

ESTTA Tracking number: **ESTTA440087**

Filing date: **11/08/2011**

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	MapMyFitness, LLC
Granted to Date of previous extension	11/16/2011
Address	522 East 6th Street Austin, TX 78701 UNITED STATES

Attorney information	ANDREW HARTMAN GROSS HARTMAN LLC 1877 N BROADWAY STREET SUITE 601 BOULDER, CO 80302 UNITED STATES andy@grosshartman.com,paul@grosshartman.com,mark.merolli@mapmyfitness.com Phone:303-926-4822
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**Applicant Information**

Application No	79069678	Publication date	07/19/2011
Opposition Filing Date	11/08/2011	Opposition Period Ends	11/16/2011
International Registration No.	1004782	International Registration Date	05/14/2009
Applicant	Andrew Smith Suite 1 37 Bundall Road; Surfers Paradise QLD 4217  AUSTRALIA		

**Goods/Services Affected by Opposition**

<p>Class 009. All goods and services in the class are opposed, namely: Application software for the input, capture, storing, processing and displaying of information, data, ads, coordinates and media in lists, pages and on a graphical information system or map on computers and mobile devices; communication software for electronically capturing, processing and distributing voice, voice commands, media, data, coordinates and information across computers and mobile devices; computer games entertainment software for running computer games on computers and mobile devices; computer graphics software to manipulate images on computers and mobile devices; computer programs and recorded software for searching, downloading, recording and playing music and sounds on PC and mobile devices; computer software for analyzing data, namely, address and property information, stock market information, and displaying results on computer and mobile devices; computer software for managing networks, authorizing access and security on computer and mobile devices; computer software for publishing ads, blogs, video and media files on PC and mobile devices; computer software for communication purposes between microcomputers and mobile devices; interactive computer software for real time chat, video streaming, maps, advertising and gaming; computer software for</p>
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managing the location of a device and devices in a region, and mapping and satellite imagery software

Class 042.

All goods and services in the class are opposed, namely: Writing, design, creation, engineering, renting and upgrading of software and hardware for the capture, processing, storage and display of information, data, ads, coordinates and media on web pages, geographical information systems and maps, on computers, mobile devices, navigation or GPS systems; writing, design, creation, engineering, renting and upgrading of computer software and hardware for mapping, navigation and communications; writing, design, creation, engineering, renting and upgrading of computer and microcomputer navigation components and hardware; mapping software and hardware design and technical consultancy; installation and maintenance of computer software for publishing, mapping and communications; online provision of web-based non-downloadable software for the capture, processing and display of information, data, ads, coordinates and media on webpages and geographical information systems, maps and navigation and GPS systems

## Grounds for Opposition

Priority and likelihood of confusion

Trademark Act section 2(d)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3672762	Application Date	02/12/2009
Registration Date	08/25/2009	Foreign Priority Date	NONE
Word Mark	MAPMYRUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/15 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/15 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/15 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload,</p>		

	exchange, and share fitness and exercise photos and stories within a fitness community Class 045. First use: First Use: 2005/07/05 First Use In Commerce: 2005/07/15 online social networking services in the field of fitness and exercise
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U.S. Registration No.	3672997	Application Date	03/18/2009
Registration Date	08/25/2009	Foreign Priority Date	NONE

Word Mark	MAPMYFITNESS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 035. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 dissemination of advertising for others via the Internet</p> <p>Class 038. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community</p> <p>Class 045. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 online social networking services in the field of fitness and exercise</p>
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U.S. Application No.	77762962	Application Date	06/18/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MAPMYTRI
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Design Mark	<h1>MAPMYTRI</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 038. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor, and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community</p> <p>Class 045. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 online social networking services in the field of fitness and exercise</p>
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U.S. Application No.	77762964	Application Date	06/18/2009
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	MAPMYHIKE
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Design Mark	<h1>MAPMYHIKE</h1>
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Description of Mark	NONE
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Goods/Services	Class 038. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01
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	<p>providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor, and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community</p> <p>Class 045. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 online social networking services in the field of fitness and exercise</p>
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U.S. Application No.	77762967	Application Date	06/18/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MAPMYRIDE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor, and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology,</p>		

