

ESTTA Tracking number: **ESTTA459125**

Filing date: **02/29/2012**

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	Hulu, LLC
Granted to Date of previous extension	02/29/2012
Address	12312 West Olympic Boulevard Los Angeles, CA 90064 UNITED STATES

Attorney information	Thomas J. Mango Cantor Colburn LLP 20 Church Street, 22nd Floor Hartford, CT 06103 UNITED STATES tmango@cantorcolburn.com, cwilkinson@cantorcolburn.com Phone:860-286-2929
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Applicant Information

Application No	77828705	Publication date	11/01/2011
Opposition Filing Date	02/29/2012	Opposition Period Ends	02/29/2012
Applicant	Dish Network, L.L.C. 9601 S. Meridian Blvd. Englewood, CO 80112 UNITED STATES		

Goods/Services Affected by Opposition

Class 038. All goods and services in the class are opposed, namely: Television transmission services; transmission of audio, video, and data via satellite, internet, or other communication networks; television broadcasting services; streaming of video and audio via communication networks; data transmission via communication networks; peer-to-peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; providing subscription television broadcasting services; satellite communication services; rental of set-top boxes for use with televisions
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	Notice of Opposition.PDF (7 pages)(39382 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	/Thomas J. Mango/
Name	Thomas J. Mango
Date	02/29/2012

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

In the Matter of Trademark Application Serial No.	77828705
Filed:	September 17, 2009
Mark:	TV EVERYWHERE
Published in the Official Gazette:	November 1, 2011

Hulu, LLC,

Opposer,

v.

Dish Network, L.L.C.,

Applicant.

Opposition No: _____

NOTICE OF OPPOSITION

In the matter of United States Trademark Application Serial No. 77828705, filed September 17, 2009 (“Application”), for registration of the mark TV EVERYWHERE, by Dish Network, L.L.C. (“Applicant”), covering “Television transmission services; transmission of audio, video, and data via satellite, internet, or other communication networks; television broadcasting services; streaming of video and audio via communication networks; data transmission via communication networks; peer-to-peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; providing subscription television broadcasting services; satellite communication services; rental of set-top boxes for use with televisions” in International Class 38, and published for opposition in the United States Patent and Trademark Office’s Official Gazette on November 1, 2011, Opposer Hulu, LLC (“Opposer” or “Hulu”) believes it will be damaged by such registration, and hereby opposes the registration of the Application.

The grounds for the opposition are as follows:

1. Hulu is a limited liability company organized and existing under the laws of the state of Delaware, with a principal place of business located at 12312 West Olympic Boulevard, Los Angeles, California 90064.

2. Founded in March 2007 and launched in private Beta form in October 2007 and generally to the public in March 2008, which is well before the filing date of Applicant's Application, Hulu is an online video service that offers a selection of hit television shows, video clips, movies, and more at the website www.hulu.com, numerous other popular destination websites online, and through its ad-supported subscription service, Hulu Plus. Hulu's selection of premium programming is provided by more than 350 content companies.

3. Hulu allows users to watch favorite shows or movies or discover new shows or movies anytime, anywhere, at home or when traveling. Hulu videos are also available on the Yahoo!, MSN, AOL, IMDb, and TV Guide websites, as well as a growing network of personal blogs, fan sites, and other sites where users choose to embed the Hulu video player.

Additionally, Hulu Plus subscribers can access and watch video content through desktop computers, PC computers, laptops, tablet computers, internet-connected TVs, set-top boxes, gaming consoles, and mobile telephones and other handheld electronic devices.

4. Third parties have already used the generic or merely descriptive term "TV everywhere" in commerce to refer to an industry-wide initiative whereby subscribers of cable, satellite, and other television services can access and watch video content (including movies and TV shows) on multiple devices, including desktop computers, PC computers, laptops, tablet computers, internet-connected TVs, set-top boxes, gaming consoles, and mobile telephones and other handheld electronic devices.

5. By way of example, a search for the generic or merely descriptive term “TV everywhere” on one of the most significant Internet search engines, Google, currently yields 20.4 million results, with Applicant only appearing once in the top ten results. Third parties and references to the industry-wide initiative appear in the other nine of the top ten results.

6. The industry-wide “TV everywhere” initiative has been the subject of widespread attention from the media and public and has been frequently featured in third party news articles and on other media.

7. The purchasing public uses, understands, and associates the term “TV everywhere” to refer to the category or class of services in question, namely as a non-distinctive, generic or merely descriptive designation for “television transmission services; transmission of audio, video, and data via satellite, internet, or other communication networks; television broadcasting services; streaming of video and audio via communication networks; data transmission via communication networks; peer-to-peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; providing subscription television broadcasting services; satellite communication services; rental of set-top boxes for use with televisions” and related services.

8. The term “TV everywhere” has become so widely recognized as a generic or merely descriptive term that it is incapable of functioning as a trademark for any goods and services in the industry because it cannot identify or distinguish the source of any such goods and services.

9. Upon information and belief, Applicant is a limited liability company organized and existing under the laws of the state of Colorado, with a principal place of business located at 9601 S. Meridian Blvd., Englewood, Colorado 80112. Applicant has no relationship with Opposer.

10. On or about September 17, 2009, Applicant filed the Application (Serial No. 77828705). As currently pending, the Application covers “Television transmission services; transmission of audio, video, and data via satellite, internet, or other communication networks; television broadcasting services; streaming of video and audio via communication networks; data transmission via communication networks; peer-to-peer network computer services, namely, electronic transmission of audio, video and other data and documents among computers; providing subscription television broadcasting services; satellite communication services; rental of set-top boxes for use with televisions” in International Class 38.

11. The Application was filed based on an Intent-To-Use basis of the Lanham Act, 15 U.S.C. §1051(b), and remains filed on an Intent-To-Use basis as of the date of this Opposition.

12. Upon information and belief, Applicant knew at the time it filed the Application that the term “TV everywhere” was a generic or merely descriptive term used by third parties in connection with the services described in the Application.

13. Upon information and belief, Applicant therefore knew at the time it filed the Application that it was not entitled to claim exclusive rights in the generic or merely descriptive term “TV everywhere”.

14. Upon information and belief, Applicant has never established any trademark or service mark rights or any other exclusive rights in the term “TV everywhere” because this term is a non-distinctive, generic or merely descriptive designation used to describe or denote a category or class of services including the services described in Applicant’s Application.

COUNT I
GENERICNESS

15. Opposer incorporates paragraphs 1 – 14 by reference and realleges the same as if originally set forth herein.

16. As applied to the services described in Applicant's Application, the term “TV everywhere” is a non-distinctive, common, generic name for Applicant's services.

17. The term “TV everywhere” is in the public domain, is part of the common fund of language, and is part of the common parlance used by members of the industry as well as the media and the relevant consuming public.

18. The designation “TV everywhere” as a whole is no less generic than its generic constituent parts “TV” and “everywhere”.

19. Members of the relevant public use, understand, and associate the term “TV everywhere” as a generic term for a particular type, category, or class of services, namely the services Applicant describes in the Application and related services.

20. Accordingly, the term “TV everywhere” is incapable of distinguishing Applicant’s services and is incapable of functioning as a source identifier, and, therefore, the term “TV everywhere” is incapable of registration.

COUNT II
DESCRIPTIVENESS AND LACK OF SECONDARY MEANING

21. Opposer incorporates paragraphs 1 – 20 by reference and realleges the same as if originally set forth herein.

22. The term “TV everywhere” is merely descriptive of the services described in Applicant's Application and, therefore, the term fails to function as a source identifier indicating the source of Applicant's services.

23. Applicant has never made substantially-exclusive use of the term “TV everywhere” and, therefore, the term has not acquired distinctiveness or secondary meaning in connection with Applicant. Moreover, since the Application was filed and remains on an Intent-To-Use basis, Applicant currently has no claim available that acquired distinctiveness or secondary meaning exists with respect to the term “TV everywhere”.

24. No individual or entity is entitled to claim exclusive rights in the term “TV everywhere” for the services covered by the Application and for which Applicant seeks registration.

WHEREFORE, Opposer Hulu, LLC respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration for United States Trademark Application Serial No. 77828705.

Respectfully submitted,

Hulu, LLC

Dated: February 29, 2012

By: /Thomas J. Mango/
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Attorneys for Hulu, LLC

Opposer’s Matter Reference No.: HUL0196OPPUS

CERTIFICATE OF SERVICE

I, Thomas J. Mango, Esq., counsel to Hulu, LLC in the above-captioned action, hereby certify that, on the 29th day of February 2012, I served a copy of the foregoing Notice of Opposition, by first class mail, postage prepaid, upon the following individual, identified in the Application as the attorney of record and correspondent:

MAX S. GRATTON
DISH NETWORK, LLC
9601 S. MERIDIAN BLVD
ENGLEWOOD, CO 80112-5905

/Thomas J. Mango/
Thomas J. Mango