

ESTTA Tracking number: **ESTTA469354**

Filing date: **04/26/2012**

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	SourceCode Technology Holdings, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2615 151st Place NE Redmond, WA 98052 UNITED STATES		

Attorney information	Kathleen T. Petrich Graham & Dunn PC 2801 Alaskan Way Pier 70 - Suite 300 Seattle, WA 98121 UNITED STATES IP@grahamdunn.com Phone:206-624-8300		
----------------------	---	--	--

Applicant Information

Application No	85447745	Publication date	03/27/2012
Opposition Filing Date	04/26/2012	Opposition Period Ends	04/26/2012
Applicant	Kahua, Inc. 810 Minsterworth Drive Alpharetta, GA 30022 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Business collaboration services, namely, providing an on-line software platform that enables and promotes collaboration amongst users
Class 042. All goods and services in the class are opposed, namely: Providing temporary use of on-line, non-downloadable computer software collaboration tools and on-line databases; software as a service (SaaS) services, namely, hosting and managing online software for others that enables use and sharing of data, information, electronic documents, and software applications

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.	3398387	Application Date	12/23/2004
Registration Date	03/18/2008	Foreign Priority Date	NONE

Word Mark	K2
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1989/11/15 First Use In Commerce: 1989/11/15 Computer software for use in computers to provide service activation, provide customer care and provide customer service solutions in the telecommunications industry Class 042. First use: First Use: 1989/11/15 First Use In Commerce: 1989/11/15 Application service provider featuring computer software that provides service activation, provides customer care and provides customer service solutions in the telecommunications industry

U.S. Registration No.	3275041	Application Date	07/06/2006
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	K2		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1989/11/15 First Use In Commerce: 1989/11/15 computer software, namely, application software for workflow and process automation		

U.S. Registration No.	3468834	Application Date	03/07/2007
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	K2		

Design Mark	
Description of Mark	The mark consists of a random block design incorporating 4 blocks alongside the text K2.
Goods/Services	<p>Class 009. First use: First Use: 2008/05/20 First Use In Commerce: 2008/05/20 Computer software, namely, application software for workflow and process automation</p> <p>Class 035. First use: First Use: 2008/05/20 First Use In Commerce: 2008/05/20 Business consultation and business workflow analysis relating to computer system implementation and system integration for workflow and process automation</p> <p>Class 042. First use: First Use: 2008/05/20 First Use In Commerce: 2008/05/20 Computer services, namely, computer consultation services in the field of design, selection, implementation and use of computer software systems for others, consulting services in the field of office and workplace automation; technical support services, namely, troubleshooting of computer software problems; maintenance of computer software</p>

U.S. Registration No.	3621973	Application Date	06/10/2008
Registration Date	05/19/2009	Foreign Priority Date	NONE
Word Mark	K2 [BLACKPOINT]		
Design Mark			
Description of Mark	The mark consists of the text mark "K2 blackpoint" with "blackpoint" in brackets and a ring about the letter "o".		
Goods/Services	<p>Class 009. First use: First Use: 2008/06/18 First Use In Commerce: 2008/06/18 Downloadable computer software for workflow and process automation</p> <p>Class 042. First use: First Use: 2008/06/18 First Use In Commerce: 2008/06/18 Application service provider (ASP) featuring software for workflow and process automation</p>		

Attachments	78537896#TMSN.jpeg (1 page)(bytes) 78923899#TMSN.gif (1 page)(bytes) 77124444#TMSN.jpeg (1 page)(bytes) 77494939#TMSN.jpeg (1 page)(bytes) Notice of Opposition of Kahua, Inc.'s K2K mark.pdf (8 pages)(67523 bytes)
-------------	---

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	/Kathleen T. Petrich/
Name	Kathleen T. Petrich
Date	04/26/2012

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

In Re Application No.: 85/447,745)	
For the mark: K2K)	
Published on: March 27, 2012)	
)	
SourceCode Technology Holdings, Inc.,)	Opposition No.
)	
Opposer,)	
)	
vs.)	
)	
Kahua, Inc.)	
)	
Applicant.)	
_____)	

Box TTAB FEE
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, SourceCode Technology Holdings, Inc., a Delaware corporation, located and doing business at 2615 151st Place NE, Redmond, Washington 98052, (hereinafter referred to as “Opposer”), believes that it will be damaged by registration of the mark shown in Serial No. 85/447,745, filed by Kahua, Inc. a Georgia corporation, located and doing business at 810 Minsterworth Drive, Alpharetta, GA 30022, (hereinafter referred to as “Applicant”), as it relates to services in Classes 35, and 42. Opposer hereby petitions to oppose registration of the mark for these services in Classes 35, and 42.

A description of the Applicant’s mark is as follows:

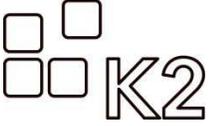
Mark:	K2K
Application Serial Number:	85/447,745
Date Filed:	October 14, 2011
Basis for Filing:	1(b)
First Use Date:	N/A
First Use in Commerce Date:	N/A
Services in Class 035:	Business collaboration services, namely, providing an on-line software platform that enables and promotes collaboration amongst users
Services in Class 042:	Providing temporary use of on-line, non-downloadable computer software collaboration tools and on-line databases; software as a service (SaaS) services, namely, hosting and managing online software for others that enables use and sharing of data, information, electronic documents, and software applications

As grounds for this Opposition, it is alleged that:

1. Opposer is a provider of global software and software solution services under the K2 trademark, the K2 Logo trademark, and variations thereof, including K2 [BLACKPEARL] (stylized design mark), K2 [BLACKPOINT] (stylized design mark), K2 [CONNECT] (stylized design mark), and K2.NET & Design (horizontal logo).

2. Opposer is the owner of and intends to rely upon as a basis for its request the following U.S. Trademark Registrations, hereafter referred to as “Opposer’s Marks”:

Mark	Reg. No.	Reg. Date.	Filing Date	Goods & Services/Class	First Use Date/ First Use in Commerce

K2	3,398,387	March 18, 2008	December 23, 2004	<p><i>Computer software for use in computers to provide service activation, provide customer care and provide customer service solutions in the telecommunications industry in class 009;</i></p> <p><i>Application service provider featuring computer software that provides service activation, provides customer care and provides customer service solutions in the telecommunications industry in class 042.</i></p>	November 15, 1989
K2	3,275,041	August 7, 2007	July 6, 2006	<p><i>Computer software, namely, application software for workflow and process automation in class 009.</i></p>	November 15, 1989
<p>K2 logo</p> 	3,468,834	July 15, 2008	March 7, 2007	<p><i>Computer software, namely, application software for workflow and process automation in class 009;</i></p> <p><i>Business consultation and business workflow analysis relating to computer system implementation and system integration for workflow and process automation in class 035; and</i></p> <p><i>Computer services, namely computer consultation services in the field of design, selection, implementation and use of computer software systems for others, consulting services in the field of office and workplace automation; technical support services, namely, troubleshooting of computer software problems; maintenance of computer software in class 042.</i></p>	May 20, 2008
K2 [BLACKPOINT] & Design	3,621,973	May 19, 2009	June 10, 2008	<p><i>Downloadable computer software for workflow and process automation in class</i></p>	June 18, 2008

K2[blackpoint]				009. <i>Application service provider (ASP) featuring software for workflow and process automation, in class 042.</i>	
----------------	--	--	--	---	--

3. For context, Opposer has established a strong family of K2 marks, including but not limited to the marks listed below, in connection with its software goods and services, but Opposer does not rely on these marks for the purposes of the Opposition.

Mark	Reg. No.	Reg. Date.	Filing Date	Goods & Services/Class	First Use Date/ First Use in Commerce
K2.NET & Design (Horizontal) 	3,224,625	April 3, 2007	February 24, 2006	<i>Computer software, namely, application software for workflow and process automation in class 009.</i> <i>Computer services, namely, computer consultation, consulting services in the field of design, selection, implementation and use of computer software systems for others, consulting services in the field of office and workplace automation; technical support services, namely, troubleshooting of computer software problems; maintenance of computer software in class 042.</i>	September 12, 2005
K2 [CONNECT] & Design 	3,603,381	April 7, 2009	July 24, 2007	<i>Computer software for collaborative application development and assembling and creating composite applications in class 009.</i>	September 5, 2008
K2 [BLACKPEARL] & Design 	3,603,380	April 7, 2009	July 24, 2007	<i>Computer software for collaborative application development, composite applications and workflow and process automation in class 009.</i>	February 4, 2009

4. Opposer or Opposer's successor-in-interest first used its K2 mark in connection with Opposer's goods and services on November 15, 1989. Opposer first used its K2 (text) mark in connection with Opposer's goods and services on November 15, 1989. Opposer first used its K2 logo mark in connection with Opposer's goods and services on May 20, 2008. Opposer first used its K2 [BLACKPOINT] & Design mark in connection with Opposer's goods and services on June 18, 2008.

5. Since at least as early as November 15, 1989, Opposer or Opposer's successor-in-interest has continuously used Opposer's Marks in commerce in connection with and to promote Opposer's goods and services, which is almost twenty two years prior to October 14, 2011, the date Applicant filed an intent-to-use application for the K2K mark in Class 35 and Class 42.

6. Opposer has the exclusive right to use Opposer's Marks in commerce in connection with Opposer's goods and services, without condition or limitation. The registrations referenced in the table above also serve as constructive notice of Opposer's claim of ownership of the marks shown therein, as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946, the filing of which predated the filing of the Applicant's intent-to-use application.

7. By reason of Opposer's extensive investment and promotional efforts in the United States, the public has come to recognize Opposer's Marks as signifying Opposer and as identifying Opposer as the exclusive source of Opposer's goods and services.

8. As a result of widespread use, promotion, and recognition of Opposer's Marks, Opposer has built extensive goodwill and consumer recognition in connection with the Opposer's Marks.

9. Upon information and belief, Opposer's rights in Opposer's Marks were established prior to any rights claimed by Applicant in its mark.

10. Applicant's mark is likely to cause confusion, to cause mistake, or to deceive the relevant public, thereby causing irreparable damage to Opposer. The commercial impression of Applicant's mark, which includes the text "K2K" is confusingly similar to Opposer's Marks, which includes the text "K2."

11. Application for federal registration should be refused where the applied for mark so resembles a registered mark that, when used on or in connection with the goods or services of the

applicant, it causes confusion, mistake, or deceives. 15 U.S.C. § 1052(2)(d). Although there is “no litmus rule” for determining likelihood of confusion under § 2(d) of the Lanham Act, the factors to consider include the similarity of the marks in their entireties as to appearance and commercial impression and the similarity of the nature of the goods or services; number and nature of similar marks in use on similar goods; length of time of concurrent use (and conditions thereof) without evidence of actual confusion; variety of goods/services on the mark is used; market interface between applicant and owner of prior mark; and extent of potential confusion. *See In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563 (C.C.P.A. 1973).

12. Applicant’s services recitation includes “*Business collaboration services, namely, providing an on-line software platform that enables and promotes collaboration amongst users*” in Class 35; and “*Providing temporary use of on-line, non-downloadable computer software collaboration tools and on-line databases; software as a service (SaaS) services, namely, hosting and managing online software for others that enables use and sharing of data, information, electronic documents, and software applications*” in Class 42.

13. Opposer’s registrations include the following similar services that would encompass the types of services described in Paragraph 11 and listed in Applicant’s recitation: “*Application service provider featuring computer software that provides service activation, provides customer care and provides customer service solutions in the telecommunications industry* in class 042 (U.S. Reg. No. 3,398,387); “*Business consultation and business workflow analysis relating to computer system implementation and system integration for workflow and process automation*” in class 035; and “*Computer services, namely computer consultation services in the field of design, selection, implementation and use of computer software systems for others, consulting services in the field of office and workplace automation; technical support services, namely, troubleshooting of computer software problems; maintenance of computer software*” in class 042 (U.S. Reg. No. 3,468,834); and “*Application service provider (ASP) featuring software for workflow and process automation*” in class 042 (U.S. Reg. No. 3,621,973).

