

ESTTA Tracking number: **ESTTA463316**

Filing date: **03/22/2012**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Bain & Company Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	131 Dartmouth Street Boston, MA 02116 UNITED STATES		

Name	Bain Capital, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	200 Clarendon Street Boston, MA 02116 UNITED STATES		

Attorney information	Peter M. Brody, Esq. Ropes & Gray LLC One Metro Center 700 12th Street, N.W., Suite 900 Washington, DC 20005-3948 UNITED STATES trademarks@ropesgray.com, peter.brody@ropesgray.com, ronald.duvernay@ropesgray.com, kherman@sandw.com Phone:202-508-4612		
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Applicant Information

Application No	85099925	Publication date	02/21/2012
Opposition Filing Date	03/22/2012	Opposition Period Ends	03/22/2012
Applicant	Qui Vive Asset Holdings L.L.C. 2310 Lyncrest Ct Valrico, FL 33596 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Entertainment services, namely, providing a web site featuring humorous photographic, audio, video and prose presentations featuring reviews of bathroom hygiene products such as tissue paper, toilet seats and bidets and Entertainment services, namely, providing a website at which the general public can receive advice from an individual concerning relationships, such advice being for entertainment purposes only
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2725433	Application Date	07/19/2001
Registration Date	06/10/2003	Foreign Priority Date	NONE
Word Mark	BAIN & COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1973/04/00 First Use In Commerce: 1973/04/00 Business management and consultation</p> <p>Class 036. First use: First Use: 1973/04/00 First Use In Commerce: 1973/04/00 financial analysis</p> <p>Class 042. First use: First Use: 1973/04/00 First Use In Commerce: 1973/04/00 technology consultation in the field of electronic commerce systems in the nature of computer hardware, computer software, network computers, network computer systems, computer peripherals, and communications systems</p>		

U.S. Registration No.	2782558	Application Date	07/19/2001
Registration Date	11/11/2003	Foreign Priority Date	NONE
Word Mark	BAIN & COMPANY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2003/05/00 First Use In Commerce: 2003/05/00 Business management and consultation</p> <p>Class 036. First use: First Use: 2003/05/00 First Use In Commerce: 2003/05/00 financial analysis</p> <p>Class 042. First use: First Use: 2003/05/00 First Use In Commerce: 2003/05/00 technology consultation in the field of electronic commerce systems in the nature of computer hardware, computer software, network computers, network computer systems, computer peripherals, and communications systems</p>		

U.S. Registration No.	3805364	Application Date	10/03/2008
Registration Date	06/22/2010	Foreign Priority Date	NONE
Word Mark	BAIN CRG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/03/31 First Use In Commerce: 2007/03/31 Consulting services in the field of corporate renewal, restructuring and turnaround		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BAIN CAPITAL		
Goods/Services	Asset management and financial services		

Attachments	76287677#TMSN.gif (1 page)(bytes) 76287676#TMSN.gif (1 page)(bytes) 77585088#TMSN.jpeg (1 page)(bytes) Bain Notice of Opp.pdf (9 pages)(364025 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 brody/
Name	Peter M. Brody, Esq.
Date	03/22/2012

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

BAIN & COMPANY INC.,

and

BAIN CAPITAL, LLC,

Potential Opposers,

v.

QUI VIVE ASSET HOLDINGS L.L.C.
DBA QVE LLC,

Applicant.

Opposition No.

Application Serial No. 85/099,925

Published in the Official Gazette
of February 21, 2012

NOTICE OF OPPOSITION

Opposers, Bain & Company Inc. (“Bain & Company”), a company organized and existing under the laws of the Commonwealth of Massachusetts, located at 131 Dartmouth Street, Boston, Massachusetts 02116, and Bain Capital, LLC (“Bain Capital”), a limited liability company organized and existing under the laws of the State of Delaware, located at 200 Clarendon Street, Boston, Massachusetts 02116, hereby oppose the application (the “Application”) filed with the United States Patent and Trademark Office (“USPTO”) by applicant Qui Vive Asset Holdings L.L.C. dba QVE LLC (the “Applicant”) to register the mark “BAIN CAPITAL” for “Entertainment services, namely, providing a web site featuring humorous photographic, audio, video and prose presentations featuring reviews of bathroom hygiene products such as tissue paper, toilet seats and bidets and entertainment services, namely, providing a website at which the general public can receive advice from an individual concerning relationships, such advice being for entertainment purposes only” in International Class 041

(U.S. Application Serial No. 85/099,925, published for opposition in the Official Gazette of February 21, 2012). Opposers believe that they will be damaged by registration of the subject mark, and as grounds of opposition, aver as follows:

1. Opposer Bain & Company, established in 1973, is a global management consulting firm headquartered in Boston, Massachusetts. It has 47 offices in 30 countries and more than 5,500 employees. It is considered one of the most prestigious consulting firms in the world, ranking first on the *2012 Vault Consulting 50*.

2. Bain & Company has used its service mark and trade name "BAIN & COMPANY" and variants thereof continuously since its founding in 1973 in connection with management consulting and related services. Bain & Company's marks include, but are not limited to, the following marks registered in the USPTO, each of which registrations is valid, subsisting, and in full force and effect, and certain of which are incontestable. Records from the USPTO TARR database evidencing such registrations are attached hereto as Exhibit A.

Reg. No.	Mark	Services (Int. Cl.)	Reg. Date
2,725,433	BAIN & COMPANY	Business management and consultation (35); Financial analysis (36); Technology consultation in the field of electronic commerce systems in the nature of computer hardware, computer software, network computers, network computer systems, Computer peripherals, and communications systems (42).	6/10/2003
2,782,558	BAIN & COMPANY and Design	Business management and consultation (35); Financial analysis (36); Technology consultation in the field of electronic commerce systems in the nature of computer hardware, computer software, network computers, network computer systems, Computer peripherals, and	11/11/2003

		communications systems (42).	
3,805,364	BAIN CRG	Consulting services in the field of corporate renewal, restructuring and turnaround (35).	6/22/2010

3. Bain & Company's federal trademark registrations identified herein are prima facie evidence of Bain & Company's ownership and validity of the marks registered therein. Further, Registration Nos. 2,725,433 and 2,782,558 are incontestable, and thus constitute conclusive evidence of Bain & Company's exclusive right to use the marks registered therein for the services specified pursuant to 15 U.S.C. §§ 1065 and 1115(b).

4. Opposer Bain Capital, founded in 1984 by partners from the consulting firm Bain & Company Inc., is a Boston-headquartered global alternative asset management and financial services company, which, as of the beginning of 2012, manages approximately \$66 billion of investor capital across various investment platforms.

5. Bain Capital has used the service mark and trade name "BAIN CAPITAL" continuously since its founding in 1984 in connection with asset management and financial services, under an exclusive license from Bain & Company.

6. The above-described registered and unregistered marks and trade names of Bain & Company and as licensed by Bain Capital (collectively, the "BAIN MARKS") constitute a family of marks, the common element of which is the word "BAIN." The BAIN MARKS are well-known to consumers. Indeed, the BAIN MARKS and the marks "BAIN & COMPANY" and "BAIN CAPITAL" are, and for many years prior to the date of the filing of the Application have been, famous and distinctive marks within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

7. For decades, Bain & Company and Bain Capital have invested and continue to invest in marketing activities in the United States to enhance the fame of the BAIN MARKS. As a result of such extensive and continuous expenditures, and the provision of services, the BAIN MARKS are valuable assets, representing considerable customer goodwill, and the public has been exposed to, and for decades has recognized, marks containing the distinctive term "BAIN" as being uniquely associated with Bain & Company and, through its license rights, Bain Capital.

8. Applicant's mark so resembles the BAIN MARKS as to be likely, when used in connection with the services identified in the Application, to cause confusion, or to cause mistake, or to deceive as to the source, sponsorship, or affiliation of Applicant's services with Bain & Company's and Bain Capital's services within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

9. Applicant's mark, when used in connection with the services identified in the Application, would cause dilution of the distinctive quality of the BAIN MARKS in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

For all of the foregoing reasons, Applicant's alleged mark is not entitled to registration on the Principal Register under Section 2 of the Lanham Act of 1946, 15 U.S.C. § 1052 and Section 2.69 of the Trademark Rules of Practice, 37 C.F.R. § 2.69.

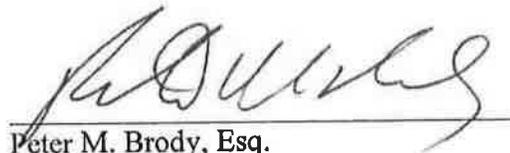
WHEREFORE, Opposers pray that application Serial No. 85/099,925 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposers.

Opposers hereby appoint the undersigned counsel as indicated below to act as their attorneys with full power to prosecute this opposition, to transact all relevant business with the

Patent and Trademark Office, and to receive all official communications with respect to this opposition.

Respectfully submitted,

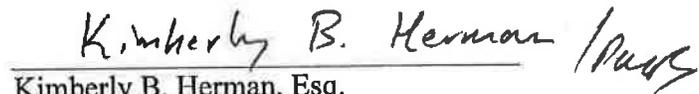
For Bain Capital, LLC:



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Attorneys for Bain & Company Inc.

Dated: March 22, 2012

EXHIBIT A

Int. Cls.: 35, 36, and 42

Prior U.S. Cls.: 100, 101, and 102

Reg. No. 2,725,433

United States Patent and Trademark Office

Registered June 10, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

BAIN & COMPANY

**BAIN & COMPANY, INC. (MASSACHUSETTS
CORPORATION)
2 COPLEY PLACE
BOSTON, MA 02117**

FOR: BUSINESS MANAGEMENT AND CONSULTATION, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-0-1973; IN COMMERCE 4-0-1973.

FOR: FINANCIAL ANALYSIS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-0-1973; IN COMMERCE 4-0-1973.

FOR: TECHNOLOGY CONSULTATION IN THE FIELD OF ELECTRONIC COMMERCE SYSTEMS IN THE NATURE OF COMPUTER HARDWARE, COM-

PUTER SOFTWARE, NETWORK COMPUTERS, NETWORK COMPUTER SYSTEMS, COMPUTER PERIPHERALS, AND COMMUNICATIONS SYSTEMS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-0-1973; IN COMMERCE 4-0-1973.

OWNER OF U.S. REG. NO. 2,679,086.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANY", APART FROM THE MARK AS SHOWN.

SN 76-287,677, FILED 7-19-2001.

GEOFFREY POSDICK, EXAMINING ATTORNEY

Int. Cls.: 35, 36, and 42

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,782,558

Registered Nov. 11, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

BAIN & COMPANY



BAIN & COMPANY, INC. (MASSACHUSETTS CORPORATION)
2 COPLEY PLACE
BOSTON, MA 02117

FOR: BUSINESS MANAGEMENT AND CONSULTATION, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 5-0-2003; IN COMMERCE 5-0-2003.

FOR: FINANCIAL ANALYSIS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 5-0-2003; IN COMMERCE 5-0-2003.

FOR: TECHNOLOGY CONSULTATION IN THE FIELD OF ELECTRONIC COMMERCE SYSTEMS IN THE NATURE OF COMPUTER HARDWARE, COM-

PUTER SOFTWARE, NETWORK COMPUTERS, NETWORK COMPUTER SYSTEMS, COMPUTER PERIPHERALS, AND COMMUNICATIONS SYSTEMS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 5-0-2003; IN COMMERCE 5-0-2003.

OWNER OF U.S. REG. NO. 2,079,086.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANY", APART FROM THE MARK AS SHOWN.

SN 76-287,676, FILED 7-19-2001.

GEOFFREY FOSDICK, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

BAIN CRG

Reg. No. 3,805,364

Registered June 22, 2010

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

BAIN & COMPANY (MASSACHUSETTS CORPORATION)
131 DARTMOUTH STREET
BOSTON, MA 02116

FOR: CONSULTING SERVICES IN THE FIELD OF CORPORATE RENOVATION, RESTRUCTURING AND TURNAROUND, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-31-2007; IN COMMERCE 3-31-2007.

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

OWNER OF U.S. REG. NOS. 2,725,433 AND 2,782,558.

SER. NO. 77-585,088, FILED 10-3-2008.

JAMES STEIN, EXAMINING ATTORNEY



David J. Kypas

Director of the United States Patent and Trademark Office

