

ESTTA Tracking number: **ESTTA514916**

Filing date: **01/08/2013**

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	U.S. Marine Corps
Granted to Date of previous extension	01/09/2013
Address	Room 4B548 Pentagon Washington, DC 20350 UNITED STATES

Attorney information	Philip Greene Office of the Counsel for the Commandant Room 4B548 Pentagon Washington, DC 20350 UNITED STATES philip.greene@usmc.mil
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Applicant Information

Application No	85977181	Publication date	09/11/2012
Opposition Filing Date	01/08/2013	Opposition Period Ends	01/09/2013
Applicant	MERCHANT CUSTOMER EXCHANGE LLC 5215 N. O'CONNOR BLVD. SUITE 200 IRVING, TX 75039 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 036. All goods and services in the class are opposed, namely: Bill payment services; Bill payment services provided through a website; Credit card and payment card services; Credit card payment processing services; Electronic commerce payment services, namely, establishing funded accounts used to purchase goods and services on the Internet; Electronic payment, namely, electronic processing and transmission of bill payment data; Financial transaction services, namely, providing secure commercial transactions and payment options; Financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; Loyalty coupon payment processing services; Loyalty program payment processing services; Merchant services, namely, payment transaction processing services; Payment processing services, namely, credit card and debit card transaction processing services; Pre-paid purchase card services, namely, processing electronic payments made through prepaid cards; Pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; Processing electronic payments made through prepaid cards; Providing electronic processing of ACH and credit card transactions and electronic payments via a global computer network; Providing electronic processing of credit card transactions and electronic payments via a global computer network; Providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments; Providing multiple payment options by means of customer-operated electronic terminals available on-</p>
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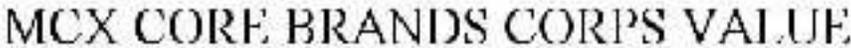
site in retail stores; Redeeming the vouchers of others for payment of goods or services

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85722042	Application Date	09/06/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MCX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1972/09/17 First Use In Commerce: 1972/09/17 Retail department store services		

U.S. Registration No.	4190769	Application Date	01/31/2012
Registration Date	08/14/2012	Foreign Priority Date	NONE
Word Mark	MCX CORE BRANDS CORPS VALUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/09/04 First Use In Commerce: 2003/09/04		

	On-line retail store services featuring a wide variety of consumer goods of others; Retail department store services; Retail gasoline supply services
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U.S. Registration No.	4194716	Application Date	01/30/2012
Registration Date	08/21/2012	Foreign Priority Date	NONE
Word Mark	MCX CORE BRANDS CORPS VALUES		
Design Mark			
Description of Mark	The mark consists of the letters "MCX" with the words "CORE BRANDS" and "CORPS VALUES" beneath the "MCX". Beneath "MCX CORE BRANDS" is a horizontal line.		
Goods/Services	Class 035. First use: First Use: 2003/09/04 First Use In Commerce: 2003/09/04 On-line retail store services featuring a wide variety of consumer goods of others; Retail apparel stores; Retail department store services		

U.S. Registration No.	4194718	Application Date	01/30/2012
Registration Date	08/21/2012	Foreign Priority Date	NONE
Word Mark	MCX CORE BRANDS CORPS VALUES		
Design Mark			
Description of Mark	The mark consists of the letters "MCX" in blue with a red horizontal band appearing in the middle of each letter. The wording "CORE BRANDS" appears in blue below "MCX", and the wording "CORPS VALUE" appears in blue below "CORE BRANDS". A red horizontal line separates the wording "CORE BRANDS" and "CORPS VALUE".		
Goods/Services	Class 035. First use: First Use: 2003/09/04 First Use In Commerce: 2003/09/04 On-line retail store services featuring a wide variety of consumer goods of others; Retail department store services; Retail gasoline supply services		

U.S. Registration	3903537	Application Date	05/12/2010
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No.			
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	MCX RAZOR WATER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/11/17 First Use In Commerce: 2009/11/17 Bottled drinking water; Bottled water; Drinking water		

