

ESTTA Tracking number: **ESTTA593719**

Filing date: **03/20/2014**

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

Proceeding	91214863
Party	Defendant Doctor's Affiliates, Inc., Kenneth Kopp
Correspondence Address	DOCTOR'S AFFILIATES, INC. 300 SHEFWOOD DR EASLEY, SC 29642-3328 allprointernet@gmail.com
Submission	Answer
Filer's Name	Eric J. von Vorys
Filer's e-mail	evonvorys@shulmanrogers.com
Signature	/EricJvonVorys/
Date	03/20/2014
Attachments	Answer 3-20-14.PDF(2902929 bytes)

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

In the Matter of Application Serial No. 86/003425
For the Mark: AG EDWARDS
Filed: July 5, 2013
Date of Publication: October 29, 2013

WELLS FARGO & COMPANY and
WELLS FARGO ADVISORS LLC,

Opposers,

v.

DOCTOR'S AFFILIATES, INC. and
KENNETH KOPP,

Applicants.

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Opposition No. 91/214863

ANSWER OF APPLICANTS TO NOTICE OF OPPOSITION

In response to the *Notice of Opposition* ("Notice") filed by WELLS FARGO & COMPANY and WELLS FARGO ADVISORS LLC (hereinafter collectively "Opposers") DOCTOR'S AFFILIATES, INC. and KENNETH KOPP (hereinafter collectively "Applicants") respond to the averments in the correspondingly-numbered paragraphs contained in the Notice as follows:

BASIS OF OPPOSITION

1. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
2. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

4. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

5. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

6. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

7. With respect to the first sentence in Paragraph 7, Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied. With respect to the second sentence in Paragraph 7, Applicants deny the truth of the matter asserted.

8. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

9. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

10. Applicants deny the truth of the matters asserted.

11. Applicants admit the truth of the matter asserted.

12. Applicants deny the truth of the matters asserted in Paragraph 12 because Opposers do not own any current, legitimate trademark rights in the AG EDWARDS mark.

13. Applicants deny the truth of the matters asserted.

14. Applicants deny the truth of the matters asserted in Paragraph 14 because Opposers do not own any current, legitimate trademark rights in the AG EDWARDS mark.

15. Applicants deny the truth of all the matters asserted. Specifically, Applicants deny that Opposers are offering any current, legitimate services in connection with the AG EDWARDS mark and Applicants vehemently deny that they are attempting to capitalize on any existing goodwill of Opposers. Opposers have no existing goodwill in the AG EDWARDS mark.

16. Applicants deny the truth of the matters asserted.

17. The allegations contained in paragraph 17 of the Notice are conclusions of law to which no response is required; to the extent that they are deemed allegations of fact, they are denied.

18. Applicants admit the truth of the matter asserted.

19. Applicants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

20. With respect to sub-clause (a), Applicants deny that Opposers own any current, legitimate trademark rights in the AG EDWARDS mark. With respect to sub-clause (b) Applicants deny that Opposers own a famous mark for AG EDWARDS as used in legitimate United States commerce in connection with any services. With respect to sub-clause (c) Applicants admit the truth of the matter asserted. The remaining allegations contained in paragraph 20 of the Notice are conclusions of law to which no response is required; to the extent that they are deemed allegations of fact, they are denied.

21. Applicants deny the truth of the matters asserted.

22. With respect to Opposers' allegation that Opposer would be injured by a grant of the registration rights to Applicants, Applicants deny the truth of the matter asserted. The remaining allegations contained in paragraph 20 of the Notice are conclusions of law to which no response is required; to the extent that they are deemed allegations of fact, they are denied.

AFFIRMATIVE PLEADINGS

1. On information and knowledge, Opposers abandoned all rights in the AG EDWARDS mark without any intention to resume use on or before 2008.

2. On information and knowledge, Opposers are inappropriately basing the current opposition on two cancelled trademark registrations: (i) Reg. No. 3149480  EDWARDS that cancelled on May 3, 2013 and (ii) Reg. No. 3086277  EDWARDS that cancelled on November 30, 2012. In both cases, the registrants did not timely file acceptable declarations under Section 8 of the Trademark Act, 15 U.S.C. § 1058(b), as shown by the records at the USPTO. Applicants herewith submit status copies of the above-referenced registrations showing that they both have cancelled as Exhibit A.

