



2. Applicant's Answer was actually dispatched on July 12, 2011, by Express Mail under Express Mail Certificate EB 506458623 US, a copy of which is attached as Exhibit B, thus the record filing date of Applicant's Answer should be July 12, 2011.
3. Applicant included with the Answer a Certificate of Mailing by Express Mail, a copy of which is attached as a portion of Exhibit A.
4. The US Postal Service has provided the attached Exhibit C, its Track & Confirm record showing the Express Mail package under Express Mail Certificate EB 506458623 US was actually delivered to the addressee at 11:16 am on July 13, 2011.
5. The US Postal Service has provided the attached Exhibit D, its response to Applicant's request for delivery information, showing that the Express Mail package under Express Mail Certificate EB 506458623 US was received at 600 Dulany Street, Alexandria, VA, at 11:16 am on July 13, 2011, and was signed for by one "Quincy Lynch".
6. Applicant properly served Opposer with Applicant's Answer as set forth in the Certificate of Service appended to the Answer.
7. In view of the foregoing, it is clear that Applicant's Answer was properly and timely filed in the US Patent and Trademark Office, but that it is lost within the US Patent and Trademark Office itself, through no fault of Applicant.

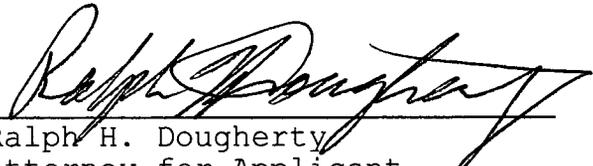
RELIEF REQUESTED

Since Applicant properly filed Applicant's Answer to the Notice of Opposition in a timely manner, it is clear that the

failure of Applicant's Answer to reach the Trademark Trial and Appeal Board is the fault of the US Patent and Trademark Office, and not that of Applicant, Applicant prays that the Notice of Default be set aside, the dates for taking action in this Opposition be reset, and that, upon consideration of Applicant's Answer by the Trademark Trial and Appeal Board, this Opposition proceeding be dismissed, and that Applicant's Registration issue forthwith.

Respectfully submitted,

Peter F. Wingard

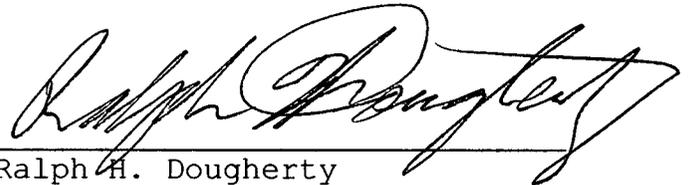
By   
Ralph H. Dougherty  
Attorney for Applicant  
Registration No. 25,851  
4219 Kronos Place  
Charlotte, North Carolina 28210  
Phone: (704) 940-3988  
Fax: (704) 631-4996  
E-Mail: ralph@ralphdougherty.com

August 5, 2011

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the attached PETITION OF APPLICANT was served on the following persons by first class mail, postage prepaid, this 5<sup>th</sup> day of August, 2011.

Karen A. Webb, Esq.  
Fenwick & West, LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041



Ralph H. Dougherty  
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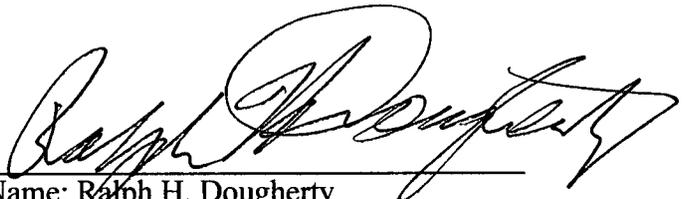
Cancellation No. 91200109

Certificate of Mailing by "Express Mail"

I, Ralph H. Dougherty, do hereby certify that the foregoing or attached documents are being deposited with the United States Postal Service as Express Mail Post Office to Addressee service, postage prepaid, in an envelope addressed to:

Trademark Trial and Appeal Board  
Madison East Building, Concourse Level, Room C-55  
600 Dulany Street  
Alexandria, VA 22314

on August 5, 2011.

  
Name: Ralph H. Dougherty  
USPTO Reg. No. 25,851

Express Mail Label Number EQ 944407659 US

August 5, 2011  
Date of Deposit

**EXHIBIT A**

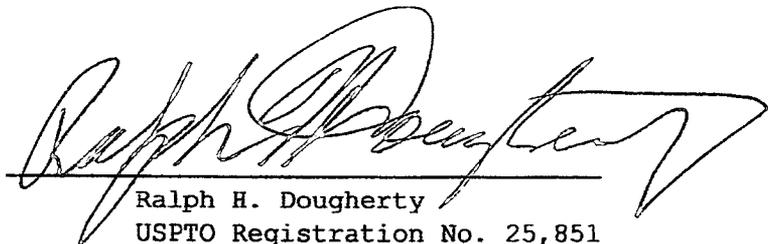
Opposition No. 91200109

Certificate of Mailing by "Express Mail"

"Express Mail" mailing Label Number EB 506458623 US

Date of Deposit July 12, 2011

I hereby Certify that the attached **ANSWER OF APPLICANT** in triplicate is being deposited with the U.S. Postal Service Express Mail Post Office to Addressee Service under 37 CFR 1.10 on the date indicated above and addressed to Box TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.