U.S. Registration No.	4173262	Application Date	01/31/2012
Registration Date	07/10/2012	Foreign Priority Date	NONE
Word Mark	MCX FROM THE HALLS OF MONTEZUMA TO THE SHORES OF TRIPOLI. WE FIGHT OUR COUNTRY'S BATTLES IN THE AIR, ON LAND AND SEA. FIRST TO FIGHT FOR RIGHT AND FREEDOM AND TO KEEP OUR HONOR CLEAN; WE ARE PROUD TO CLAIM THE TITLE OF UNITED STATES MARINE! REFILLS NOT LANDFILLS MCX CORE BRANDS CORPS VALUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2010/04/02 First Use In Commerce: 2010/04/02 Coffee cups; Coffee mugs; Drinking cups sold with lids therefor; Insulated vacuum flasks; Plastic cups; Vacuum flasks		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MCX		
Goods/Services	Class 36: credit card services		

Attachments	85722042#TMSN.jpeg (1 page)(bytes) 85529290#TMSN.jpeg (1 page)(bytes) 85528847#TMSN.jpeg (1 page)(bytes) 85528874#TMSN.jpeg (1 page)(bytes) 85036808#TMSN.jpeg (1 page)(bytes) 85530000#TMSN.jpeg (1 page)(bytes) opposition 1 8 13.pdf (6 pages)(441781 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	/Philip Greene/
Name	Philip Greene
Date	01/08/2013

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

In the matter of trademark application: Serial No. 85977181

For the mark: MCX

Published in the Official Gazette on 11 September 2012

UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
ROOM 4B548
WASHINGTON, DC 20350-3000

v.

MERCHANT CUSTOMER EXCHANGE LLC (“APPLICANT”)
5215 N. O’CONNOR BLVD.
SUITE 200
IRVING, TX 75039

NOTICE OF OPPOSITION

Opposer: United States Marine Corps
3000 Marine Corps Pentagon
Room 4B548
Washington, D.C. 20350-3000

The above-identified Opposer (also “Marine Corps”) believes that it/he/she will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The mark to be opposed (“Opposed Mark”) consists of or comprises a mark which so resembles a mark registered in the U.S. Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the services of the Applicant, to cause confusion, or to cause mistake, or to deceive, in violation of Trademark Act section 2(d). See, 15 U.S.C. 1052(d).

The Opposed Mark is intended to represent these Class 36 services:

Bill payment services; Bill payment services provided through a website; Credit card and payment card services; Credit card payment processing services; Electronic commerce payment services, namely, establishing funded accounts used to purchase services and services on the Internet; Electronic payment, namely, electronic processing and transmission of bill payment data; Financial transaction services, namely, providing secure commercial transactions and payment options; Financial transaction services, namely, providing secure commercial transactions and payment options using a mobile device at a point of sale; Loyalty coupon payment processing services; Loyalty program payment processing services; Merchant services, namely, payment transaction processing services; Payment processing services, namely, credit card and debit card transaction processing services; Pre-paid purchase card services, namely, processing electronic payments made through prepaid cards; Pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; Processing electronic payments made through prepaid cards; Providing electronic processing of ACH and credit card transactions and electronic payments via a global computer network; Providing electronic processing of credit card transactions and electronic payments via a global computer network; Providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments; Providing multiple payment options by means of customer-operated electronic terminals available on-site in retail stores; Redeeming the vouchers of others for payment of services or services

The Opposer owns common law trademark rights in the mark MCX, and many other marks containing the term MCX. The Opposer operates a nationwide chain of retail stores known as Marine Corps Exchanges. Since at least as early as 1972, those retail stores have become known by the abbreviated name of "MCX," which is short for Marine Corps Exchange, and MCX has become a trademark and service mark of the Marine Corps. In addition to retail services offered under the mark MCX, the Opposer also offers credit card services under the MCX umbrella. The Opposer has filed a trademark application on the mark MCX, found at SN 85/722042.

Further, Opposer asserts rights in the following registered trademarks:

MCX CORE BRANDS CORPS VALUES® (word mark, U.S. Reg. No. 4190769). Class 35: On-line retail store services featuring a wide variety of consumer services of others; Retail department store services; Retail gasoline supply services.

