

ESTTA Tracking number: **ESTTA620201**

Filing date: **08/07/2014**

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	Oxygen Cloud, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1600 Seaport Blvd. Ste. 310 Redwood City, CA 94063 UNITED STATES		

Correspondence information	Alex Teu General Counsel Oxygen Cloud, Inc. 1600 Seaport Blvd. Ste. 310 Redwood City, CA 94063 UNITED STATES alex.teu@oxygencloud.com Phone:650-241-6222
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Applicant Information

Application No	86086667	Publication date	07/15/2014
Opposition Filing Date	08/07/2014	Opposition Period Ends	08/14/2014
Applicants	Doe, Paul 44859 10th St West Lancaster, CA 93534 UNITED STATES Evans, Leah 44859 10th St West Lancaster, CA 93534 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 storage devices, namely, blank-flash drives

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.	4462911	Application Date	01/15/2010
Registration Date	01/07/2014	Foreign Priority Date	NONE

Word Mark	ODRIVE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2013/10/19 First Use In Commerce: 2013/10/19 Computer services, namely, providing on-line software tools in the nature of an application service provider, to share data, manipulate data, store data, retrieve and restore data, search and organize data, and manage data all under user control

U.S. Application No.	86192108	Application Date	02/12/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ODRIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Computer software for file and data transfers over the internet and across different platforms; computer software for storage, distribution, sharing and collaboration of data, information, documents, electronic files, videos, audio, images, and photos; computer software for management of corporate data, files, content and information; computer software for enhancing, facilitating, automating and creating file processing and workflow		

Attachments	77912657#TMSN.png(bytes) 86192108#TMSN.png(bytes) Notice of Opposition_odrive.pdf(1564282 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 Overnight Courier on this date.

Signature	/Alexander Teu/
Name	Alex Teu
Date	08/07/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer's Information

Name	Oxygen Cloud, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1600 Seaport Boulevard Suite 310 Redwood City, CA 94063 UNITED STATES		

Applicant Information

Application no.	86086667	Publication date	July 15, 2014
Opposition filing date	August 7, 2014	Opposition Period Ends	August 14, 2014
Applicant	Leah Evans 44859 10 th Street West Lancaster, CA 93534 UNITED STATES		

Application no.	86086667	Publication date	July 15, 2014
Opposition filing date	August 7, 2014	Opposition Period Ends	August 14, 2014
Applicant	Paul Doe 44859 10 th Street West Lancaster, CA 93534 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: computer storage.
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Grounds for Opposition

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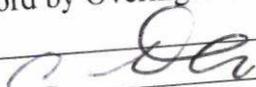
Marks Cited by Opposer as Basis for Opposition

U.S. Application no.	77912657	Application Date	1/15/2010
Registration date	1/7/2014	Foreign priority date	None
Word Mark	ODRIVE		
Description of Mark	Standard character mark		
Goods/Services	Class 042. First use: January 2010. First use in Commerce: October 2013 Provider of computer services to users for storing, sharing and retrieving data.		

U.S. Application no.	86192108	Application Date	2/12/2014
Registration date	None	Foreign priority date	None
Published for Opposition date	7/8/2014	Opposition filed?	No
Word Mark	ODRIVE		
Description of Mark	Standard character mark		
Goods/Services	Class 009. First use: January 2010. First use in Commerce: October 2013 Computer software for storing, distributing and sharing data over the internet and across different platforms.		

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Signature	
Name	C. Alexander Teu
Date	08/7/2014

for opposition on October 12, 2010. It received no opposition. The mark ODRIVE was registered on January 7, 2014.

6. Opposer filed for registration of ODRIVE on February 12, 2014, in U.S. trademark application Serial No. 86192108 (Class 009). The application was published on July 8, 2014. On information and belief, there has not been any Notice of Opposition filed against application Serial No. 86192108.

7. Applicant filed to register the proposed mark ODRIVE, Serial Number 86086667, for "Computer storage devices, namely, blank flash drives," on October 9, 2013, claiming a bona fide intent to use the mark in commerce, as is evidenced by publication of said mark in the Official Gazette in the July 15, 2014 issue ("Applicant's Mark").

8. Opposer's use of Opposer's Marks has been valid and continuous since at least January of 2010 and has not been abandoned. Opposer is also the owner of the URL: odrive.com and "odrive" Twitter handle. Opposer's Marks are symbolic of extensive good will and consumer recognition. As a result of the substantial amounts of time and effort in advertising and promotion, Opposers have developed an exceedingly valuable goodwill in respect to Opposer's Marks.

9. Applicant's Mark and Opposer's Marks are identical or very similar in sound, appearance and meaning.

10. Applicant's services and Opposer's services are very similar and related.

11. Applicant's services and Opposer's services are likely to be marketed and sold together.

12. On information and belief, Opposer alleges that the services of Opposer

and Applicant are offered or to be offered in similar channels of commerce and offered to similar customers.

13. Applicant's use of and application to register ODRIVE is without the consent or permission of Opposer.

14. Applicant's Mark and Opposer's Marks are likely to be confused.

15. Opposer's first use of Opposer's Marks precedes Applicant's first use of Applicant's Mark in commerce.

16. Opposer's first use of Opposer's Marks precedes the filing of Applicant's application to register Applicant's Mark in the United States Patent and Trademark Office.

17. Opposer's application of Opposer's Mark (Serial No. 77912657) precedes Applicant's first use of Applicant's Mark in commerce.

16. Opposer's application of Opposer's Mark (Serial No. 77912657) precedes the filing of Applicant's application to register Applicant's Mark in the United States Patent and Trademark Office.

22. As a result of confusing similarity between Opposer's Marks and Applicant's Mark and because the goods and/or services of Applicant and Opposer are very similar, are in similar channels of commerce, and are directed to similar customers, registration of the proposed mark ODRIVE in connection with Applicant's services is likely to deceive purchasers as to the source or sponsorship of such services, to cause confusion, to cause mistake, or to deceive.

23. Consumers familiar with the Opposer's Marks are likely to mistakenly believe that Applicant's services are sponsored, authorized, associated with or otherwise

approved by Opposer because the proposed mark is identical or closely resembles Opposer's Marks. Deficiencies or faults in the quality of Applicant's services are likely to reflect negatively upon, tarnish and seriously injure the reputation which Opposer has established for services provided under Opposer's Marks. This confusion is likely to result in loss of revenues to Opposer and damage Opposer's reputation.

24. Applicant's use of the Applicant's Mark does or is likely to falsely suggest a relationship between Applicant's services and Opposer's. Such use of the mark ODRIVE is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's services. Such use is likely to cause a significant level of sales by Applicant to consumers who would be confused by the use of the proposed mark into believing that Opposer is the source of Applicant's services, resulting in ill-gotten gains by Applicant. Applicant's use of the proposed mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

25. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of the Lanham Act, and Opposer would be damaged thereby.

WHEREFORE, Opposer prays that the application for registration of the mark ODRIVE, Serial No. 86086667, be refused and that this Opposition be sustained in favor of Opposer.

The fee required by Sect. 2.6(a) is enclosed herewith.

Respectfully submitted by Opposer,

By: _____



Dated: August 7 2014

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