

ESTTA Tracking number: **ESTTA634293**

Filing date: **10/21/2014**

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	TankSoft LLC		
Entity	Limited Liability Company	Citizenship	Texas
Address	8 Hendon Lane San Antonio, TX 78257 UNITED STATES		

Attorney information	Nathan G. Roach RAM Law Firm PLLC 110 E. Houston St., Floor 7 San Antonio, TX 78205 UNITED STATES nathan@nathanroach.com,nathan@ramattorneys.com,admin@ramattorneys.com Phone:210-745-5834
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### Applicant Information

Application No	76714737	Publication date	09/23/2014
Opposition Filing Date	10/21/2014	Opposition Period Ends	10/23/2014
Applicant	EVERMARKET, INC. 6237 GLORIA ST CHINO, CA 91710 UNITED STATES		

### Goods/Services Affected by Opposition

Class 003. First Use: 2012/05/01 First Use In Commerce: 2012/05/01 All goods and services in the class are opposed, namely: Cosmetics; Eyeshadow, Concealer; Blusher; makeup puff; eyeliner pencil; Lipstick; soaps, Perfumery; nail products, namely, nail polish, artificial nails, nail tips, and nail art items, namely, nail glitter, stickers and adhesive plastic jewels for nails; nail care preparations; nail art brushes
Class 009. First Use: 2012/05/01 First Use In Commerce: 2012/05/01 All goods and services in the class are opposed, namely: Cellular telephone apparatuses; Cellular telephone USB apparatuses, namely, hardware, cables and hubs; Blank USB flash drives; Digital cameras; Digital video cameras; headphones; Fitted plastic films known as skins for covering and providing a scratch proof barrier or protection for electronic devices, namely, MP3 players, mobile telephones, smart telephones, digital cameras, global positioning systems and personal digital assistants; Fitted plastic films known as skins for covering and providing a scratch proof barrier or protection for electronic devices' screens, namely, portable computers, tablet computers, MP3 players, e-readers, mobile telephones, smart telephones, digital cameras, global positioning systems, or personal digital assistants; Cell Phone Case; Carrying cases for cell phones; Carrying cases for mobile computers; Computer carrying cases; Laptop carrying cases; Notebook computer carrying cases
Class 025. First Use: 2012/05/01 First Use In Commerce: 2012/05/01 All goods and services in the class are opposed, namely: Shirts, pants, tops, bottoms, jackets, sweat-

ers, swimwear, sleepwear, underwear, belts, scarves; headwear; footwear
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## Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Application is barred by: unclean hands, trademark misuse, false registration statement, and infringement of common law rights.

## Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86143042	Application Date	12/13/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EVERMARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2013/11/01 First Use In Commerce: 2013/12/04 Computer application software for mobile phones, namely, software for users to access an internet marketplace and engage in transactions for the sale and purchase of goods and services Class 035. First use: First Use: 2013/11/01 First Use In Commerce: 2013/11/15 Providing a web site at which users can offer goods for sale and buy goods offered by others		

Attachments	86143042#TMSN.png( bytes ) Notice of Opposition 102114.pdf(99413 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	/Nathan G. Roach/
Name	Nathan G. Roach
Date	10/21/2014

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

<b>TankSoft LLC</b>	§	<b>Opposition No.:</b> _____
	§	
<b>Opposer,</b>	§	<b>Serial No.:</b> 76/714,737
	§	<b>IC:</b> 003, 009, 025
<b>vs.</b>	§	<b>Filed:</b> August 12, 2013
	§	<b>Mark:</b> Evermarket
	§	
	§	
	§	
	§	
<b>Evermarket, Inc.</b>	§	
	§	
<b>Applicant.</b>	§	

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**NOTICE OF OPPOSITION**

TankSoft LLC, a Texas limited liability company organized under the laws of the State of Texas, with a mailing address of 8 Hendon Lane, San Antonio, Texas 78257 (“Opposer”), believes that it will be damaged by registration of the trademark shown in Serial No. 76/714,737, filed August 12, 2013, and hereby opposes the same.

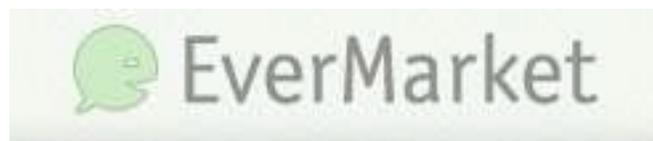
As grounds for the opposition, Opposer alleges that:

1. As illustrated in the Official Gazette dated September 23, 2014, Applicant claims ownership and seeks to register the design mark illustrated in and covered by Application Serial No. 76/714,737 in the following classes:
  - a. International Class 003 – Cosmetics; Eyeshadow, Concealer; Blusher; makeup puff; eyeliner pencil; Lipstick; soaps, Perfumery; nail products, namely, nail

polish, artificial nails, nail tips, and nail art items, namely, nail glitter, stickers and adhesive plastic jewels for nails; nail care preparations; nail art brushes

- b. International Class 009 - Cellular telephone apparatuses; Cellular telephone USB apparatuses, namely, hardware, cables and hubs; Blank USB flash drives; Digital cameras; Digital video cameras; headphones; Fitted plastic films known as skins for covering and providing a scratch proof barrier or protection for electronic devices, namely, MP3 players, mobile telephones, smart telephones, digital cameras, global positioning systems and personal digital assistants; Fitted plastic films known as skins for covering and providing a scratch proof barrier or protection for electronic devices' screens, namely, portable computers, tablet computers, MP3 players, e-readers, mobile telephones, smart telephones, digital cameras, global positioning systems, or personal digital assistants; Cell Phone Case; Carrying cases for cell phones; Carrying cases for mobile computers; Computer carrying cases; Laptop carrying cases; Notebook computer carrying cases; and
- c. International Class 025 - Shirts, pants, tops, bottoms, jackets, sweaters, swimwear, sleepwear, underwear, belts, scarves; headwear; footwear.

2. Opposer is common law owner of the following logo, for Computer application software for mobile phones, namely, software for users to access an internet marketplace and engage in transactions for the sale and purchase of goods and services:



3. Opposer has reason to believe that it may be harmed by Applicant's mark because Applicant's goods are of the kind that may be sold on Opposer's EverMarket platform.

4. Applicant's Application and its claimed mark are barred by the doctrine of unclean hands.

5. Applicant's Application and its claimed mark are barred by the doctrine of trademark misuse.

6. Applicant's Application and its claimed mark are barred by the doctrine of fraud upon the trademark office.

7. Applicant's Application and its claimed mark are barred by false suggestion of a connection.

8. Applicant's Application and its claimed mark are barred by the doctrine of misuse of the trademark registration symbol, ® and misuse of a registration statement.

WHEREFORE, Opposer respectfully prays that said application Serial No. 76/714,737 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

/Nathan G. Roach/

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