	<p>namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community</p> <p>Class 045. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 online social networking services in the field of fitness and exercise</p>
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U.S. Application No.	77762972	Application Date	06/18/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MAPMYWALK
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 038. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise</p> <p>Class 041. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events</p> <p>Class 042. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor, and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community</p> <p>Class 045. First use: First Use: 2007/05/01 First Use In Commerce: 2007/05/01 online social networking services in the field of fitness and exercise</p>
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U.S. Application No.	85444083	Application Date	10/11/2011
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	MAPMYMEDIA
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Design Mark	<b>MAPMYMEDIA</b>
Description of Mark	NONE
Goods/Services	Class 035. First use: Dissemination of advertising for others via the Internet

Attachments	77668971#TMSN.jpeg ( 1 page )( bytes ) 77693650#TMSN.jpeg ( 1 page )( bytes ) 77762962#TMSN.jpeg ( 1 page )( bytes ) 77762964#TMSN.jpeg ( 1 page )( bytes ) 77762967#TMSN.jpeg ( 1 page )( bytes ) 77762972#TMSN.jpeg ( 1 page )( bytes ) 85444083#TMSN.jpeg ( 1 page )( bytes ) MapMy OppositionPDF.pdf ( 3 pages )(189784 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	/andrew hartman/
Name	ANDREW HARTMAN
Date	11/08/2011

IN THE U.S. PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

In re application of Andrew Smith, an individual citizen of Australia

Mark: MAPMY )  
Serial No.: 79/069,678 )  
Filing Date: May 14, 2009 ) Opposition No. \_\_\_\_\_  
Opposer: MapMyFitness a Delaware Corporation )  
Address: 522 East 6th Street Austin TEXAS 78701 )

NOTICE OF OPPOSITION

Opposer, MapMyFitness, a Delaware Corporation, hereby files its Notice of Opposition against Mr. Andrew Smith (Applicant) regarding the application to register MAPMY, Serial No. 79/069,678. In support of the opposition, Opposer states as follows:

1. Opposer operates a suite of fitness-oriented websites and associated mobile and tablet applications including MapMyRUN, MapMyRIDE, MapMyWALK, MapMyHIKE, MapMyFITNESS and MapMyTRI .
2. These offerings in commerce provide more than five million runners, cyclists, walkers, and other fitness enthusiasts with access to an innovative geo-mapping web based application that permits them to track and store their daily running, cycling, walking or hiking routes in an online database, a searchable database of routes across the globe, essential community-based fitness content, unique online training tools and fitness calculators, comprehensive global event listings, and a dynamic social network of healthy and active individuals.
3. Opposer's iMapMy mobile apps use the built-in GPS technology of the iPhone, BlackBerry, and Android to enable users to record and map their daily fitness activities and routes right on their devices.
4. Opposer began use in commerce of the mark MAPMYRUN on July 15, 2005 and filed for federal registration of MAPMYRUN on February 12, 2009. The registration issued on August 25, 2009 for the following services:
  - a. providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise, Class 38
  - b. providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events, Class 41
  - c. computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community, Class 42 and

