

ESTTA Tracking number: **ESTTA611868**

Filing date: **06/24/2014**

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	Pionetechs, Inc.		
Entity	Corporation	Citizenship	Florida
Address	1814 N.E. Miami Gardens Drive Suite 400 North Miami Beach, FL 33179 UNITED STATES		

Attorney information	Daniel S. Polley Daniel S. Polley, P.A. 7251 West Palmetto Park Road Suite 202 Boca Raton, FL 33433 UNITED STATES dan@danpolley.com Phone:561-347-5955		
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Applicant Information

Application No	85817418	Publication date	06/17/2014
Opposition Filing Date	06/24/2014	Opposition Period Ends	07/17/2014
Applicant	Go Swiftly, LLC 18980 Embers Avenue Farmington, MN 55024 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer software applications for mobile phones, point of sale systems, handheld devices, portable media players for electronic ordering systems, payment transactions, database management, electronic storage of data, email communications, and for delivery of content-specific advertising

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. Application No.	86078277	Application Date	09/30/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WAITLESS		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 042. First use: First Use: 2009/10/31 First Use In Commerce: 2009/10/31 Application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web site for use by others for managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; providing a web site featuring temporary use of non-downloadable software for managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Software as a service (SAAS) services, namely, hosting software for use by others for use in managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Internet based virtual wait-management tool; System for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; sms messaging internet based system for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations</p>

U.S. Application No.	86078514	Application Date	09/30/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WAITLESS		
Design Mark			
Description of Mark	The mark consists of the wording "WaitLess" partially superimposed over a clock with the capital letter "L" forming the hour and minute hands of the clock.		
Goods/Services	<p>Class 042. First use: First Use: 2009/10/31 First Use In Commerce: 2009/10/31 Application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web site for use by others for managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; providing a web site featuring temporary use of non-downloadable software for man-</p>		

	aging customer wait lines and experiences at bars,restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Software as a service (SAAS) services, namely, hosting software for use by others for usein managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Internet based virtual wait-management tool; System for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; sms messaging internet based system for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service providerlocations
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Related Proceedings	Cancellation Proceeding filed June 23, 2014 against U.S. Registration No. 4,407,657. Cancellation No. not assigned at the time of filing this Notice of Opposition.
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Attachments	86078277#TMSN.jpeg(bytes) 86078514#TMSN.jpeg(bytes) Notice of Opposition.pdf(16379 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	/Daniel S. Polley/
Name	Daniel S. Polley
Date	06/24/2014

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

In the Matter Trademark Application Serial No. 85817418
For the Mark: IWAITLESS
Filing Date: January 7, 2013

PIONETECHS, INC.,

Opposer,

vs.

**GO SWIFTLY, LLC, a Minnesota Limited
Liability Company,**

Applicant.

NOTICE OF OPPOSITION

Opposer is Pionetechs, Inc., a Florida Corporation, having a business address of 1814 N.E. Miami Gardens Drive, Suite 400, North Miami Beach, Florida 33179 (hereinafter referred to as “Opposer”). To the best of Opposer’s knowledge, Applicant is Go Swiftly, LLC, a Minnesota Limited Liability Company, having a listed address of 18980 Embers Avenue, Farmington, Minnesota 55024. Opposer believes another address for Applicant may be 1239 Highland Parkway, St. Paul, Minnesota 55116. The above-mentioned Opposer believes that it has and will be damaged by Applicant’s pending application - U.S. Application No. 85817418 (“the ‘418 Application”) for the mark IWAITLESS and hereby opposes registration or allowance of the ‘418 Application by the United States Patent and Trademark Office.

The grounds for the cancellation are as follows:

1. Opposer is the senior user and owner of the mark WAITLESS used generally in connection with software systems and services for managing customer wait lines such as, but not limited to, wait lines at bar and restaurants. (collectively referred to as “Opposer’s Goods and Services”).

2. Opposer has been using the WAITLESS mark in commerce in the United States in connection with Opposer’s Goods and Services since at least as early as October 31, 2009.

3. On November 30, 2006, Opposer applied to register its WAITLESS word mark and WAITLESS logo mark on the Principal Trademark Register for use on or in connection with Opposer's Goods and Services in Class 42, with the actual description in both applications being described as:

“Application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web site for use by others for managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; providing a web site featuring temporary use of non-downloadable software for managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Software as a service (SAAS) services, namely, hosting software for use by others for use in managing customer wait lines and experiences at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; Internet based virtual wait-management tool; System for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations; sms messaging internet based system for managing lines at bars, restaurants, hospitality, gaming, amusement park facilities and other third party service provider locations”.

