joint Preliminary Report and Discovery Schedule [7]. The Court has reviewed and approves the parties Joint preliminary Report and Discovery Schedule. In the report, the defendant has indicated the need for additional time beyond the assigned discovery track to complete discovery. The plaintiff indicates that the original discovery track of four months should be sufficient. Should there be a further extension of time of the discovery deadline the deadlines for motions for summary judgment and filing of the Consolidated Pretrial Order shall be adjusted accordingly. Accordingly,

IT IS HEREBY ORDERED that the request for discovery extension deadline in this case is **denied** without prejudice and the discovery deadline is **April 4, 2011**. The request for a discovery extension may be renewed if the parties are unable to complete discovery despite diligent effort in the original discovery period. Any

motions to amend the pleadings must be filed by **January 4, 2011**, unless the filing party has obtained prior permission of the court to file later. Any Motions for Summary Judgment must be filed by **May 4, 2011**, and if no Motions for Summary Judgment are filed, the Proposed Consolidated Pretrial Order will be due on **May 4, 2011**. However, if a Motion for Summary Judgment is filed, the Proposed Consolidated Pretrial Order will be due within 30 days of the Court's ruling on the Motion for Summary Judgment.

IT IS FURTHER ORDERED that the parties are directed to adhere to the above deadlines. Any motions requesting extensions of time must be made prior to the existing deadline and will be granted only in exceptional cases where the circumstances on which the request is based did not exist or the attorney(s) could not have anticipated that such circumstances would arise at the time the Preliminary Planning Report was filed. Failure to comply with this order, may result in the imposition of sanctions, including the dismissal of this action.

Within 10 days from the entry of this Order, counsel for the parties are directed to confer and determine whether any party will likely be requested to disclose or produce substantial information from electronic or computer based media. If so, the parties are directed to determine: (a) whether disclosure or production will be limited to data reasonably available to the parties in the ordinary course of business; (b) the anticipated scope, cost and time required for disclosure

or production of data beyond what is reasonably available to the parties in the ordinary course of business; (c) the format and media agreed to by the parties for the production of such data as well as agreed procedures for such production; (d) whether reasonable measures have been taken to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise; and (e) whether there are other problems which the parties anticipate that may arise in connection with electronic or computer-based discovery. Counsel are directed to the American Bar Association Section of Litigation Civil Discovery Standards § 29 (August 1999)(available upon request from the Court) for guidance. Any agreements as to the foregoing shall be set forth in a written agreement or consent order. If there are substantial disagreements, a discovery conference with the Court should be requested. Counsel are directed to comply with the Federal Bar Association's Standards for Civility in Professional Conduct (1998) (available from the FBA web site or upon request from the Court).

The Clerk is directed to submit this action on May 5, 2011, if the parties have not filed a Motion for Summary Judgment or Proposed Pretrial Order.

SO ORDERED, this 8th day of December, 2010.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE