

ESTTA Tracking number: **ESTTA475383**

Filing date: **05/30/2012**

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	Financial Industry Regulatory Authority, Inc.
Granted to Date of previous extension	05/30/2012
Address	1735 K Street, NW Washington, DC 20006 UNITED STATES

Attorney information	Carla B. Oakley Morgan, Lewis & Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105 UNITED STATES coakley@morganlewis.com, patricia.marquez@morganlewis.com, sfrademarks@morganlewis.com Phone:415-442-1301
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Applicant Information

Application No	85345247	Publication date	01/31/2012
Opposition Filing Date	05/30/2012	Opposition Period Ends	05/30/2012
Applicant	ProctorU, Inc. 1824 Holmes Street, Bldg. E Livermore, CA 94550 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2008/02/29 First Use In Commerce: 2008/02/29
All goods and services in the class are opposed, namely: Online educational testing services in the field of distant learning, namely, administering standardized tests

Grounds for Opposition

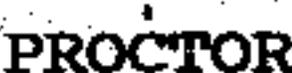
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1768263	Application Date	10/10/1990
Registration Date	04/27/1993	Foreign Priority Date	NONE
Word Mark	PROCTOR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1992/10/00 First Use In Commerce: 1992/10/00 training, educational testing and certification of professional and employment skills and abilities

U.S. Registration No.	1766565	Application Date	10/10/1990
Registration Date	04/20/1993	Foreign Priority Date	NONE
Word Mark	PROCTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1992/07/00 First Use In Commerce: 1992/07/00 computer programs for training, testing, and certification of professional and employment skills and abilities		

U.S. Registration No.	1920891	Application Date	01/22/1992
Registration Date	09/19/1995	Foreign Priority Date	NONE
Word Mark	PROCTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1992/07/01 First Use In Commerce: 1992/07/01 booklets, pamphlets and brochures for training, testing and certification of professional and employment skills and abilities		

U.S. Registration No.	1797000	Application Date	01/22/1992
Registration Date	10/05/1993	Foreign Priority Date	NONE
Word Mark	PROCTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1992/07/00 First Use In Commerce: 1992/07/00 computer and facilities manuals for training, testing and certification of professional and employment skills and abilities		

Attachments	74802572#TMSN.gif (1 page)(bytes) 74801329#TMSN.gif (1 page)(bytes) Notice of Opposition (Exs A-D) Serial No. 85345247.pdf (24 pages)(762644 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	/CBO/
Name	Carla B. Oakley
Date	05/30/2012

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

In the matter of application Serial No. 85/345247
Filed June 14, 2011
For the mark ProctorU
Published in the OFFICIAL GAZETTE on January 31, 2012

Financial Industry Regulatory Authority, Inc.,

Opposer,

v.

ProctorU, Inc.,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Financial Industry Regulatory Authority, Inc. (“FINRA”), a Delaware not-for-profit corporation, having its principal place of business at 1735 K Street NW, Washington, DC 20006, believes that it will be damaged by the application filed by ProctorU, Inc. (“Applicant”) to register ProctorU (Ser. No. 85/345247) (the “Application”) and hereby opposes the same.

As grounds for the opposition, FINRA alleges as follows:

1. FINRA is a not-for-profit corporation that is a self-regulatory organization (“SRO”) registered with the Securities Exchange Commission as a national securities association pursuant to federal law. As an SRO, FINRA is involved in the regulation of securities markets, brokerage firms and individual brokers. There are about 4,540 FINRA member firms and 631,725 brokers. FINRA develops rules and regulations, and designs and operates marketplace services and facilities for use by investment brokerage firms and their employees, and also for use by investors.

2. For two decades, FINRA has used its PROCTOR[®] mark in connection with computer programs, training, educational testing and certification services, and also booklets,

pamphlets, brochures and manuals for training, testing and certification purposes. FINRA owns several incontestable federal trademark registrations for its PROCTOR[®] mark.

