

ESTTA Tracking number: **ESTTA496145**

Filing date: **09/24/2012**

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	Cape Cod Cooperative Bank d/b/a The Cooperative Bank of Cape Cod
Granted to Date of previous extension	09/23/2012
Address	25 Benjamin Franklin Way Hyannis, MA 02601 UNITED STATES

Attorney information	Jeffrey M. White, Esq. PIERCE ATWOOD LLP 254 Commercial St. Portland, ME 04101 UNITED STATES trademark@pierceatwood.com, jwhite@pierceatwood.com Phone:207-791-1100
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### Applicant Information

Application No	85449105	Publication date	03/27/2012
Opposition Filing Date	09/24/2012	Opposition Period Ends	09/23/2012
Applicant	Bank of Cape Cod 232 Main Street Hyannis, MA 02601 UNITED STATES		

### Goods/Services Affected by Opposition

Class 036. First Use: 2006/08/15 First Use In Commerce: 2006/08/15  
All goods and services in the class are opposed, namely: banking services

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)

### Marks Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CAPE COD COOPERATIVE BANK		
Goods/Services	Commercial and consumer time, savings and demand deposit		

	accounts; commercial and industrial, commercial real estate, consumer and consumer real estate loans; commercial and consumer debit and credit cards; electronic payments and funds transmissions; mobile and internet banking; trust referral; investment advisory and brokerage; safe deposit; and incidental services at branch locations in Cape Cod (Barnstable County, Massachusetts), and online via the internet.
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE COOPERATIVE BANK OF CAPE COD		
Goods/Services	Commercial and consumer time, savings and demand deposit accounts; commercial and industrial, commercial real estate, consumer and consumer real estate loans; commercial and consumer debit and credit cards; electronic payments and funds transmissions; mobile and internet banking; trust referral; investment advisory and brokerage; safe deposit; and incidental services at branch locations in Cape Cod (Barnstable County, Massachusetts), and online via the internet.		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	Commercial and consumer time, savings and demand deposit accounts; commercial and industrial, commercial real estate, consumer and consumer real estate loans; commercial and consumer debit and credit cards; electronic payments and funds transmissions; mobile and internet banking; trust referral; investment advisory and brokerage; safe deposit; and incidental services at branch locations in		

	Cape Cod (Barnstable County, Massachusetts), and online via the internet.
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Attachments	The Cooperative Bank of Cape Cod logo - SQUARE GRAY (W3334068).JPG 2012-09-24 Notice of Opposition (Bank of Cape Cod Serial No. 85-449,105) (W3333834).PDF ( 10 pages )(570796 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	/Jefrey M. White/
Name	Jeffrey M. White, Esq.
Date	09/24/2012

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

In re Bank of Cape Cod  
Serial No. 85/449,105

Cape Cod Cooperative Bank d/b/a	)	
The Cooperative Bank of Cape Cod	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
Bank of Cape Cod,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Cape Cod Cooperative Bank d/b/a The Cooperative Bank of Cape Cod (“Opposer”) is a Massachusetts cooperative bank governed by Chapter 170 of the General Laws of Massachusetts with offices located at 25 Benjamin Franklin Way, Hyannis, Massachusetts 02601.

Opposer, through its undersigned attorneys, files this Notice of Opposition to U.S. trademark application Serial No. 85/449,105, filed in the name of Bank of Cape Cod (“Applicant”), a Massachusetts trust company governed by Chapter 172 of the General Laws of Massachusetts with offices located at 232 Main Street, Hyannis, Massachusetts 02601.

Applicant has applied to register the purported mark BANK OF CAPE COD (standard character) for banking services in International Class 36. Opposer asserts it would be damaged by registration of Applicant’s purported mark in International Class 36 and hereby opposes such registration.

In support of Opposer's assertion that it would be damaged by the registration of Applicant's purported mark in International Class 36, and in support of grounds for opposing same, Opposer alleges as follows:

1. Applicant provides banking services at branch locations in Cape Cod (Barnstable County, Massachusetts), and online via the internet.

