

ESTTA Tracking number: **ESTTA470635**

Filing date: **05/03/2012**

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	Mobile Network Marketing Corporation PTY. LTD.		
Entity	PTY. LTD.	Citizenship	Australia
Address	3-36 Princess Street Bundaberg, Queensland, 4670 AUSTRALIA		

Attorney information	Josh Gerben, Esq. Gerben Law Firm, PLLC 1155 Connecticut Ave NW Suite 500 Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:2022942287		
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Applicant Information

Application No	85357948	Publication date	04/10/2012
Opposition Filing Date	05/03/2012	Opposition Period Ends	05/10/2012
Applicant	The Promotion Man 500 E. National Hwy Washington, IN 47501 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. All goods and services in the class are opposed, namely: Computer software, namely, electronic financial platform that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment</p>
<p>Class 035. All goods and services in the class are opposed, namely: Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, location based marketing, blogging and other forms of passive, sharable or viral communications channels; Advertising and marketing services, namely, promoting the goods and services of others; Advertising services, namely, promoting and marketing the goods and services of others through all public communication means; Advertising, marketing and promoting the goods and services of others using kiosks; Advertising, marketing and promotional services related to all industries for the purpose of facilitating networking and socializing opportunities for business purposes; Business management consulting with relation to strategy, marketing, sales, operation, product design particularly specializing in the use of analytic and statistic models for the understanding and predicting of consumers, businesses, and market trends and actions</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85073420	Application Date	06/29/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/01/00 First Use In Commerce: 2010/01/00 Apparatus for transmission of communication, namely, a device which transmits advertisements to mobile phones and computers utilizing wireless technology		

U.S. Registration No.	4105452	Application Date	07/17/2011
Registration Date	02/28/2012	Foreign Priority Date	NONE
Word Mark	...ADD A ZERO TO YOUR BOTTOM LINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2010/00/00 First Use In Commerce: 2010/00/00 Advertising and marketing services; Marketing services, namely, promoting the goods and services of others to wireless electronic devices		

U.S. Application No.	85368907	Application Date	07/12/2011
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	ZERO PROXIMITY MARKETING SYSTEMS		
Design Mark			
Description of Mark	The mark consists of the stylized word ZERO with the Z in red and ERO in black. The stylized word ZERO appears above the stylized words PROXIMITY MARKETING SYSTEMS in black. A black three quarters circle surrounds the aforementioned wording.		
Goods/Services	<p>Class 009. First use: First Use: 2010/01/00 First Use In Commerce: 2010/01/00 Computer systems, namely, hardware and software for wireless proximity marketing systems; Computer hardware and software for wireless proximity marketing systems</p> <p>Class 035. First use: First Use: 2010/00/00 First Use In Commerce: 2010/00/00 Advertising and marketing services; Marketing services, namely, promoting the goods and services of others to wireless electronic devices</p>		

Attachments	85073420#TMSN.jpeg (1 page)(bytes) 85373345#TMSN.jpeg (1 page)(bytes) 85368907#TMSN.jpeg (1 page)(bytes) Zero_NoticeofOpposition_05032012.pdf (5 pages)(110090 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	/Josh Gerben/
Name	Josh Gerben, Esq.
Date	05/03/2012

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

Mobile Network Marketing	§	
Corporation Pty. Ltd.,	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
The Promotion Man DBA Yoders	§	
Mobile Marketing, LLC	§	Mark: ZERO
	§	
Applicant.	§	Serial No. 85/357,948

