

ESTTA Tracking number: **ESTTA556309**

Filing date: **08/27/2013**

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

Proceeding	91212080
Party	Plaintiff Livingston International
Correspondence Address	Lori Lesser Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, NY 10017 UNITED STATES llesser@stblaw.com, agregorian@stblaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Lori Lesser
Filer's e-mail	llesser@stblaw.com, agregorian@stblaw.com
Signature	/s/ Lori Lesser
Date	08/27/2013
Attachments	Amended Notice of Opposition and Exhibits.pdf(2294029 bytes)

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

LIVINGSTON INTERNATIONAL INC.)	
Opposer,)	Opposition No.: 91212080
)	Serial No.: 85/635,363
v.)	Filing Date: May 25, 2012
)	Mark: LIVINGSTON
)	Int'l Class: 39
NEW LIVINGSTON, S.p.A.)	Published: February 19, 2013
Applicant.)	
)	

AMENDED NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314

Opposer Livingston International Inc. ("Opposer") is an Ontario corporation with its principal place of business located at 405 The West Mall, Suite 400, Toronto, Ontario M9C 5K7.

Opposer believes that it will be damaged by the registration of the stylized mark LIVINGSTON (Ser. No. 85/635,363) and hereby opposes grant of the registration.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is the owner of the mark LIVINGSTON ("Opposer's Mark"), as a word mark, stylized mark and logo.
2. Opposer has used Opposer's Mark extensively and continuously in commerce in the United States, from at least as early as 1993, generating strong common-law rights in such mark.

3. As the owner of Opposer's Mark, Opposer has standing under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), to bring this Notice of Opposition.

4. On May 25, 2012, New Livingston, S.p.A. ("Applicant") filed an intent-to-use application with the United States Patent and Trademark Office ("PTO") to register the mark LIVINGSTON (Ser. No. 85/635,363) in International Class 39 for use in connection with "[t]ransport of persons and goods by air; packaging and storage of goods; travel arrangement, namely, services for arranging transportation by air" ("Applicant's Mark"). A printout of this application from the PTO's official website located at www.uspto.gov is attached hereto as Exhibit A.

5. On February 19, 2013, Applicant's trademark application was published for opposition in the Official Gazette. Opposer filed a 90 day request for extension of time to oppose on March 20, 2013. Opposer subsequently contacted Applicant, and both parties have attempted and are attempting in good faith to negotiate an amicable settlement of the dispute underlying this Opposition. Pending such negotiations, Opposer filed an additional 60 day request for extension of time to oppose with the consent of Applicant on June 13, 2013, which was granted by the PTO.

6. Opposer offers in U.S. commerce, among other services, customs brokerage, trade compliance, international trade consulting and global trade management services, and international freight forwarding services.

7. According to its application, Applicant intends to register Applicant's Mark for use in connection with similar services. According to Applicant's website at www.livingstonair.it, Applicant "operates national, international and intercontinental flights mainly from its base at the airport of Milan Malpensa". See Exhibit B.

8. The registration and/or use by Applicant of the Applicant's Mark in connection with the aggregate of goods and services described in Applicant's application is likely to cause substantial confusion in the minds of the public, who may mistakenly believe that Opposer is affiliated with Applicant, or endorses or sponsors Applicant's services, or is sponsored or endorsed by Applicant, in each case, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

9. For the foregoing reasons, Opposer will be damaged by the grant of registration of Applicant's Mark, and pursuant to 15 U.S.C. § 1052(d), the application to register Applicant's Mark should be denied.

WHEREFORE, Opposer requests that this Amended Notice of Opposition be sustained and that Applicant be denied registration of the application to register the mark LIVINGSTON (Ser. No. 85/635,363).

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By: /s/ Lori E. Lesser
Lori E. Lesser
Alexis D. Gregorian
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New York, New York 10017
212-455-2000 (telephone)
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Attorneys for Opposer

Dated: August 27, 2013

Exhibit A



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

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LIVINGSTON

Word Mark	LIVINGSTON
Goods and Services	IC 039. US 100 105. G & S: Transport of persons and goods by air; packaging and storage of goods; travel arrangement, namely, services for arranging transportation by air
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.15.09 - Gulls; Pelicans; Seabirds 03.15.24 - Stylized birds and bats
Serial Number	85635363
Filing Date	May 25, 2012
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	February 19, 2013
Owner	(APPLICANT) New Livingston S.p.a. CORPORATION ITALY Via Giovanni XXIII, 206 Cardano Al Campo (VA) ITALY 21010
Attorney of Record	Jeffrey B. Sladkus, Esq.
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the word "LIVINGSTON" in a stylized font below a drawing of a seagull.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Exhibit B

OUR FLIGHTS
destinations and fleet

D.I.Y. HOLIDAYS
personalize your flight

TRAVEL INFORMED
how to travel

GET TO KNOW US
the way we fly

BRAND ON-BOARD
advertisement and partners



LIVINGSTON
COMPAGNIA AEREA

[\(/en.aspx\)](#)

Get to know us > Who we are

WHO WE ARE



CONTACTS

NEW LIVINGSTON SPA

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21010 Cardano al Campo (VA)
Aeroporto di Milano Malpensa - Italia

Tel: (work) +39.0331.267321
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Fax: (fax) +39.0331.267421
(+39.0331.267421)



[WHO WE ARE](#) [NEW LIVINGSTON](#) [CUSTOMER EXPERIENCE](#) [OUR HISTORY](#)

Livingston is the new Italian airline privately owned by Riccardo Toto.

