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

Proceeding	91207031
Party	Defendant ValMark Securities, Inc.
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121029.nbw Notice of Appearance 22077.50008

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and complete copy of the forgoing ENTRY OF APPEARANCE OF BEHALF OF REGISTRANT have been served via e-mail and United States Postal Service, First-Class Mail, on this 29<sup>th</sup> day of October, 2012, on:

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**CERTIFICATE OF FILING**

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, via the ESTTA procedure on October 29, 2012.

/Nathan B Webb/  
Nathan B. Webb, Esq.

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

<p>Vyapar Capital Market Partners, LLC</p> <p style="text-align:center">Opposer,</p> <p>v.</p> <p>ValMark Securities, Inc.</p> <p style="text-align:center">Applicant.</p>	<p>Opposition Number: 91207031</p> <p>Mark: VOLMAX Serial Number: 85/231132 Filed: February 1, 2011</p> <p>Mark: VULMAX Serial Number: 85/561084 Filed: March 6, 2012</p>
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**ANSWER TO NOTICE OF OPPOSITION**

Applicant, ValMark Securities, Inc. (“ValMark”), by its undersigned counsel hereby submits its Answer to Opposer’s Notice of Opposition as follows:

1. Applicant admits the allegations in Paragraph 1.
2. Applicant admits the allegations in Paragraph 2.
3. Applicant admits the allegations in Paragraph 3.
4. Applicant admits the allegations in Paragraph 4.
5. Applicant is without sufficient information to form a belief as to the allegations in Paragraph 5, and therefore denies the same.
6. Applicant is without sufficient information to form a belief as to the allegations in Paragraph 6, and therefore denies the same.
7. Applicant is without sufficient information to form a belief as to the allegations in Paragraph 7, and therefore denies the same.
8. Applicant is without sufficient information to form a belief as to the allegations in Paragraph 8, and therefore denies the same.

9. Applicant re-alleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.
10. Applicant is without sufficient information to form a belief as to the allegations in Paragraph 10, and therefore denies the same.
11. Applicant admits to *de minimus* use of the mark in interstate commerce, but not in association with the services claimed in Trademark Serial Application No. 85/561,084.
12. Applicant denies each and every allegation in Paragraph 12.

### **AFFIRMATIVE DEFENSES**

13. Applicant hereby re-alleges each and every allegation admitted or denied in conjunction with paragraphs 1 through 12 which are incorporated herein by reference.
14. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's VULMAX mark and Opposer's VOLMAX mark are not confusingly similar to the reasonably prudent purchaser of the relevant services. This is especially true where, as here, the relevant services travel in different channels of trade and the reasonably prudent purchaser is sophisticated and exercises a great deal of care in their buying decisions and is unlikely to be confused into believing there is an association or affiliation with Opposer.
15. Applicant further avers that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded mark of Opposer. The term "MAX" is generic, falls squarely within the crowded-field doctrine, and is otherwise so highly descriptive that it is entitled to little or no trademark significance. The dominant portion of the respective marks ("VUL" for Applicant)("VOL" for Opposer)

imparts each with their own distinctive meaning and commercial impression which are not likely to be confused by the consuming public.

16. Upon information and belief, Applicant avers that there are a myriad of adoptions and uses of variations of the word “MAX” for goods and services related to the goods and services of Opposer, as well as a variety of noncompeting goods and services. As such, any trademark and/or service mark rights that Opposer may have are narrowly circumscribed to the services indicated in Registration No. 4,034,231 and any other use would not lead to a likelihood of confusion.
17. Applicant further avers that Opposer has not alleged facts sufficient to demonstrate that it would be damaged by the registration of Applicant’s mark or that Applicant’s mark should therefore be refused registration.
18. Further answering, Applicant avers that it does not, by the filing of this pleading, waive any defense or denial—including charges that Opposer’s marks should be held invalid—which, under the facts and circumstances of this case, including those which may become known in discovery, may be properly asserted. Applicant further reserves the right to amend its Answer to include any such defense or denial which full discovery in this case may reveal.

WHEREFORE, Applicant prays that this opposition be dismissed and a registration for the term VULMAX be issued to the Applicant.

*[Remainder of page intentionally left blank]*

Dated: October 29, 2012

Respectfully submitted,

**Emerson Thomson Bennett, LLC**

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/ Nathan B Webb /  
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