2. On August 28, 2007, pursuant to Trademark Act § 23, the United States Patent and Trademark Office (the "PTO") issued, in the name of Applicant's predecessor-in-interest (CCCB LLC), U.S. Supplemental Registration No. 3,287,240 for the phrase BANK OF CAPE COD for use in connection with banking services in International Class 36 ("Applicant's Supplemental Registration"). A true and correct copy of Applicant's Supplemental Registration is attached hereto as Exhibit A.

3. Applicant's Supplemental Registration shows (a) that Applicant alleged it first used the phrase BANK OF CAPE COD and alleged it first used such phrase in commerce on August 15, 2006; and (b) that Applicant, in connection with obtaining Applicant's Supplemental Registration, disclaimed the exclusive right to use the word "BANK" apart from the phrase BANK OF CAPE COD as shown in the registration. See Exhibit A.

4. On October 17, 2011, pursuant to Trademark Act §§ 1(a) and 2(f), Applicant filed U.S. trademark application Serial No. 85/449,105 for the purported mark BANK OF CAPE COD for use in connection with banking services in International Class 36 ("Applicant's § 2(f) Application"). Applicant's § 2(f) Application as published for opposition in the Official Gazette on March 27, 2012, is attached hereto as Exhibit B.

5. Applicant's § 2(f) Application shows (a) that Applicant alleged it first used the purported mark BANK OF CAPE COD and alleged it first used such purported mark in

commerce on August 15, 2006; and (b) that Applicant, in connection with prosecuting Applicant's § 2(f) Application, disclaimed the exclusive right to use the word "BANK" apart from the purported mark BANK OF CAPE COD as shown in the application. See Exhibit B.

6. Opposer provides commercial and consumer time, savings and demand deposit accounts; commercial and industrial, commercial real estate, consumer and consumer real estate loans; commercial and consumer debit and credit cards; electronic payments and funds transmissions; mobile and internet banking; trust referral; investment advisory and brokerage; safe deposit; and incidental services at branch locations in Cape Cod (Barnstable County, Massachusetts), and online via the internet (collectively, "Opposer's Services").

7. Opposer owns the following marks (collectively, "Opposer's Marks"), each of which it uses in connection with Opposer's Services:

- (a) CAPE COD COOPERATIVE BANK;
- (b) THE COOPERATIVE BANK OF CAPE COD; and
- (c)



8. Opposer's CAPE COD COOPERATIVE BANK mark and Opposer's THE COOPERATIVE BANK OF CAPE COD mark (referenced in ¶¶ 7(a) and 7(b), respectively) are legal equivalents.

9. Opposer has not abandoned but instead has used its CAPE COD COOPERATIVE BANK mark (referenced in ¶ 7(a)) or a legal equivalent thereof without interruption during the period from Opposer's founding in 1921 to the present.

10. Opposer's uses of its CAPE COD COOPERATIVE BANK mark (referenced in ¶ 7(a)) or a legal equivalent thereof have generated and sustained considerable consumer goodwill. Such goodwill is symbolized by and associated with Opposer's CAPE COD COOPERATIVE BANK mark and all legal equivalents thereof, and has been so symbolized and associated long before August 15, 2006—the only first use date alleged on Applicant's Supplemental Registration and Applicant's § 2(f) Application.

11. Opposer's CAPE COD COOPERATIVE BANK mark (referenced in ¶ 7(a)) and all legal equivalents thereof are well-known and commercially strong, and were well-known and commercially strong long before August 15, 2006.

12. Opposer has priority over Applicant to use and register the phrase BANK OF CAPE COD and any phrase confusingly similar thereto in connection with banking services in International Class 36. Opposer's priority is based on its first use of Opposer's CAPE COD COOPERATIVE BANK mark in U.S. commerce at least as early as Opposer's founding in 1921.

13. Applicant's purported mark BANK OF CAPE COD is nearly identical to Opposer's CAPE COD COOPERATIVE BANK mark and all legal equivalents thereof—including Opposer's THE COOPERATIVE BANK OF CAPE COD mark—in sight, sound, connotation, and overall commercial impression.

14. The International Class 36 banking services identified in Applicant's § 2(f) Application, the services actually provided by Applicant (referenced in ¶ 1), and Opposer's Services are nearly identical or closely related and are marketed and sold in the same or similar target markets.

15. Applicant's purported mark BANK OF CAPE COD, when used in connection with the International Class 36 banking services identified in Applicant's § 2(f) Application in general, and when used by Applicant in connection with the services actually provided by Applicant (referenced in ¶ 1) in particular, is (a) highly or merely descriptive of such services, and/or (b) primarily geographically descriptive of them.

16. Applicant's purported mark BANK OF CAPE COD has not become distinctive of Applicant's services in commerce and has not otherwise acquired distinctiveness or source-identifying significance, and registration thereof on the Principal Register is barred by Trademark Act § 2(e), notwithstanding Trademark Act § 2(f).

**COUNT I**  
**Standing and Ground for Opposition—Trademark Act § 2(d)**

17. Based on the allegations in ¶¶ 1–16, Opposer asserts it would be damaged by the registration of Applicant's purported mark BANK OF CAPE COD in International Class 36, because the same is likely to cause confusion with Opposer's CAPE COD COOPERATIVE BANK mark and Opposer's THE COOPERATIVE BANK OF CAPE COD mark as to source, origin, affiliation and/or sponsorship.

18. In view of the foregoing, Opposer opposes, and respectfully requests that the Trademark Trial and Appeal Board refuse, registration of Applicant's purported mark BANK OF CAPE COD in International Class 36 pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d), on the ground that it so resembles Opposer's CAPE COD COOPERATIVE BANK mark and Opposer's THE COOPERATIVE BANK OF CAPE COD mark as to be likely, when used in connection with the International Class 36 banking services identified in Applicant's § 2(f) Application and/or the services actually provided by Applicant (referenced in ¶ 1), to cause confusion, or to cause mistake, or to deceive.

**COUNT II**  
**Standing and Ground for Opposition—Trademark Act § 2(e)**

19. Based on the allegations in ¶¶ 1–16, Opposer asserts it would be damaged by the registration of Applicant’s purported mark BANK OF CAPE COD for use in connection with the International Class 36 banking services identified in Applicant’s § 2(f) Application, because the same is (a) highly or merely descriptive of such services, and/or (b) primarily geographically descriptive of them.

20. In view of the foregoing, Opposer opposes, and respectfully requests that the Trademark Trial and Appeal Board refuse, registration of Applicant’s purported mark BANK OF CAPE COD in International Class 36 pursuant to Trademark Act § 2(e), 15 U.S.C. § 1052(e), on the ground that it consists of words that, when used in connection with the International Class 36 banking services identified in Applicant’s § 2(f) Application and/or the services actually provided by Applicant (referenced in ¶ 1), are highly or merely descriptive of them or are primarily geographically descriptive of them.

Respectfully submitted,

Date: September 24, 2012

By: /s/ Jeffrey M. White

Jeffrey M. White, Esq.  
PIERCE ATWOOD LLP  
Merrill’s Wharf  
254 Commercial Street  
Portland, ME 04101  
Tel: (207) 791-1100

Attorneys for Opposer

**In re Bank of Cape Cod  
Serial No. 85/449,105**

**Opposition No. \_\_\_\_\_**

**EXHIBIT A**

**Notice of Opposition**

**filed by**

**Cape Cod Cooperative Bank d/b/a The Cooperative Bank of  
Cape Cod**

**Int. Cl.: 36**

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

**United States Patent and Trademark Office**

**Reg. No. 3,287,240**

**Registered Aug. 28, 2007**

**SERVICE MARK  
SUPPLEMENTAL REGISTER**

**BANK OF CAPE COD**

CCCB LLC (MASSACHUSETTS LTD LIAB CO)  
683 MAIN STREET  
OSTERVILLE, MA 02655

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

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

FIRST USE 8-15-2006; IN COMMERCE 8-15-2006.