3. FINRA owns federal trademark registration Reg. No. 1768263 for the PROCTOR[®] mark, covering “training, educational testing and certification of professional and employment skills and abilities” in Class 42. FINRA’s PROCTOR[®] mark has been registered since April 27, 1993, and has become incontestable. The registration was renewed on December 31, 2003. As stated in its registration, FINRA has used its PROCTOR[®] mark in connection with the specified services since at least as early as October 1992. A true and correct copy of the TARR printout page for this registration from the USPTO web site is attached hereto as Exhibit A.

4. FINRA owns federal trademark registration Reg. No. 1766565 for the PROCTOR[®] mark, covering “computer programs for training, testing, and certification of professional and employment skills and abilities” in Class 9. The registration issued on April 20, 1993, and has become incontestable. The registration was renewed on December 31, 2003. As stated in its registration, FINRA has used its PROCTOR[®] mark in connection with computer programs since at least as early as July 1992. A true and correct copy of the TARR printout page for this registration from the USPTO web site is attached hereto as Exhibit B.

5. FINRA owns federal trademark registration Reg. No. 1920891 for the PROCTOR[®] mark, covering “booklets, pamphlets and brochures for training, testing and certification of professional and employment skills and abilities” in Class 16. FINRA’s PROCTOR[®] mark has been registered since September 19, 1995, and has become incontestable. The registration was renewed on July 12, 2005. As stated in its registration, FINRA has used its PROCTOR[®] mark in connection with these publications since at least as early as July 1, 1992. A true and correct copy of the TARR printout page for this registration from the USPTO web site is attached hereto as Exhibit C.

6. FINRA owns federal trademark registration Reg. No. 1797000 for the PROCTOR[®] mark, covering “computer and facilities manuals for training, testing and certification of professional and employment skills and abilities” in Class 16. FINRA’s PROCTOR[®] mark has been registered since October 5, 1993, and has become incontestable. The registration was renewed on December 13, 2003. As stated in its registration, FINRA has used its PROCTOR[®] mark in connection with these publications since at least as early as July 1992. A true and correct copy of the TARR printout page for this registration from the USPTO web site is attached hereto as Exhibit D.

7. In addition to the products and services identified in its incontestable registrations, FINRA has used its PROCTOR[®] mark for a variety of other related products and services, including providing administration and delivery of computer-based testing and training; providing a variety of exams and training sessions related to areas including but not limited to skills, professional and vocational training; and for providing testing centers wherein the computer-based testing and training sessions occur.

8. Through FINRA’s continuous and extensive use of its PROCTOR[®] mark for two decades for the products and services identified above, FINRA’s PROCTOR[®] mark has become identified exclusively with FINRA. FINRA has developed substantial goodwill in its PROCTOR[®] mark, and the PROCTOR[®] mark has become famous and well-known.

9. By way of the opposed Application, Applicant seeks to register ProctorU (Ser. No. 85/345247) for “Online educational testing services in the field of distant learning, namely, administering standardized tests” in International Class 41. The Application was filed well after FINRA’s registrations for its PROCTOR[®] mark became incontestable.

10. The ProctorU designation incorporates FINRA’s PROCTOR[®] mark entirely, and is nearly identical in sight, sound and meaning to FINRA’s PROCTOR[®] marks.

11. FINRA has not authorized Applicant's use of the ProctorU designation, nor the Application.

12. FINRA is informed and believes, and on that basis alleges that the services identified in the Application are or would be competitive, closely related to and/or complementary with the products and services FINRA promotes and sells under its PROCTOR[®] mark, such that purchasers and prospective purchasers would believe that Applicant's ProctorU services emanate from FINRA or are sponsored or endorsed by FINRA, when they are not, or that there is an affiliation between FINRA and Applicant, when there is not.