Livingston operates national, international and intercontinental flights mainly from its base at the airport of Milan Malpensa.

The business model is extremely innovative and unique due to its tailor made service, its new fleet and its strong partnership with tour operators and travel agencies.

The network proposes:

- Connections for leisure travel;
- Connections for scheduled flight;
- Connections for religious and pilgrim travel.

Livingston blends the typical characteristics of an efficient charter carrier with a corporate jet one, able to offer a service of the highest level of courtesy and reliability.

Livingston's mission is to be at the service of its customers, personnel and shareholders.

Our flights
Where we fly [\(/en/Vola con noi/Dove Voliamo.aspx\)](#)
Our fleet [\(/en/Vola con noi/La nostra flotta.aspx\)](#)

D.I.Y. Holidays
Fast Track [\(/en/Viaggia su misura/Fast Track.aspx\)](#)
Parking [\(/en/Viaggia su misura/Parcheggio.aspx\)](#)

Travel informed
Before the flight [\(/en/Viaggia informato/Prima del volo.aspx\)](#)

Get to know us
Who we are [\(/en/Conosci Livingston/Chi siamo.aspx\)](#)

Brand on-board
Our partners [\(/en/Brand in volo/i nostri partner.aspx\)](#)

Contact us
[\(/en/Contatti/Contattaci.aspx\)](#)
Work with us
[\(/en/Contatti/Lavora con noi.aspx\)](#)

How and where to buy
(/en/Vola con noi/Scopri
come e dove
acquistare.aspx)
SPECIAL OFFERS (/en/Vola
con noi/LivingFun.aspx)

Buy your Menu
(/en/Viaggia su
misura/Pasti new.aspx)
Comfort Seat (/en/Viaggia
su misura/Posti
Comfort.aspx)
Vip Lounge (/en/Viaggia su
misura/Sala Vip.aspx)

On board (/en/Viaggia
informato/A bordo.aspx)
After the fly (/en/Viaggia
informato/Dopo il
volo.aspx)

Our services (/en/Conosci
Livingston/I nostri
servizi.aspx)
Our certifications
(/en/Conosci
Livingston/Certificazioni.aspx)
Press room (/en/Conosci
Livingston/Sala
Stampa.aspx)

Advertise on our flights
(/en/Brand in volo/Fai
pubblicita con noi.aspx)
Magazine (/en/Brand in
volo/Magazine.aspx)

Information on Privacy
(/en/Contatti/Privacy
Policy.aspx)
Contact our Press Office
(/en/Contatti/Contattaci
PressOffice.aspx)
Terms for Website
(/en/Contatti/Termini e
condizioni del sito.aspx)
Terms for Menus
(/en/Contatti/Condizioni di
vendita dei menu.aspx)
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Organizzazione Gestione
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Opposer believes that it will be damaged by the registration of the stylized mark

LIVINGSTON (Ser. No. 85/635,363) and hereby opposes grant of the registration. ¶

Deleted: Opposer submits the required fee of \$300 along with this Notice of Opposition.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is the owner of the mark LIVINGSTON ("Opposer's Mark"), as a word mark, stylized mark and logo.

Deleted: exclusive licensee

2. Opposer has used Opposer's Mark extensively and continuously in commerce in the United States, from at least as early as 1993, generating strong common-law rights in such mark.

Deleted: , pursuant to a written license agreement with the current owner of this trademark, United Parcel Service of America, Inc. ("UPS"). Opposer is the imminent successor in interest in Opposer's Mark and will promptly inform the United States Patent and Trademark Office ("PTO") of ownership of Opposer's Mark.

Deleted: UPS (and/or

Deleted: in its capacity as exclusive licensee) have

Deleted: ¶

3. As the owner of Opposer's Mark, Opposer has standing under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), to bring this Notice of Opposition,

Deleted: based upon its exclusive license to Opposer's Mark

4. On May 25, 2012, New Livingston, S.p.A. ("Applicant") filed an intent-to-use application with the United States Patent and Trademark Office ("PTO") to register the mark LIVINGSTON (Ser. No. 85/635,363) in International Class 39 for use in connection with "[t]ransport of persons and goods by air; packaging and storage of goods; travel arrangement, namely, services for arranging transportation by air" ("Applicant's Mark"). A printout of this application from the PTO's official website located at www.uspto.gov is attached hereto as Exhibit A.

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8. The registration and/or use by Applicant of the Applicant's Mark in connection with the aggregate of goods and services described in Applicant's application is likely to cause substantial confusion in the minds of the public, who may mistakenly believe that Opposer is affiliated with Applicant, or endorses or sponsors Applicant's services, or is sponsored or endorsed by Applicant, in each case, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

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LIVINGSTON (Ser. No. 85/635,363).

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By: /s/ Lori E. Lesser

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Attorneys for Opposer

Dated: August 27, 2013

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NEW LIVINGSTON, S.p.A.)	Published: February 19, 2013
Applicant.)	
)	

CERTIFICATE OF SERVICE

I, Alexis Gregorian, hereby certify that a true and complete copy of the foregoing Amended Notice of Opposition has been served on Jeffrey Sladkus, attorney for Applicant, by mailing said copy on August 27, 2013 via Federal Express to:

Jeffrey B. Sladkus, Esq.
The Sladkus Law Group
1827 Powers Ferry Road
Building 6, Suite 200
Atlanta, Georgia 30339

SIMPSON THACHER & BARTLETT LLP

By: 
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425 Lexington Avenue
New York, New York 10017
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Attorney for Opposer