- d. online social networking services in the field of fitness and exercise, Class 45.
5. Opposer began use of the mark MAPMYFITNESS on MAY 1, 2007 and filed for federal registration of MAPMYRUN on March 18, 2009. The registration issued on August 25, 2009 for the following services:
  - a. providing online electronic bulletin boards for the transmission of messages among users in the field of fitness and exercise, Class 38
  - b. providing a website through which users can locate and share information and post ratings information about fitness events and competitions in the field of fitness and exercise; online journals, namely, blogs featuring fitness and exercise; providing information and on-line newsletters in the field of fitness and exercise; providing internet news portals featuring links to fitness and exercise stories and events, Class 41
  - c. computer services, namely, creating and hosting an online community website for registered users to upload, share and otherwise provide fitness data to track, locate, monitor and log fitness and exercise goals and progress, calculate calories, heart rate, and body mass index; fitness routine routing technology, namely, providing a web site that gives computer users the ability to upload, exchange, and share fitness and exercise photos and stories within a fitness community, Class 42 and
  - d. online social networking services in the field of fitness and exercise, Class 45.
6. Opposer also has used in commerce and has pending applications for the marks MAPMYRIDE, MAPMYWALK, MAPMYHIKE and MAPMYTRI, as well as MAPMYMEDIA (the "Pending Applications").
7. Opposer's offerings are associated with sports and physical activities such as cycling, walking, hiking and triathlons.
8. Through longstanding use, sales and promotion, consumers have come to recognize that Opposer has a family of marks that include the element MAPMY- coupled with various sport and other elements.
9. On May 14, 2009, after the application dates and first use in commerce dates for MAPMYRUN and MAPMYFITNESS, Applicant applied to register MAPMY for goods and services confusingly similar to Opposer's MAPMYRUN and MAPMYFITNESS registrations and its Pending Applications, namely:
  - a. Application software for the input, capture, storing, processing and displaying of information, data, ads, coordinates and media in lists, pages and on a graphical information system or map on computers and mobile devices; communication software for electronically capturing, processing and distributing voice, voice commands, media, data, coordinates and information across computers and mobile devices; computer games entertainment software for running computer games on computers and mobile devices; computer graphics software to manipulate images on computers and mobile devices; computer programs and recorded software for searching, downloading, recording and playing music and sounds on PC and mobile devices; computer software for analyzing data, namely, address and property information, stock market information, and displaying results on computer and mobile devices; computer software for managing networks, authorizing access and security on computer and mobile devices; computer software for publishing ads, blogs, video and media files on PC and mobile devices; computer software for communication purposes between microcomputers and mobile devices; interactive computer software for real time chat, video streaming, maps, advertising and gaming; computer software for managing the location of a device and devices in a region, and mapping and satellite imagery software, in Class 9 and

- b. Writing, design, creation, engineering, renting and upgrading of software and hardware for the capture, processing, storage and display of information, data, ads, coordinates and media on web pages, geographical information systems and maps, on computers, mobile devices, navigation or GPS systems; writing, design, creation, engineering, renting and upgrading of computer software and hardware for mapping, navigation and communications; writing, design, creation, engineering, renting and upgrading of computer and microcomputer navigation components and hardware; mapping software and hardware design and technical consultancy; installation and maintenance of computer software for publishing, mapping and communications; online provision of web-based non-downloadable software for the capture, processing and display of information, data, ads, coordinates and media on webpages and geographical information systems, maps and navigation and GPS systems, in Class 42
10. Applicant's filing date is junior to Opposer's filing dates and dates of first use in commerce for Opposer's MAPMYRUN and MAPMYFITNESS registrations.
11. Opposer has standing to file this Notice of Opposition as Applicant's application, if allowed to register is likely to cause confusion under Section 2(d) of the Lanham Act due to, *inter alia*, the similarities in the marks and the good and services, as well as due to Opposer's family of MAPMY- marks. As such, Opposer would face irreparable harm if the application is allowed to register and Applicant's mark is not proper subject matter for registration.
12. In addition, Opposer has additional standing to file this Notice of Opposition since Opposer's applications for MAPMYRIDE, MAPMYWALK, MAPMYHIKE and MAPMYTRI have been suspended by the US Patent and Trademark Office based on Applicant's pending application for MAPMY. This suspension is causing Opposer additional damage that can only be relieved by successful opposition of Applicant's application.

NOW THEREFORE, for the reasons set forth above, Opposer respectfully submits that Applicant's application for registration of a mark confusingly similar to Opposer's MAPMYRUN and MAPMYFITNESS registrations, Pending Applications and MAPMY- family of marks be sustained and that Applicant's application be refused registration.

MapMyFitness, a Delaware Corporation

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Dated: November 08, 2011