MCX CORE BRANDS CORPS VALUES® (design mark, 4194716). Class 35: On-line retail store services featuring a wide variety of consumer services of others; Retail apparel stores; Retail department store services.

MCX CORE BRANDS CORPS VALUES® (design mark, 4194718). Class 35: On-line retail store services featuring a wide variety of consumer services of others; Retail department store services; Retail gasoline supply services.

MCX RAZOR WATER® (3903537). Class 32: Bottled drinking water; Bottled water; Drinking water.

MCX FROM THE HALLS OF MONTEZUMA TO THE SHORES OF TRIPOLI. WE FIGHT OUR COUNTRY'S BATTLES IN THE AIR, ON LAND AND SEA. FIRST TO FIGHT FOR RIGHT AND FREEDOM AND TO KEEP OUR HONOR CLEAN; WE ARE PROUD TO CLAIM THE TITLE OF UNITED STATES MARINE! REFILLS NOT LANDFILLS MCX CORE BRANDS CORPS VALUE® (4173262). Class 21: Coffee cups; Coffee mugs; Drinking cups sold with lids therefor; Insulated vacuum flasks; Plastic cups; Vacuum flasks.

The above-referenced marks, and other common law marks based on and/or containing the term MCX, are herein referred to as the "Marine Corps' Marks." Opposer respectfully asserts that the Opposed Mark, MCX, so resembles the Marine Corps' Marks as to be likely, when used on or in connection with the Applicant's use of the Opposed Mark, to cause confusion, or to cause mistake, or to deceive, particularly when such mark is used by Applicant in the retail arena.

2. The mark consists of or comprises matter that is deceptive, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The mark is to be used by Applicant on various retail-based financial services, referenced above. The mark is deceptive in that it creates the impression among consumers and the general public at large that the Applicant's services are either offered by the Opposer, or licensed by the Opposer, and/or are otherwise authorized by or affiliated with the Opposer. The Opposer respectfully asserts that the Opposed Mark MCX is deceptive in that it is misdescriptive of the character, quality, function, composition or use of the services, to the extent to which it deceives the public into believing that the retail-sales-related services on which the mark is used, are the official such services of the Marine Corps. Further, Opposer asserts that prospective purchasers are likely to believe that the misdescription actually describes the services as being the official such services of the Marine Corps and its well-known MCX/Marine Corps Exchange chain of retail stores, and related services. The Opposer also asserts that this misdescription is likely to affect the public's decision to purchase such services.
3. The mark consists of or comprises matter which falsely suggests a connection to the Marine Corps, in violation of Trademark Act section 2(a). See, 15 U.S.C. 1052(a). The Opposer respectfully asserts that (1) the mark is the same as, or a close approximation of, the name or identity previously (and continuously) used by the Opposer, the Marine Corps, for approximately 40 years (if not longer); (2) the mark would be recognized as such, in that it points uniquely and unmistakably to the Opposer, the Marine Corps; (3) the person or institution named by the mark, namely, the Opposer, the Marine Corps, is

not connected with the activities performed by the Applicant under the mark; and (4) the fame or reputation of the Opposer, the Marine Corps, is such that, when the mark is used with the Applicant's services, a connection with the person or institution would be presumed. Opposer asserts, and intends to show, that consumers would view, and do in fact view, the mark as pointing uniquely to Opposer, the Marine Corps.