3. On information and knowledge, there is no evidence that after 2008, Opposers actively and continually promoted, advertised or provided any services under the AG EDWARDS mark such that the goodwill generated thereby would inure to Opposers' benefit.

4. On information and knowledge, there is no evidence that Opposers are currently, actively promoting, advertising or providing any services under the AG EDWARDS mark such that the goodwill generated thereby would inure to Opposers' benefit.

5. Opposers' Notice is completely devoid of any factual allegation that Opposers *currently* own rights in the AG EDWARDS mark, because on information and knowledge, Opposers do not currently use, and have not used for over five years, the AG EDWARDS mark covering any services in interstate commerce.

6. On information and knowledge, Opposers have not re-filed any federal trademark application for the AG EDWARDS mark because Opposers have not used said mark since 2008, and currently do not use, said mark in interstate commerce in connection with any services.

7. On information and knowledge, Opposers' use of the AG EDWARDS mark was not famous as that term is defined by 15 U.S.C. § 1125(c) (2) (A).

8. Contrary to its pleading, Opposers cannot show any actual confusion (more than *de minimus*) resulting from Applicants' use of the AG EDWARDS mark.

9. Applicants started using the AG EDWARDS mark in legitimate interstate commerce more than five years after Opposers abandoned their rights in the AG EDWARDS mark.

10. On information and knowledge, the residual goodwill associated with the AG EDWARDS mark (if any) inured to A. G. Edwards & Sons, Inc., not Opposers, who purchased said mark from Wachovia, but never used it in connection with any services in legitimate interstate commerce.

11. On information and knowledge, any residual goodwill associated with the AG EDWARDS name dissipated years ago.

12. As Opposers abandoned their rights in the AG EDWARDS mark on or before 2008 and the residual goodwill (if any) dissipated years ago, no potential consumer would believe that Applicants' AG EDWARDS mark used in connection with its real estate services was likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicants' services with Opposers' services, or as to the origin, sponsorship, or approval of Applicants' services, or commercial activities by Opposers.

13. Consequently, no consumer is likely to be confused by the marks or any alleged false association and Opposers cannot be damaged by the instant application registering.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Opposers do not have standing to bring the instant action. Opposers do not have any rights in the AG EDWARDS mark because they abandoned any rights they may have had therein on or before 2008. For Opposers to have standing to file the instant opposition, Opposers must have a "real interest" in the proceeding. To plead a "real interest," Opposers must allege a "direct and personal

stake” in the outcome of the proceeding. On information and knowledge, Opposers do not have a “real interest” because they do not own any current, legitimate trademark rights in the AG EDWARDS mark and the residual goodwill (if any) in the mark dissipated years ago.

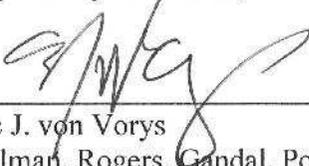
Second Affirmative Defense

Opposer’s claims are barred by the doctrine of unclean hands. On information and knowledge, Opposers abandoned all rights in the AG EDWARDS mark without any intention to resume use on or before 2008. Opposers do not own any current, legitimate trademark rights in the AG EDWARDS mark and the residual goodwill (if any) in the mark dissipated years ago. Opposers filed the instant opposition for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of Applicants’ trademark application.

WHEREFORE, the Applicants, Doctor’s Affiliates, Inc. and Kenneth Kopp pray Opposition No. 91/214863 be dismissed.

March 20, 2014

Respectfully submitted,

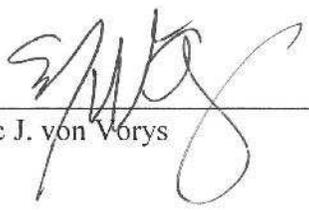
By: 
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*Attorneys for Applicants, Doctor’s Affiliates, Inc.
and Kenneth Kopp*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2014, a copy of the foregoing *Answer of Applicants to Notice of Opposition* was mailed via first class mail, postage prepaid, to:

Felicia J. Boyd, Esquire
Barnes & Thornburg LLP
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402