Notice of Opposition

Opposer, Mobile Network Marketing Corporation Pty. Ltd. (hereinafter referred to as “Opposer”), an Australian limited company, believes it will be damaged by the registration of the mark shown in Application Serial No. 85/357,948 filed by The Promotion Man DBA Yoders Mobile Marketing, LLC (hereinafter referred to as “Applicant”), which application was published in the Official Gazette on April 10, 2012, and hereby opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer has sold computer hardware and software for proximity marketing systems and offered marketing and advertising services using the ZERO trademark and service mark since at least as early as 2010.
2. Opposer has openly and continuously used the ZERO trademark and service mark since at least as early as 2010.
3. Opposer has promoted its goods and services under the “ZERO” trademark and has built up substantial goodwill in the mark.
4. Applicant seeks to register the mark “ZERO” as a mark for the following goods and services: “Computer software, namely, electronic financial platform that accommodates

multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment” in international class 9 and “Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, location based marketing, blogging and other forms of passive, sharable or viral communications channels; Advertising and marketing services, namely, promoting the goods and services of others; Advertising services, namely, promoting and marketing the goods and services of others through all public communication means; Advertising, marketing and promoting the goods and services of others using kiosks; Advertising, marketing and promotional services related to all industries for the purpose of facilitating networking and socializing opportunities for business purposes; Business management consulting with relation to strategy, marketing, sales, operation, product design particularly specializing in the use of analytic and statistic models for the understanding and predicting of consumers, businesses, and market trends and actions” in international class 35.

5. Applicant filed its application for the mark “ZERO,” Serial No. 85/357,948 on June 28, 2011.

6. Applicant’s application is for a mark identical to Opposer’s mark.

7. Applicant’s application is for goods and services that are highly related, complementary and/or overlapping to Opposer’s goods and services.

8. Upon information and belief, Applicant was a distributor of Opposer’s ZERO products and services prior to the filing of Applicant’s application.

9. Upon information and belief, Applicant had knowledge that the ZERO mark was extensively used by Opposer to sell its goods and services.

10. Upon information and belief, Applicant's application is a fraudulent attempt to gain a federal trademark registration on a trademark of which the Applicant knows is owned by the Opposer.

11. Opposer has been using the mark "ZERO" in the United States in connection with its goods and services since at least as early as 2010, a date prior to any priority date to which Applicant is entitled.

12. Said use has been valid and continuous since its date of first use and has not been abandoned. Opposer's mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in promotion of Opposer's products. In view of the fact that the parties' respective marks and services are virtually identical, it is alleged that Applicant's mark so resembles Opposer's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

13. Opposer owns a pending trademark application for the mark "ZERO," Serial No. 85/073,420 for use in connection with, "Computer systems, namely, hardware and software for wireless proximity marketing systems," in Class 09, filed on June 29, 2010.

14. Opposer owns a pending trademark application for the mark "ZERO," Serial No. 85/368,907 for use in connection with, "Computer systems, namely, hardware and software for wireless proximity marketing systems; Computer hardware and software for wireless proximity marketing systems," in Class 09, and "Advertising and marketing services; Marketing services, namely, promoting the goods and services of others to wireless electronic devices," in Class 35 filed on July 12, 2011

15. Opposer's application for Serial No. 85/368,907 has been suspended by the USPTO based on Applicant's filing of a prior pending application for the mark "ZERO."

16. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer, and would likely stand in the way of Opposer's good faith attempt to register its mark "ZERO."

17. In view of the above, Applicant is not entitled to federal registration of its alleged mark "ZERO" as Opposer has priority of use of the virtually identical "ZERO" mark in commerce in connection with products highly related, complementary and/or overlapping to Applicant's goods and services.

18. By reason of all the foregoing, Opposer will be gravely damaged by the registration of Applicant's mark.

WHEREFORE, by its undersigned attorney, Opposer respectfully requests that this Notice of Opposition be sustained and that registration of the mark "ZERO", Serial No. 85/357,948, be refused.

Respectfully submitted,



Dated: May 3, 2012

Josh Gerben, Esq.
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Washington, DC 20036
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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2012, a true and correct copy of the foregoing Notice of Opposition is being served by certified mail, return receipt requested on Applicant as shown in the correspondence record in the Office, as follows:

The Promotion Man
500 E. National Hwy
Washington, IN 47501

Dated: May 3, 2012

A handwritten signature in black ink, appearing to read "J. Gerben", written in a cursive style.

Josh Gerben, Esq.