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EB506458623US

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

In the matter of Application of

Mark:                   TWEETMARKS  
Serial No.:           77/695,071  
Filed:                 March 19, 2009  
Applicant:            Peter F. Wingard

Twitter, Inc.	)	
	)	
V.	)	Opposer
	)	)
Peter F. Wingard d/b/a/ Krumlr	)	Opposition No. 91200109
	)	
	)	
	)	
	)	
	)	

**ANSWER OF APPLICANT AND AFFIRMATIVE DEFENSES**

Applicant, Peter F. Wingard, an individual, having an address of 392 Ivy Glen Circle, Avondale Estates, Georgia 30002, hereby answers each of the allegations of the Notice of Opposition by Opposer, Twitter, Inc.:

1. Applicant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 and therefore denies the same.
  
2. Applicant admits that the Opposer has filed an application to register the mark TWEET on April 16, 2009, in three classes, classes 38, 41, and 45. Applicant denies the remainder of paragraph 2.

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18. Applicant denies the allegations of Paragraph 18.

### AFFIRMATIVE DEFENSES

In further Answer to the Notice of Opposition, by way of Affirmative Defenses, Applicant asserts that:

#### FIRST AFFIRMATIVE DEFENSE

19. Opposer has failed to state a claim on which relief can be granted, and failed to allege any proper grounds for opposition of Applicant's mark.

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20. Opposer failed to set forth those services on which Opposer utilizes Opposer's mark and which Opposer believes would be confused with services of Applicant.

#### THIRD AFFIRMATIVE DEFENSE

21. Applicant's mark differs so much from the marks of Opposer that there is no likelihood of confusion between the marks.

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22. The services described in the opposed application are different from the services of Opposer covered by Opposer's Registration No. 3,780,175, and Opposer's Application Nos. 77/715,815, 77/804,481 and 85/116,717.

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24. Consumers of Applicant's services are entirely too knowledgeable to be confused by Applicant's distinctive mark and Opposer's marks.

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25. Consumers of Opposer's services are entirely too knowledgeable to be confused by Applicant's distinctive mark and Opposer's marks.

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32. At least 35 service marks incorporate the word "tweet" or some closely related form of "tweet" therein, which indicates that Opposer does not have exclusive rights to the word "tweet".

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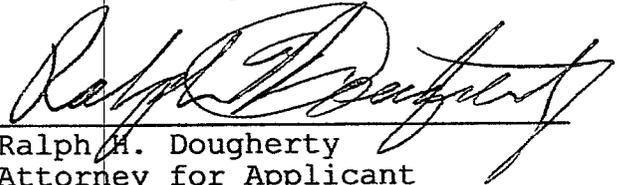
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RELIEF REQUESTED

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Respectfully submitted,

Peter F. Wingard

By 

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July 12, 2011

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the attached ANSWER OF APPLICANT was served on the following persons by first class mail, postage prepaid, this 12<sup>th</sup> day of June, 2011.

Karen A. Webb, Esq.  
Fenwick & West, LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041



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**EXHIBIT A**

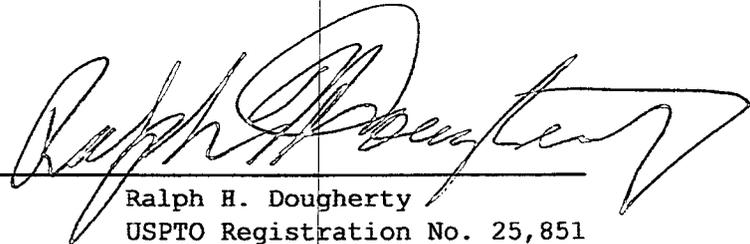
Opposition No. 91200109

Certificate of Mailing by "Express Mail"

"Express Mail" mailing Label Number EB 506458623 US

Date of Deposit July 12, 2011

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EB506458623US

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

In the matter of Application of

Mark: TWEETMARKS

Serial No.: 77/695,071

Filed: March 19, 2009

Applicant: Peter F. Wingard

---

Twitter, Inc.

Opposer

V.

