

ESTTA Tracking number: **ESTTA657933**

Filing date: **02/25/2015**

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

Proceeding	91220292
Party	Defendant The Spark Agency, Inc.
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Submission	Answer and Counterclaim
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Signature	/aph72met/
Date	02/25/2015
Attachments	Switch Answer and Counterclaim.pdf(41940 bytes )

Registration Subject to the filing

Registration No	3799562	Registration date	06/08/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	Swatch AG (Swatch SA) (Swatch Ltd.) 94, rue Jacob StÄmpfli Bienne, 2500 SWITZERLAND		

Goods/Services Subject to the filing

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are requested, namely: MANAGEMENT OF BUSINESS; ADVERTISING AGENCIES; COMPUTER ASSISTED PROCESSING OF DATA DERIVED FROM THE TIMING OF SPORTING ACTIVITIES FOR USE IN EDUCATION, ENTERTAINMENT AND PUBLICITY
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Swatch AG (Swatch SA) (Swatch Ltd)** )  
Opposer, )  
v. ) Opposition No. 91220292  
**The Spark Agency, Inc.** )  
Applicant. )  
\_\_\_\_\_ )

**APPLICANT’S ANSWER TO OPPOSER’S NOTICE OF OPPOSITION  
AND APPLICANT’S COUNTERCLAIM FOR CANCELLATION**

In answer to the Notice of Opposition filed by Opposer Swatch AG (Swatch SA) (Swatch Ltd), Applicant The Spark Agency, Inc. states the following:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

6. Applicant denies each and every allegation set forth in Paragraph 6 of the Notice of Opposition.

7. Applicant denies each and every allegation set forth in Paragraph 7 of the Notice of Opposition.

8. Applicant denies each and every allegation set forth in Paragraph 8 of the Notice of Opposition.

9. Applicant denies each and every allegation set forth in Paragraph 9 of the Notice of Opposition.

10. Applicant denies each and every allegation set forth in Paragraph 10 of the Notice of Opposition.

11. Applicant denies each and every allegation set forth in Paragraph 11 of the Notice of Opposition.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

14. Applicant denies each and every allegation set forth in Paragraph 14 of the Notice of Opposition.

15. Applicant admits the allegations set forth in Paragraph 15 of the Notice of Opposition.

16. Applicant admits the allegations set forth in Paragraph 16 of the Notice of Opposition.

17. Applicant admits only that the Board held that Applicant's application Serial No. 77/505539 for the mark SW:TCH was not entitled to registration. Applicant denies each and every remaining allegation set forth in Paragraph 17 of the Notice of Opposition because the Board based its ruling on a registration for advertising services not pleaded by Opposer in this Notice of Opposition.

18. Applicant admits the allegations set forth in Paragraph 18 of the Notice of Opposition.

19. Applicant denies each and every allegation set forth in Paragraph 19 of the Notice of Opposition.

20. Applicant denies each and every allegation set forth in Paragraph 20 of the Notice of Opposition.

21. Applicant denies each and every allegation set forth in Paragraph 21 of the Notice of Opposition.

## **DENIAL OF PRAYER FOR RELIEF**

Applicant denies that Opposer is entitled to any of the relief sought in its prayer for relief against Applicant.

## **COUNTERCLAIM FOR CANCELLATION**

1. Opposer is the owner of U.S. Registration No. 3,799,562 for the mark SWATCH for “management of business; advertising agencies; computer assisted processing of data derived from the timing of sporting activities for use in education, entertainment and publicity,” in International Class 35.

2. In view of Opposer’s allegations in its Notice of Opposition (Paragraph 9), and Opposer’s reliance on Registration No. 3,799,562 (registered 6/8/2010 based on §44(e) and pleaded after discovery closed) in the previous opposition between the Parties (#91190380), Applicant reasonably believes Opposer will later attempt to rely on Registration No. 3,799,562 as a basis for opposition to the registration of Applicant’s SWATCH mark (Serial No. 86267771).

3. Upon information and belief, Opposer has made no use of its SWATCH mark in the United States in connection with any of the services recited in International Class 35 for at least the three years preceding the filing of this Counterclaim for Cancellation.

4. Upon information and belief, Opposer has no current intent to resume use of its SWATCH mark in connection with any of the services recited in International Class 35, and had no intent to resume use of its SWATCH mark in connection with any of the services recited in International Class 35 at the time it discontinued use of its mark.