4. The mark consists of or comprises matter that is deceptively misdescriptive, in violation of Trademark Act Section 2(e)(1). See, 15 U.S.C. §1052(e)(1). Opposer asserts that the term MCX conveys that the services are the official services of the Marine Corps, and/or is authorized by or approved by the Marine Corps. However, Opposer asserts that the ideas immediately conveyed are false, and are deceptively misdescriptive, and that the mark is therefore unregistrable under §2(e)(1). Opposer asserts that the mark MCX misdescribes the services in a deceptive manner, and that members of the public are likely to believe the misrepresentation; in other words, members of the public are likely to believe that the services offered under the mark MCX are the official such services of the Marine Corps. Further, Opposer asserts that this misrepresentation materially affects the decision to purchase the services, i.e., many purchasers of services bearing the mark MCX do so under the belief that the services are the official services of the Marine Corps.
5. The Opposed Mark, MCX, dilutes the Opposer's Marine Corps' Marks, referenced above, in violation of Trademark Act section 43(c). See, 15 U.S.C. 1125(c). Opposer asserts that the term MCX has become a famous mark, and points to the services provided by the United States Marine Corps. The Marine Corps Exchange chain of retail outlets has been in existence at least as early as 1972, and the term MCX has become synonymous with the Marine Corps. The Marine Corps has a thriving trademark licensing program, through which it grants to private entities the right to use various USMC trademarks. As such, when consumers see the term MCX on consumer services, such as those offered by the Applicant, consumers may come to believe that the Applicant's services rendered under the Opposed Mark are officially licensed by the Marine Corps, or somehow affiliated with or endorsed by the Marine Corps, the Opposer's trademark rights in the term MCX become diluted.
6. The Opposed Mark is being used by, or with the permission of, the Applicant so as to misrepresent the source of the services on or in connection with which the mark is used, in violation of Trademark Act section 14. The Opposer asserts that the Applicant's use of the mark MCX, on consumer services referenced above, misrepresents the source of the services as being from the Marine Corps, or one of its authorized licensees, and not from the Applicant.
7. The mark was registered and is used in violation of 32 Code of Federal Regulations 765.14 (hereinafter "32 CFR 765.14"). The Opposer notes that 32 CFR 765.14 was promulgated to implement 10 U.S.C. 7881, and sets forth guidelines with respect to the circumstances under which the Marine Corps may allow third parties to use its seal,

emblem, *names* or initials of the Marine Corps, and the requirements for such use by third parties without such permission. In particular, 32 CFR 765.14(c)(2) reads as follows:

“(2) Requests from civilian enterprises to use or imitate the Marine Corps emblem, names, or initials will ordinarily be approved where use or imitation merely provides a Marine Corps accent or flavor to otherwise fungible services. Disapproval, however, usually may be expected where such use or imitation reasonably would:

(i) Imply any official or unofficial connection between the Marine Corps and the user;

(ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;

(iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing services and services such as insurance, real estate, or financial services; or

(iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps.”

The Opposer asserts that Applicant’s use of the name MCX is contrary to the guidelines of 32 CFR 765.14(c)(2), and is conducted in such a way as to imply an official or unofficial connection between the Marine Corps and the consumer services offered by the Applicant, gives the impression that the Marine Corps selectively benefits the services of the Applicant, and would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps, to the extent to which it compromises the strength and effectiveness of the Marine Corps’ trademark licensing program, and harmful to its MCX brand. Therefore, the Opposed Mark should not become registered.

8. The proposed use of the Opposed Mark by would be in violation of SECNAV Instruction 5030.7. The Applicant notes that SECNAV Instruction 5030.7 is virtually identical to 32 CFR 765.14. For the reasons stated above, Opposer asserts that Applicant’s Opposed Mark and use of the mark is contrary to SECNAV Instruction 5030.7. Accordingly, Opposer asserts that the Applicant’s mark MCX should not become registered.

WHEREFORE, Opposer believes that it has been, is, and/or will be damaged by said application, and prays that the mark not be allowed to become registered.

Respectfully submitted,

By:


Philip Greene
Attorney for Opposer

Date:

01/08/2013

Associate Counsel (Trademark)
U.S. Marine Corps
Office of the Counsel for the Commandant
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Washington, D.C. 20350-3000
703-614-2173
Fax: 703-697-5362

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition to Cancel was served on this 8th day of January, 2013 by postage pre-paid, first-class mail to the following:

Applicant (last listed owner):

Merchant Customer Exchange, LLC
5215 N. O'Connor Blvd.
Suite 200
Irving, TX 75039

Correspondent:

Mark A. Niede, Esq.
IpHorgan Ltd.
1130 Lake Cood Rd.
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