

ESTTA Tracking number: **ESTTA527828**

Filing date: **03/20/2013**

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	NEXTBOOK, INC.
Granted to Date of previous extension	03/20/2013
Address	37 WEST 28TH STREET 8TH FLOOR New York, NY 10001 UNITED STATES

Attorney information	Jason M. Vogel, Esq. Kilpatrick Townsend & Stockton LLP 1114 Avenue of the Americas, 21st Floor New York, NY 10036 UNITED STATES jvogel@ktslaw.com, agarcia@ktslaw.com, OHarris@ktslaw.com, tadmin@kiltown.com, nytrademarks@kilpatricktownsend.com Phone:212-775-8700
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Applicant Information

Application No	76711757	Publication date	11/20/2012
Opposition Filing Date	03/20/2013	Opposition Period Ends	03/20/2013
Applicant	Avalanche, LLC 1691 Michigan Ave., Suite 410 Miami Beach, FL 33139 UNITED STATES		

Goods/Services Affected by Opposition

Class 045. First Use: 2010/08/25 First Use In Commerce: 2010/08/25
All goods and services in the class are opposed, namely: Providing on-line social networking services by means of a global computer network

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2843648	Application Date	07/24/2002
Registration Date	05/18/2004	Foreign Priority Date	NONE
Word Mark	JEWCY		

Design Mark	JEWCY		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 ENTERTAINMENT, NAMELY LIVE VARIETY, DRAMA AND COMEDY PERFORMANCES FEATURING LIVE AND RECORDED MUSIC		

U.S. Registration No.	3228371	Application Date	01/02/2003
Registration Date	04/10/2007	Foreign Priority Date	NONE
Word Mark	JEWCY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 045. First use: First Use: 2006/09/15 First Use In Commerce: 2006/09/15 DATING AND MATCHMAKING SERVICES		

U.S. Application No.	85976070	Application Date	06/01/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JE CY		
Design Mark			
Description of Mark	The mark consists of the letters "J", "E", "C", and "Y" in a stylized format with the Hebrew character Shin in a stylized format between the "JE", and "CY".		
Goods/Services	Class 041. First use: First Use: 2001/11/15 First Use In Commerce: 2002/11/15 On-line journals, namely, blogs featuring information in the field of religious, cultural, arts and educational material; entertainment services, namely, providing a website featuring audio and audiovisual recordings featuring religious material, cultural material, the arts and educational material; providing information in the fields of religious instruction, cultural events, the arts and education via the internet; providing electronic publications in the nature of electronic magazines		

	and online magazines relating to the Jewish culture, music and entertainment; electronic publication services, namely, publication of electronic magazines and online magazines; providing a website featuring entertainment information on musical artists, musical concert tours, events and downloadable and streaming audio and audiovisual musical content; providing entertainment information via the Internet; conducting of ceremonies and events; entertainment services, namely, conducting parties; organizing religious events, namely, religious instruction services, and cultural events; organizing exhibitions and events for educational, religious instruction, cultural, arts and entertainment purposes; production of live entertainment performances and shows; entertainment, namely, live variety, drama and comedy performances featuring live and recorded music; arranging and conducting of concerts and live music events
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Attachments	76433557#TMSN.gif (1 page)(bytes) 85976070#TMSN.jpeg (1 page)(bytes) 2013-3-20 Notice of Opposition (JEWCIER).pdf (8 pages)(278383 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	/Olivia Harris/
Name	Olivia Harris
Date	03/20/2013

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

In the Matter of Serial No. 76/711,757
Mark: JEWCIER
Filing Date: June 15, 2012
Publication Date: November 20, 2012
Our Reference No.: 94155/ 811575

NEXTBOOK, INC.,

Opposer,

v.

AVALANCHE, LLC,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Nextbook, Inc., a Delaware corporation with an address at 37 West 28th Street, 8th Floor, New York, New York 10001 (“Opposer”), believes that it will be damaged by the registration of the trademark shown in Application Serial No. 76/711,757 (the “Application”) and therefore opposes the same pursuant to 15 U.S.C. § 1063.

As grounds for its opposition, Opposer alleges as follows:

1. Opposer is the owner of the following U.S. trademark registrations for the trademark JEWCY (the “JEWCY Mark”):

Reg. No.	Goods/Services	Reg. Date	Date of First Use
2,843,648	Entertainment, namely live variety, drama and comedy performances featuring live and recorded music (Class 41)	May 18, 2004	June 2002
3,228,371	Dating and matchmaking services (Class 45)	April 10, 2007	September 15, 2006

The foregoing registrations are valid and in full force and effect, and thus constitute *prima facie* evidence of Opposer's exclusive right to use the JEWCY Mark in commerce in connection with the goods and services specified in the registrations.