Eric J. von Vorys

EXHIBIT A



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Word Mark AG EDWARDS

Goods and Services (CANCELLED) IC 036. US 100 101 102. G & S: Financial services, namely, financial consultation, financial investment services in the field of securities, annuities, bonds, certificates of deposit, defined portfolios, futures, commodities, insurance, mutual funds, stocks, options, and other securities, and financial brokerage services in the nature of mutual fund, security, and stock brokerage services. FIRST USE: 20030923. FIRST USE IN COMMERCE: 20040228

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.15.13 - Ripple (single wave); Waves, single

Serial Number 78365390

Filing Date February 10, 2004

Current Basis 1A

Original Filing Basis 1B

Published for Opposition October 4, 2005

Registration Number 3149480

Registration Date September 26, 2006

Owner (REGISTRANT) A. G. Edwards & Sons, Inc. CORPORATION DELAWARE One North Jefferson Ave. St. Louis MISSOURI 63103

(LAST LISTED OWNER) WELLS FARGO ADVISORS, LLC LIMITED LIABILITY COMPANY DELAWARE 1 NORTH JEFFERSON AVE. ST. LOUIS MISSOURI 63103

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Felicia J. Boyd

Type of Mark SERVICE MARK

Register PRINCIPAL

Other Data The name AG EDWARDS does not identify a particular living individual.

Live/Dead Indicator DEAD

Cancellation Date May 3, 2013

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Generated on: This page was generated by TSDR on 2014-03-20 15:38:52 EDT**Mark:** AG EDWARDS**EDWARDS****US Serial Number:** 78365390**Application Filing Date:** Feb. 10, 2004**US Registration Number:** 3149480**Registration Date:** Sep. 26, 2004**Register:** Principal**Mark Type:** Service Mark**Status:** Registration cancelled because registrant did not file an acceptable declaration under Section 8 click on the Trademark Document Retrieval link at the top of this page.**Status Date:** May 03, 2013**Publication Date:** Oct. 04, 2005**Notice of Allowance Date:** Dec. 27, 2004**Date Cancelled:** May 03, 2013

Mark Information

Mark Literal Elements: AG EDWARDS**Standard Character Claim:** No**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)**Design Search Code(s):** 01.15.13 - Waves, single; Ripple (single wave)**Name Portrait Consent:** The name AG EDWARDS does not identify a particular living individual.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Financial services, namely, financial consultation, financial investment services in the field of se of deposit, defined portfolios, futures, commodities, insurance, mutual funds, stocks, options, ar brokerage services in the nature of mutual fund, security, and stock brokerage services

International Class(es): 036 - Primary Class**U.S Class(es):** 100, 101, 102**Class Status:** SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Sep. 23, 2003

Use in Commerce: Feb. 28, 2003

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: WELLS FARGO ADVISORS, LLC

Owner Address: 1 NORTH JEFFERSON AVE.
ST. LOUIS, MISSOURI 63103
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information**Attorney of Record**

Attorney Name: Felicia J. Boyd

Attorney Primary Email WellsFargoFilings@btlaw.com

Attorney Email Authorized: Yes

Address:

Correspondent

Correspondent Name/Address: Felicia J. Boyd

Barnes & Thornburg LLP
225 South Sixth Street, Suite 2800
Minneapolis, MINNESOTA 55402
UNITED STATES

Phone: 612-367-8729

Fax: 612-333-679

Correspondent e-mail: WellsFargoFilings@btlaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 03, 2013		

CANCELLED SEC. 8 (6-YR)

Jan. 05, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Aug. 24, 2010	ATTORNEY REVOKED AND/OR APPOINTED	
Aug. 24, 2010	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Mar. 06, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 06, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 25, 2009	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 14, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Aug. 27, 2008	ATTORNEY REVOKED AND/OR APPOINTED	
Aug. 27, 2008	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
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Aug. 04, 2006	ASSIGNED TO LIE	67287
Jul. 31, 2006	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jun. 03, 2006	STATEMENT OF USE PROCESSING COMPLETE	65362
May 23, 2006	USE AMENDMENT FILED	65362
May 23, 2006	TEAS STATEMENT OF USE RECEIVED	
Dec. 27, 2005	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 04, 2005	PUBLISHED FOR OPPOSITION	
Sep. 14, 2005	NOTICE OF PUBLICATION	
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Jun. 06, 2005	TEAS/EMAIL CORRESPONDENCE ENTERED	76539
May 20, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	76539
May 20, 2005	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 12, 2005	FINAL REFUSAL E-MAILED	
May 12, 2005	FINAL REFUSAL WRITTEN	76147
Mar. 24, 2005	AMENDMENT FROM APPLICANT ENTERED	76539
Mar. 07, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	76539
Mar. 07, 2005	PAPER RECEIVED	
Sep. 06, 2004	NON-FINAL ACTION E-MAILED	6325
Sep. 01, 2004	ASSIGNED TO EXAMINER	76147
Feb. 23, 2004	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 17, 2001