13. Since the applied-for designation incorporates entirely FINRA's PROCTOR[®] mark, and since Applicant purports to use ProctorU for competitive, closely related or complementary services, offered or to be offered through overlapping channels to at least some of the same type of purchasers and consumers, Applicant's proposed designation is likely to cause confusion, or to cause mistake, or to deceive or disparage, by falsely suggesting a connection with or otherwise damaging FINRA. Applicant's proposed designation also is likely to cause dilution of FINRA's famous PROCTOR[®] mark.

14. For each of the above reasons, the Application for ProctorU should be rejected under the Lanham Act, 15 U.S.C. § 1052(d).

15. For each of the above reasons, the Application for ProctorU should be rejected under the Lanham Act, 15 U.S.C. § 1063.

WHEREFORE, FINRA prays that Application Serial No. 85/345247 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of FINRA.

Dated: May 30, 2012

Respectfully submitted,

By: 
Carla B. Oakley
Attorney for Financial Industry Regulatory
Authority, Inc.

Carla B. Oakley
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105
(415) 442-1301 (phone)
(415) 442-1001 (fax)
coakley@morganlewis.com

EXHIBIT A

to NOTICE OF OPPOSITION

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. v. PROCTORU, INC.

Ser. No. 85/345247

Submitted by Financial Industry Regulatory Authority, Inc. (Opposer)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-30 13:04:29 ET

Serial Number: 74104528 Assignment Information Trademark Document
Retrieval

Registration Number: 1768263

Mark (words only): PROCTOR

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2003-12-31

Filing Date: 1990-10-10

Transformed into a National Application: No

Registration Date: 1993-04-27

Register: Principal

Law Office Assigned: LAW OFFICE 13

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2009-01-09

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Address:

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
1735 K STREET, N.W.
WASHINGTON, DC 20006

United States

Legal Entity Type: NON-PROFIT CORPORATION

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 042

Class Status: Active

training, educational testing and certification of professional and employment skills and abilities

Basis: 1(a)

First Use Date: 1992-10-00

First Use in Commerce Date: 1992-10-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-01-09 - Case File In TICRS

2007-08-29 - Automatic Update Of Assignment Of Ownership

2003-12-31 - First renewal 10 year

2003-12-31 - Section 8 (10-year) accepted/ Section 9 granted

2003-10-24 - Combined Section 8 (10-year)/Section 9 filed

1999-07-17 - Section 8 (6-year) accepted & Section 15 acknowledged

1999-02-11 - Section 8 (6-year) and Section 15 Filed

1993-04-27 - Registered - Principal Register
1993-02-26 - Allowed for Registration - Principal Register (SOU accepted)
1993-02-26 - Assigned To Examiner
1993-01-29 - Statement Of Use Processing Complete
1993-01-29 - Extension 1 granted
1992-12-29 - Use Amendment Filed
1992-12-29 - Extension 1 filed
1992-06-30 - NOA Mailed - SOU Required From Applicant
1992-04-07 - Published for opposition
1992-03-06 - Notice of publication
1991-11-25 - Approved For Pub - Principal Register
1991-11-14 - Examiner's amendment mailed
1991-10-24 - Non-final action mailed
1991-09-18 - Communication received from applicant
1991-03-22 - Non-final action mailed
1991-03-20 - Assigned To Examiner
1991-03-06 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

SUSAN M. FREEDMAN
FINNEGAN, HENDERSON, FARABOW, ETAL.
1300 I STREET, NW
WASHINGTON DC 20005-3315

EXHIBIT B

to NOTICE OF OPPOSITION

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. v. PROCTORU, INC.