2. Opposer is also the owner of the following U.S. trademark application for the JEWCY Mark:

Mark	Serial No.	Goods/Services	Filing Date	Date of First Use
JEWCY and Design 	85/976,070	On-line journals, namely, blogs featuring information in the field of religious, cultural, arts and educational material; entertainment services, namely, providing a website featuring audio and audiovisual recordings featuring religious material, cultural material, the arts and educational material; providing information in the fields of religious instruction, cultural events, the arts and education via the internet; providing electronic publications in the nature of electronic magazines and online magazines relating to the Jewish culture, music and entertainment; electronic publication services, namely, publication of electronic magazines and online magazines; providing a website featuring entertainment information on musical artists, musical concert tours, events and downloadable and streaming audio and audiovisual musical content; providing entertainment information via the Internet; conducting of ceremonies and events; entertainment services, namely, conducting parties; organizing religious events, namely, religious instruction services, and cultural events; organizing exhibitions and events for educational, religious instruction, cultural, arts and entertainment purposes; production of live entertainment performances and shows; entertainment, namely, live variety, drama and comedy performances featuring live and recorded music; arranging and conducting of concerts and live music events (Class 41)	June 1, 2010	November 15, 2002

Applicant's Application

3. Notwithstanding Opposer's prior rights in its JEWCY Mark, on June 15, 2012, Avalanche, LLC ("Applicant"), with an address of 1691 Michigan Avenue, Suite 410, Miami Beach, Florida 33139, filed an Application to register the JEWCIER mark ("Applicant's Mark") for "Providing on-line social networking services by means of a global computer network" in International Class 45, claiming a date of first use of August 25, 2010.

4. The Application was published in the *Trademark Official Gazette* on November 20, 2012. On December 13, 2012, Opposer timely filed a request for a ninety (90) day extension of time to oppose the Application, which was granted on December 13, 2012 by the Trademark Trial and Appeal Board through and until March 20, 2013. On December 19, 2012, Opposer filed a Letter of Protest, which was accepted by the Commissioner for Trademarks on January 17, 2013, and jurisdiction of the application was restored to the Examining Attorney. Subsequently, an Office Action was issued on February 28, 2013 refusing registration of the Application under Section 2(d) on the basis of likelihood of confusion with Opposer's prior registrations and prior pending applications for the JEWCY Mark.

5. There is no issue as to priority. Opposer, through its predecessors, began using its JEWCY Mark in commerce at least as early as 2002, well prior to the June 15, 2012 filing date of Applicant's Application, or Applicant's August 25, 2010 claimed date of first use.

6. Applicant's Mark is virtually identical from a visual, phonetic and conceptual perspective to the JEWCY Mark, differing only in the addition of the superlative variant "ier," which does nothing to distinguish Applicant's Mark from the JEWCY Mark. In fact, the addition of the superlative suffix "-ier" falsely suggests that Applicant's services are merely a higher level

of services offered by the same entity as Opposer's services. Moreover, both Applicant's Mark and Opposer's JEWCY Mark utilize the same misspelling of the "jui" prefix in the words "juicy" and "juicier," replacing these letters with the letters "jew." This identical play on words renders the marks connotatively identical in that both make reference to the parties' identical target audience, namely, Jewish consumers.

7. The services listed by Applicant in the Application are identical and/or highly related to the services offered by Opposer under the JEWCY Mark.

8. Accordingly, Applicant's use of Applicant's Mark for the services set forth in the Application is likely to cause consumers to be confused, to be deceived, and to assume erroneously that Applicant's services are those of Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and with consequent injury to Opposer and the public.

9. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), Opposer believes that it will be damaged by registration of Applicant's Mark in that members of the purchasing public are likely to be confused or mistaken that Applicant's services offered under Applicant's Mark originate from Opposer, or from the same source as services offered under Opposer's JEWCY Mark, or that such services of Applicant are sponsored by, endorsed by, or affiliated with the source of services sold under Opposer's JEWCY Mark. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that is symbolized by Opposer's JEWCY Mark.

10. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to the use of Applicant's Mark. Such registrations would be a source of damage and injury to Opposer.

WHEREFORE, Opposer requests that registration of Application Serial No. 76/711,757 be denied pursuant to 15 U.S.C. §§ 1052(d) and 1063(a).

The opposition fee in the amount of \$300.00 for a notice of opposition in one class is filed with this Notice of Opposition. If for any reason this amount is insufficient, it is requested that Kilpatrick Townsend & Stockton LLP's Deposit Account No. 11-0855 be charged with any deficiency. This paper is being filed electronically.

Please recognize Jason Vogel, Olivia Harris, and the law firm of Kilpatrick Townsend & Stockton LLP as attorneys for Opposer in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to Jason Vogel at Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036.

Dated: March 20, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

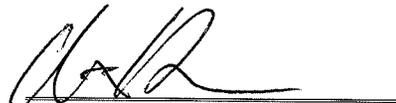
By: 

Jason Vogel
Olivia Harris
1114 Avenue of the Americas
New York, NY 10036
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Attorneys for Opposer, Nextbook, Inc.

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, March 20, 2013.

A handwritten signature in black ink, appearing to read 'O. Harris', is written over a horizontal line.

Olivia Harris
Attorney for Opposer

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

In the Matter of Serial No. 76/711,757
Mark: JEWCIER
Filing Date: June 15, 2012
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NEXTBOOK, INC.,

Opposer,

v.

AVALANCHE, LLC,

Applicant.

Opposition No. _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION has been served on Applicant and counsel for Applicant by mailing said copies on March 20, 2013, via First Class Mail, postage prepaid, and addressed as follows:

Avalanche, LLC
1691 Michigan Avenue, Suite 410
Miami Beach, Florida 33139

Fred D. Zemel
Scarinci & Hollenbeck
1100 Valley Brook Avenue, P.O. Box 790
Lyndhurst, New Jersey 07071-0790

A copy was also sent by electronic mail to the email address for counsel for applicant:

FZemel@scarincihollenbeck.com.



Olivia Harris
Attorney for Opposer