Peter F. Wingard d/b/a/ Krumlr

Applicant

---

Opposition No. 91200109

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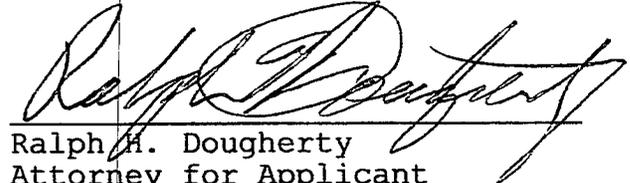
RELIEF REQUESTED

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Respectfully submitted,

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By



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July 12, 2011

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**EXHIBIT A**

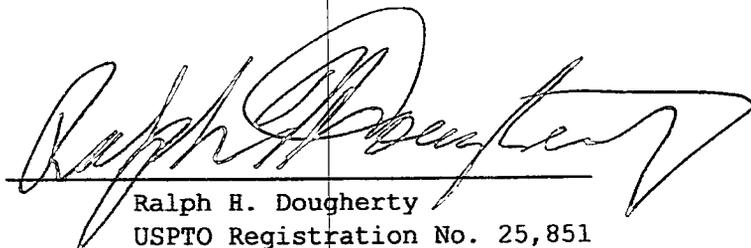
Opposition No. 91200109

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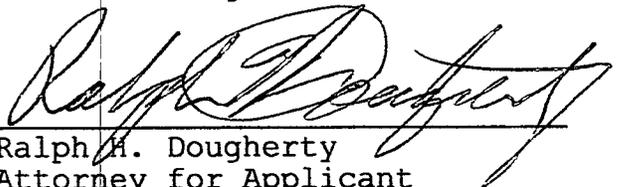
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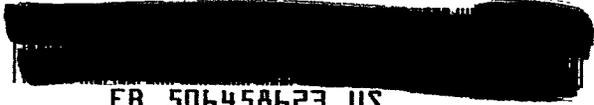
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**EXHIBIT B**



**EB 506458623 US**



**EXPRESS MAIL**

**Customer Copy**  
Label 11-B, March 2004

UNITED STATES POSTAL SERVICE

Post Office To Addressee

Post Office ZIP Code: [Redacted] City: [Redacted] State: [Redacted]

Date Accepted: [Redacted]

No. Day Year: [Redacted]

Time Accepted: [Redacted]

Post Office ZIP Code: [Redacted] City: [Redacted] State: [Redacted]

Date Accepted: [Redacted]

No. Day Year: [Redacted]

Time Accepted: [Redacted]

Post Office ZIP Code: [Redacted] City: [Redacted] State: [Redacted]

Date Accepted: [Redacted]

No. Day Year: [Redacted]

Time Accepted: [Redacted]

Delivery Attempt	Time	Signature
Ma. Day		
Delivery Attempt	Time	Signature
Ma. Day		
Delivery Attempt	Time	Signature
Ma. Day		

**CUSTOMER USE ONLY**

**PAYMENT BY ACCOUNT**  
Express Mail Corporate Acct. No.  **WAIVER OF SIGNATURE (Domestic Mail Only)**  
Additional merchandise insurance is void if customer requests waiver of signature.  
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

Federal Agency Acct. No. or Postal Service Acct. No.  **NO DELIVERY**  
 Weekend  Holiday  Mailer Signature

**FROM: (PLEASE PRINT)** PHONE ( )

*United States Postal Service  
Post Office # 100  
Washington, DC 20540*

**TO: (PLEASE PRINT)** PHONE ( )

*United States Postal Service  
Post Office # 100  
Washington, DC 20540*

**FOR PICKUP OR TRACKING**  
Visit [WWW.USPS.COM](http://WWW.USPS.COM)  
Call 1-800-222-1811



FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

[ ] [ ] [ ] [ ] + [ ] [ ] [ ] [ ] [ ] [ ]

[Customer Service](#)   [USPS Mobile](#)



# EXHIBIT C

[Search USPS.com or Track Packages](#)

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## Track & Confirm

[GET EMAIL UPDATES](#)   [PRINT DETAILS](#)

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
EB506458623US	Express Mail®	Delivered	July 13, 2011, 11:16 am	ALEXANDRIA, VA 22314	Guaranteed By: July 13, 2011, 12:00 PM Proof of Delivery
		Arrival at Unit	July 13, 2011, 10:15 am	ALEXANDRIA, VA 22314	
		Processed through Sort Facility	July 12, 2011, 7:34 pm	CHARLOTTE, NC 28228	
		Acceptance	July 12, 2011, 3:47 pm	CHARLOTTE, NC 28226	

### Check on Another Item

What's your label (or receipt) number?

[Find](#)

#### LEGAL

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- [Terms of Use >](#)
- [FOIA >](#)
- [No FEAR Act EEO Data >](#)

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- [Postal Inspectors >](#)
- [Inspector General >](#)
- [Postal Explorer >](#)

**EXHIBIT D**



Date: 07/28/2011

BOX TTAB:

The following is in response to your 07/28/2011 request for delivery information on your Express Mail(R) item number EB50 6458 623U S. The delivery record shows that this item was delivered on 07/13/2011 at 11:16 AM in ALEXANDRIA, VA 22314 to Q L. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section  
ure  
d  
Christine Lynch

Address of Recipient:

y  
s  
600. D. Williams St

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service