Ser. No. 85/345247

Submitted by Financial Industry Regulatory Authority, Inc. (Opposer)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-30 13:25:27 ET

Serial Number: 74104527 Assignment Information Trademark Document
Retrieval

Registration Number: 1766565

Mark (words only): PROCTOR

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2003-12-31

Filing Date: 1990-10-10

Transformed into a National Application: No

Registration Date: 1993-04-20

Register: Principal

Law Office Assigned: LAW OFFICE 13

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-08-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Address:

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
1735 K STREET, N.W.
WASHINGTON, DC 20006

United States

Legal Entity Type: NON-PROFIT CORPORATION

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

computer programs for training, testing, and certification of professional and employment skills and abilities

Basis: 1(a)

First Use Date: 1992-07-00

First Use in Commerce Date: 1992-07-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-08-13 - Case File In TICRS

2007-08-29 - Automatic Update Of Assignment Of Ownership

2003-12-31 - First renewal 10 year

2003-12-31 - Section 8 (10-year) accepted/ Section 9 granted

2003-10-16 - Combined Section 8 (10-year)/Section 9 filed

2003-10-16 - Combined Section 8 (10-year)/Section 9 filed

2003-10-16 - PAPER RECEIVED

2000-11-25 - Section 8 (6-year) accepted & Section 15 acknowledged
1999-11-01 - Response received to Post Registration action - Sections 8 & 15
1999-11-01 - Post Registration action correction
1999-11-01 - Post Registration action correction
1999-07-22 - Post Registration action mailed Section 8 & 15
1999-02-11 - Section 8 (6-year) and Section 15 Filed
1993-04-20 - Registered - Principal Register
1993-02-19 - Allowed for Registration - Principal Register (SOU accepted)
1993-02-19 - Assigned To Examiner
1993-02-05 - Statement Of Use Processing Complete
1992-12-29 - Use Amendment Filed
1992-10-27 - NOA Mailed - SOU Required From Applicant
1992-08-04 - Published for opposition
1992-07-02 - Notice of publication
1992-01-17 - Approved For Pub - Principal Register
1991-11-14 - Communication received from applicant
1991-06-21 - Non-final action mailed
1991-04-26 - Assigned To Examiner
1991-04-24 - Assigned To Examiner
1991-03-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

GRIFFITH B. PRICE

Correspondent

GRIGGITH B. PRICE

FINNEGAN HENDERSON FARABOW GARRETT & DUN

1300 I STREET, N.W.

WASHINGTON, D.C. 20005

EXHIBIT C

to NOTICE OF OPPOSITION

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. v. PROCTORU, INC.

Ser. No. 85/345247

Submitted by Financial Industry Regulatory Authority, Inc. (Opposer)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-30 13:31:05 ET

Serial Number: 74802572 [Assignment Information](#) [Trademark Document](#)
[Retrieval](#)

Registration Number: 1920891

Mark (words only): PROCTOR

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2005-07-12

Filing Date: 1992-01-22

Transformed into a National Application: No

Registration Date: 1995-09-19

Register: Principal

Law Office Assigned: LAW OFFICE 8

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-07-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Address:

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
1735 K STREET, N.W.
WASHINGTON, DC 20006

United States

Legal Entity Type: NON-PROFIT CORPORATION

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 016

Class Status: Active

booklets, pamphlets and brochures for training, testing and certification of professional and employment skills and abilities

Basis: 1(a)

First Use Date: 1992-07-01

First Use in Commerce Date: 1992-07-01

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-08-29 - Automatic Update Of Assignment Of Ownership

2005-07-12 - First renewal 10 year

2005-07-12 - Section 8 (10-year) accepted/ Section 9 granted

2005-07-12 - Assigned To Paralegal

2005-06-03 - Combined Section 8 (10-year)/Section 9 filed

2005-06-03 - TEAS Section 8 & 9 Received

2001-10-03 - Section 8 (6-year) accepted & Section 15 acknowledged

2001-09-18 - Section 8 (6-year) and Section 15 Filed

1995-09-19 - Registered - Principal Register

1995-07-27 - Allowed for Registration - Principal Register (SOU accepted)