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Word Mark AG EDWARDS

Goods and Services (CANCELLED) IC 036. US 100 101 102. G & S: Financial services, namely, financial consultation, financial investment services in the field of securities, annuities, bonds, certificates of deposit, defined portfolios, futures, commodities, insurance, mutual funds, stocks, options, and other securities, and financial brokerage services in the nature of mutual fund, security, and stock brokerage services. FIRST USE: 20030923. FIRST USE IN COMMERCE: 20040228

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.15.13 - Ripple (single wave); Waves, single

Serial Number 78365388

Filing Date February 10, 2004

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 30, 2005

Registration Number 3086277

Registration Date April 25, 2006

Owner (REGISTRANT) A. G. Edwards & Sons, Inc. CORPORATION DELAWARE One North Jefferson Ave. St. Louis MISSOURI 63103

(LAST LISTED OWNER) WELLS FARGO ADVISORS, LLC LIMITED LIABILITY COMPANY DELAWARE 1 NORTH JEFFERSON AVE. ST. LOUIS MISSOURI 63103

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Felicia J. Boyd

Prior Registrations 2238102;2696171

Description of Mark The mark consists of the literal element AG EDWARDS and a design element with the letters A and G integrated into a stylized representation of a wing and flame.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date November 30, 2012

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STATUS DOCUMENTS

[Back to Search](#)[Print](#)**Generated on:** This page was generated by TSDR on 2014-03-20 15:44:06 EDT**Mark:** AG EDWARDS**US Serial Number:** 78365388**Application Filing Date:** Feb. 10, 2006**US Registration Number:** 3086277**Registration Date:** Apr. 25, 2006**Register:** Principal**Mark Type:** Service Mark**Status:** Registration cancelled because registrant did not file an acceptable declaration under Section 8 click on the Trademark Document Retrieval link at the top of this page.**Status Date:** Nov. 30, 2012**Publication Date:** Aug. 30, 2005**Notice of Allowance Date:** Nov. 22, 2006**Date Cancelled:** Nov. 30, 2012

Mark Information

Mark Literal Elements: AG EDWARDS**Standard Character Claim:** No**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)**Description of Mark:** The mark consists of the literal element AG EDWARDS and a design element with the letters A and G representing a representation of a wing and flame.**Design Search Code(s):** 01.15.13 - Waves, single; Ripple (single wave)

Related Properties Information

Claimed Ownership of US [2238102](#), [2696171](#)**Registrations:**

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Financial services, namely, financial consultation, financial investment services in the field of securities, mutual funds, defined portfolios, futures, commodities, insurance, mutual funds, stocks, options, and brokerage services in the nature of mutual fund, security, and stock brokerage services

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 10:

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Sep. 23, 2003

Use in Commerce: Feb. 28, 200.

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: WELLS FARGO ADVISORS, LLC

Owner Address: 1 NORTH JEFFERSON AVE.
ST. LOUIS, MISSOURI 63103
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information**Attorney of Record**

Attorney Name: Felicia J. Boyd

Attorney Primary Email WellsFargoFilings@btlaw.com

Attorney Email Authorized: Yes

Address:

Correspondent

Correspondent Name/Address: Felicia J. Boyd

Barnes & Thornburg LLP
225 South Sixth Street, Suite 2800
Minneapolis, MINNESOTA 55402
UNITED STATES

Phone: 612-367-8729

Fax: 612-333-679

Correspondent e-mail: WellsFargoFilings@btlaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

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Sep. 03, 2004	NON-FINAL ACTION WRITTEN	76081
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TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

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