4. Opposer's above-identified WAITLESS word mark was assigned Serial No. 86/078,277 (“the ‘277 Application’”) by the United States Patent and Trademark Office (“PTO”) and Opposer's above-identified WAITLESS logo mark was assigned Serial No. 86/078,514 (“the ‘514 Application’”) by the PTO (The WAITLESS word mark and the WAITLESS logo mark will be collectively referred to as the “WAITLESS marks”).

5. The ‘418 Application’ has been cited by the Examining Attorney reviewing Opposer's ‘277 Application and Opposer's ‘514 Application as a potential bar to the registration of Opposer's WAITLESS mark shown in Opposer's ‘277 Application and Opposer's WAITLESS logo mark shown in Opposer's ‘514 Application.

6. The filing date of the ‘418 Application is January 7, 2013.

7. The '418 Application is an intent to use application.
8. Opposer's date of first use of its WAITLESS marks predates and is prior to the Applicant's filing date.
9. Opposer has continuously used and continues to use its WAITLESS marks since its date of first use and date of first use in commerce.
10. Opposer has trademark/service mark priority as the senior user and owner of the WAITLESS marks for Opposer's Goods and Services.
11. In view of Opposer's superior rights to the WAITLESS marks if the '418 Application is permitted to remain active, Opposer will continue to suffer injury to itself and its trademark/service mark rights, including, but not limited to, the potential citation of the '418 Application in support of a refusal to allow registration of Opposer's WAITLESS marks reflected in the '277 Application and the '514 Application.
12. Opposer's common law rights to the WAITLESS marks were established before the filing date of the '418 Application.
13. Opposer's superior common law rights to the WAITLESS marks provide a basis for opposing the '418 Application.
14. Due to the substantial similarity between Opposer's WAITLESS marks and Applicant's IWAITLESS mark and the related nature of the parties' respective services and goods, consumers and purchasers are likely to believe, and would be justified in believing, that the Applicant's services originate from the Opposer or an entity in some way associated with the Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).
15. Applicant's IWAITLESS mark so resembles Opposer's WAITLESS marks as to be likely, when applied to the goods and services of Applicant, to cause confusion or mistake or to deceive consumers as to the source, sponsorship, endorsement, authorization or approval of Applicant's goods and services, thereby resulting in irreparable damage and detriment to Opposer and its reputation in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).
16. Continued pendency of Applicant's IWAITLESS mark would be a continued source of damage and injury to Opposer and a source of confusion to Opposer's customers or potential customers who rely upon the reputation of the Opposer,

the high quality of Opposer's goods and services as reflected by Opposer's WAITLESS marks and because consumers and potential consumers are likely to attribute the source or sponsorship of Applicant's goods listed in the '418 Application to Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

17. For the foregoing reasons, Applicant is not entitled to receive a registration or allowance of IWAITLESS mark and the '418 Application should be abandoned.

18. Opposer will be damaged by the allowance or registration of the mark in the '418 Application at issue, particularly since if the mark in the '418 Application is allowed to be registered, Applicant's IWAITLESS mark will block and prevent rightful registration of Opposer's WAITLESS marks in Opposer's above-noted applications.

19. For any of the above reasons, U.S. Application Serial No. 85817418 must be abandoned by the Trademark Trial and Appeal Board ("Board") of the United States Patent and Trademark Office.

WHEREFORE, Opposer will be harmed by the continued existence and allowance of U.S. Application Serial No. 85817418. Opposer requests that U.S. Application Serial No. 85817418 be deemed invalid and abandoned and that this Notice of Opposition be sustained in favor of Opposer on the merits, for all grounds identified in the Notice. Opposer also requests any other relief that the Board deems appropriate.

This Notice is being filed electronically and the required fee is being paid electronically on June 24, 2014.

Respectfully submitted.

Attorneys for Opposer

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CERTIFICATE OF SERVICE

I certify that this correspondence is being served on Applicant by depositing one copy thereof with the United States Postal Service as first class mail, postage prepaid, in an envelope to:

Go Swiftly, LLC
18980 Embers Avenue
Farmington, Minnesota 55024
and
1239 Highland Parkway
St. Paul, Minnesota 55116

Abiola Shobola, Esq. (Attorney of Record),
18980 Embers Avenue
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9757 Aleutian Street,
Las Vegas, Nevada 89178-3844

This 24th day of June 2014.

Attorneys for Opposer

/Daniel S. Polley/
Daniel S. Polley, Reg. No. 34,902
DANIEL S. POLLEY, P.A.