1995-05-24 - Communication received from applicant

1995-07-14 - Statement Of Use Processing Complete

1995-07-14 - Extension 5 granted

1995-05-24 - Use Amendment Filed

1995-05-24 - Extension 5 filed

1995-07-14 - Divisional processing completed

1995-01-17 - Extension 4 granted

1994-11-23 - Extension 4 filed

1994-06-22 - Extension 3 granted

1994-05-24 - Extension 3 filed

1994-01-09 - Extension 2 granted

1993-11-24 - Extension 2 filed

1993-07-08 - Extension 1 granted

1993-05-21 - Extension 1 filed

1993-07-08 - Divisional processing completed

1993-05-21 - Divisional request received

1992-11-24 - NOA Mailed - SOU Required From Applicant

1992-09-01 - Published for opposition

1992-07-31 - Notice of publication

1992-06-23 - Approved For Pub - Principal Register

1992-06-19 - Examiner's amendment mailed

1992-03-31 - Non-final action mailed

1992-03-25 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Carla B. Oakley

Correspondent

CARLA B. OAKLEY
MORGAN, LEWIS & BOCKIUS LLP
1 MARKET SPEAR STREET TOWER
SAN FRANCISCO, CA 94105-1126

EXHIBIT D

to NOTICE OF OPPOSITION

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. v. PROCTORU, INC.

Ser. No. 85/345247

Submitted by Financial Industry Regulatory Authority, Inc. (Opposer)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-30 13:32:56 ET

Serial Number: 74801329 [Assignment Information](#) [Trademark Document](#)
[Retrieval](#)

Registration Number: 1797000

Mark (words only): PROCTOR

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2003-12-13

Filing Date: 1992-01-22

Transformed into a National Application: No

Registration Date: 1993-10-05

Register: Principal

Law Office Assigned: LAW OFFICE 8

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-09-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Address:

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
1735 K STREET, N.W.
WASHINGTON, DC 20006

United States

Legal Entity Type: NON-PROFIT CORPORATION

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 016

Class Status: Active

computer and facilities manuals for training, testing and certification of professional and employment skills and abilities

Basis: 1(a)

First Use Date: 1992-07-00

First Use in Commerce Date: 1992-07-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-09-14 - Case File In TICRS

2007-08-29 - Automatic Update Of Assignment Of Ownership

2003-12-13 - First renewal 10 year

2003-12-13 - Section 8 (10-year) accepted/ Section 9 granted

2003-10-03 - Combined Section 8 (10-year)/Section 9 filed

2000-01-19 - Section 8 (6-year) accepted & Section 15 acknowledged

1999-08-25 - Section 8 (6-year) and Section 15 Filed

1993-10-05 - Registered - Principal Register
1993-07-19 - Allowed for Registration - Principal Register (SOU accepted)
1993-07-08 - Statement Of Use Processing Complete
1993-07-08 - Extension 1 granted
1993-05-21 - Use Amendment Filed
1993-05-21 - Extension 1 filed
1993-07-08 - Divisional processing completed
1992-11-24 - NOA Mailed - SOU Required From Applicant
1992-09-01 - Published for opposition
1992-07-31 - Notice of publication
1992-06-23 - Approved For Pub - Principal Register
1992-06-19 - Examiner's amendment mailed
1992-03-31 - Non-final action mailed
1992-03-25 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

SUSAN M. FREEDMAN
FINNEGAN HENDERSON FARABOW, ET AL
1300 I STREET, NW
WASHINGTON, DC 20005-3315

CERTIFICATE OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, San Francisco, CA 94105.

On **May 30, 2012**, I served the within document(s):

NOTICE OF OPPOSITION (Exhibits A-D) (Appl. Serial No. 85/345247)



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at **San Francisco**, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Howard M. Gitten, Esq.
Edwards Angell Palmer & Dodge LLP
PO Box 130
F.D.R. Station
New York, NY 10150

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on

May 30, 2012, at San Francisco, California.



Kristen Kern