SER. NO. 78-904,494, FILED P.R. 6-9-2006; AM. S.R.  
5-14-2007.

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

ANNE E. GUSTASON, EXAMINING ATTORNEY

**In re Bank of Cape Cod  
Serial No. 85/449,105**

**Opposition No. \_\_\_\_\_**

**EXHIBIT B**

**Notice of Opposition**

**filed by**

**Cape Cod Cooperative Bank d/b/a The Cooperative Bank of  
Cape Cod**

**CLASS 36—(Continued).**

SN 85-449,105. BANK OF CAPE COD, HYANNIS, MA. FILED 10-17-2011.

**BANK OF CAPE COD**

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

OWNER OF U.S. REG. NO. 3,287,240.  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BANK", APART FROM THE MARK AS SHOWN.

SEC. 2(F).  
FOR BANKING SERVICES (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-15-2006; IN COMMERCE 8-15-2006.  
FRED CARL, EXAMINING ATTORNEY

**CLASS 36—(Continued).**

SN 85-449,180. CICOLETTI, KATHRYN, SANTA MONICA, CA. FILED 10-17-2011.

**MakinSense Babe**

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

FOR PROVIDING A WEBSITE FEATURING INFORMATION, NEWS AND OPINIONS REGARDING MONEY MANAGEMENT, FINANCIAL NEWS, INVESTING, BUDGETING, EARNING AND SPENDING MONEY, MONEY-SAVING TIPS, AND LIFESTYLE AND ATTITUDE ISSUES RELATED TO PERSONAL FINANCE AND MONEY MANAGEMENT (U.S. CLS. 100, 101 AND 102).  
DANNEAN HETZEL, EXAMINING ATTORNEY

SN 85-449,166. SCOTTRADE, INC., ST. LOUIS, MO. FILED 10-17-2011.

**IM WITH SCOTTRADE**

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

OWNER OF U.S. REG. NOS. 2,140,963, 3,573,743 AND OTHERS.

FOR ON-LINE DISCOUNT SECURITIES BROKERAGE SERVICES (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-10-2011; IN COMMERCE 10-10-2011.  
KATHERINE CONNOLLY, EXAMINING ATTORNEY

SN 85-449,289. THE CALIFORNIA ENDOWMENT, LOS ANGELES, CA. FILED 10-17-2011.

**FRESHWORKS**

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

FOR OFFERING LOANS TO GROCERY STORES, MARKETS AND OTHER HEALTHY FOOD RETAILERS TO ENCOURAGE THE SALE AND CONSUMPTION OF FRESH PRODUCE AND HEALTHY FOOD ALTERNATIVES IN UNDERSERVED COMMUNITIES (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-2-2011; IN COMMERCE 3-2-2011.  
SANI KHOURI, EXAMINING ATTORNEY

SN 85-449,174. CICOLETTI, KATHRYN, SANTA MONICA, CA. FILED 10-17-2011.

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

FOR PROVIDING A WEBSITE FEATURING INFORMATION, NEWS AND OPINIONS REGARDING MONEY MANAGEMENT, FINANCIAL NEWS, INVESTING, BUDGETING, EARNING AND SPENDING MONEY, MONEY-SAVING TIPS, AND LIFESTYLE AND ATTITUDE ISSUES RELATED TO PERSONAL FINANCE AND MONEY MANAGEMENT (U.S. CLS. 100, 101 AND 102).  
DANNEAN HETZEL, EXAMINING ATTORNEY

SN 85-449,340. PRIMAVERA FINANCIAL, INC., NEWPORT BEACH, CA. FILED 10-17-2011.

**PRIMA PLUS**

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

FOR FINANCIAL SERVICES, NAMELY, PROVISION OF LOANS AND FINANCING FOR HEALTHCARE TREATMENTS AND PROCEDURES (U.S. CLS. 100, 101 AND 102).

MATTHEW PAPPAS, EXAMINING ATTORNEY