

ESTTA Tracking number: **ESTTA619917**

Filing date: **08/06/2014**

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	Ergowerx LLC
Granted to Date of previous extension	08/06/2014
Address	20 N. VanBrunt Street, Suite 11 Englewood, NJ 07631 UNITED STATES
Attorney information	Steven T. Shelton Cozen O'Connor 277 Park Avenue New York, NY 10172 UNITED STATES sshelton@cozen.com, eblum@cozen.com, tmdocketing@cozen.com Phone:212-297-2674

Applicant Information

Application No	85657752	Publication date	04/08/2014
Opposition Filing Date	08/06/2014	Opposition Period Ends	08/06/2014
Applicant	SMARTFISH GROUP, INCORPORATED Suite 6 MARLBOROUGH, MA 01752 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Print brokering and distribution, namely, purchasing printed materials on behalf of others and purchasing agencies in the field of printed matter; direct marketing services; marketing services; advertising services; providing marketing and marketing consulting services in the field of social media; business management services, namely, managing all stages of the production of marketing and advertising materials from creation of initial-concept through production of printed materials and web design; order fulfillment services</p>
<p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: graphic design services; web design services; digital asset management services, namely, providing temporary use of online, cloud-based, nondownloadable software that enables users to access, organize, and manage their digital files through an online web portal</p>

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.	3868731	Application Date	06/25/2009
Registration Date	10/26/2010	Foreign Priority Date	NONE
Word Mark	SMARTFISH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/05/04 First Use In Commerce: 2010/05/04 Computer peripherals, namely, mice		

U.S. Registration No.	4029250	Application Date	06/25/2009
Registration Date	09/20/2011	Foreign Priority Date	NONE
Word Mark	SMARTFISH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2011/01/05 First Use In Commerce: 2011/01/05 Computer peripherals, namely, keyboards		

Attachments	77980377#TMSN.png(bytes) 77768104#TMSN.png(bytes) SMARTFISH CREATIVE Notice of Opposition.pdf(25460 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	/Steven T. Shelton/
Name	Steven T. Shelton
Date	08/06/2014

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

Ergowerx LLC,

Opposer,

v.

Smartfish Group, Incorporated,

Applicant.

Mark: SMARTFISH CREATIVE

Application No.: 85-657,752

Opposition No.:

Ergowerx LLC (hereinafter “Opposer”), a limited liability company organized and existing under the laws of the state of New York, having a place of business at 20 North VanBrunt Street, Suite 11, Englewood NJ 07631, believes it will be damaged by registration of the mark SMARTFISH CREATIVE as shown in Application No. 85-657,752 owned by Smartfish Group, Incorporated, 257 Simirano Drive, Suite 6, Marlborough, MA 01752 (hereinafter “Applicant”), and hereby opposes the same.

The grounds for opposition are as follows:

1. Upon information and belief, Applicant is the owner of Application No. 85-657,752 for SMARTFISH CREATIVE for “print brokering and distribution, namely, purchasing printed materials on behalf of others and purchasing agencies in the field of printed matter; direct marketing services; marketing services; advertising services; providing marketing and marketing consulting services in the field of social media; business management services, namely, managing all stages of the production of marketing and advertising materials from creation of initial concept through production of printed materials and web design; order fulfillment services” in Class 35 and “graphic design services; web design services; digital asset management services, namely, providing temporary use of online, cloud-based, nondownloadable software that enables users to access, organize, and manage their digital files

through an online web portal” in Class 42.

2. Upon information and belief, Applicant filed Application No. 85-657,752 in the U.S. Patent and Trademark Office on June 21, 2012, relying on an intent to use the mark in commerce under Trademark Act Section 1(b).

3. Upon information and belief, Application No. 85-657,752 was published for opposition in the *Official Gazette* of the U.S. Patent and Trademark Office dated April 8, 2014.

4. Opposer has been granted an extension of time by the Trademark Trial and Appeal Board to file a Notice of Opposition against Application No. 85-657,752 up to and including August 6, 2014.

5. Opposer is the owner in the U.S. of the mark SMARTFISH for various products in Class 9.

6. Opposer is the owner of valid and subsisting U.S. Trademark Registration No. 3,868,731 for the word mark SMARTFISH for goods in Class 9 and Registration No. 4,029,250 for the word mark SMARTFISH for goods in Class 9.

7. Opposer has continuously used the SMARTFISH mark in interstate commerce since 2010, which is prior to the June 21, 2012 filing date of Application No. 85-657,752. Consequently, priority belongs to Opposer.

8. Through its use and promotion of the mark, Opposer’s SMARTFISH mark has become well recognized in the U.S. Opposer has invested significant money and effort in promoting Opposer’s goods sold under the SMARTFISH mark. Products sold by Opposer in association with Opposer’s SMARTFISH mark have been promoted and sold throughout the country. Opposer, by the aforesaid use of Opposer’s SMARTFISH mark, and by the promotional efforts in connection therewith, has built up valuable goodwill in its SMARTFISH mark.

9. Applicant’s SMARTFISH CREATIVE mark, as used with the services identified in Application No. 85-657,752, is confusingly similar to Opposer’s SMARTFISH mark as applied to the products of Opposer, and is likely to cause confusion, mistake, or deception

amongst the general and consuming public as to whether Applicant's services originate with Opposer, or are licensed, authorized or sponsored by Opposer, or are promoted with Opposer's approval.

10. By reason of the foregoing, Opposer will be damaged by Applicant's registration of the SMARTFISH CREATIVE mark.

WHEREFORE, Opposer respectfully requests that Applicant's Application No. 85-657,752 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

ERGOWERX LLC

Dated: August 6, 2014

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