

ESTTA Tracking number: **ESTTA660135**

Filing date: **03/10/2015**

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	American Motor Company, LLC		
Entity	Limited Liability Company	Citizenship	Florida
Address	5301 McCoy Rd. Orlando, FL 32812 UNITED STATES		

Attorney information	Matthew H. Swyers The Trademark Company, PLLC 344 Maple Avenue West, PBM 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com Phone:(800) 906-8626 x 100		
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Applicant Information

Application No	86243085	Publication date	03/10/2015
Opposition Filing Date	03/10/2015	Opposition Period Ends	04/09/2015
Applicant	Pearl Technology Holdings, LLC 2701 E. Plano Parkway, Suite 100 Plano, TX 75074 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2014/01/28 First Use In Commerce: 2014/01/28 All goods and services in the class are opposed, namely: Providing a website to facilitate the sale of cars between individual owners and automobile dealerships; providing an on-line commercial information directory; providing a searchable database in the field of sales information available via a global computer network; database management services; advertising services, namely providing advertising in the nature of on-line and electronic classified directories; electronic auction services via the internet; on-line auction services

Grounds for Opposition

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

U.S. Application No.	86323185	Application Date	06/27/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INSTANTCAROFFER.COM		

Design Mark	
Description of Mark	<p>The mark consists of the words "InstantCarOffer.com" with Instant and Offer.com in black and Car in Green; above the words is a green smooth rounded line starting just above the n in Instant extending in a curved upward manner to the right and then above the C in Car it begins descending in a curved manner until the second f in Offer when it starts going flat until the end of .com when it takes a dip downward and extends slightly beyond the words, then under and in the center of the top curved line is another green smooth curved rounded line that starts above the n in Instant and curves up until the a in car and then begins curving down until the first f in offer when it comes to a point and turns backwards in a straight line fashion over the o in Offer extending to the r in car, with three green flags in descending size to the left of the l in Instant.</p>
Goods/Services	<p>Class 035. First use: First Use: 2013/01/03 First Use In Commerce: 2013/04/01 On-line trading services in which seller posts products to be auctioned and bidding is done via the Internet; Operating on-line marketplaces featuring used cars; Operating on-line marketplaces for sellers and buyers of goods and/or services; Promoting the sale of goods and services of others by through an online website whereby sellers of automobiles can obtain quotes for their used cars from automobile dealers; Providing demand creation and lead generation activities and services; Providing on-line referrals in the field of used automobiles; Providing sales leads for the used car industry; Providing used car sales leads for others</p> <p>Class 042. First use: First Use: 2013/01/03 First Use In Commerce: 2013/04/01 Providing an online non-downloadable Internet-based system application featuring technology enabling users to connect with automobile dealerships interested in acquiring their used car</p>

Related Proceedings	92060799
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Attachments	86323185#TMSN.png(bytes) Notice of Opposition.pdf(174699 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	/Matthew H. Swyers/
Name	Matthew H. Swyers
Date	03/10/2015

line referrals in the field of used automobiles; Providing sales leads for the used car industry; Providing used car sales leads for others” covered in International Class 35 and “Providing an online non-downloadable Internet-based system application featuring technology enabling users to connect with automobile dealerships interested in acquiring their used car” covered in International Class 42 (hereinafter collectively “Opposer’s Services”).

2. Opposer’s Application for Opposer’s Mark was filed on or about June 27, 2014 and was assigned U.S. Application Serial No. 86/323,185.

3. Opposer has been continuously using Opposer’s Mark in commerce since at least as early as April 1, 2013.

4. Opposer has invested significant time, money, and effort in in promoting Opposer’s Services under Opposer’s Mark, which are associated exclusively with Opposer and his services. The goodwill of the business connected with the use of, and symbolized by, Opposer’s Mark is an asset of incalculable value.

5. By an Office Action dated October 8, 2014, the Examining Attorney issued an initial refusal to register Opposer’s Mark  based upon the examining attorney’s opinion that, if registered, Opposer’s Mark may create a likelihood of confusion with Applicant’s mark for  as more fully identified in Serial No. 86/243,085, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

6. On April 4, 2014 Applicant filed an application to register the trademark  (hereinafter “Applicant’s Mark”) used in connection with “Providing a website to facilitate the sale of cars between individual owners and automobile dealerships; providing an on-line commercial information directory; providing a searchable database in the field of sales information available via a global computer network; database management services; advertising services, namely providing advertising in the nature

of on-line and electronic classified directories; electronic auction services via the internet; on-line auction services,” covered in International Class 35 (hereinafter “Applicant’s Services”). This application was assigned Application No. 86/243,085.

7. Upon information and belief, Applicant claims a date of first use in commerce of Applicant’s Mark for Applicant’s Services of January 28, 2014.

8. There is no issue of priority. Upon information and belief, Applicant acquired no rights in Applicant’s Mark before Opposer acquired rights in Opposer’s Marks.

9. Upon information and belief, Applicant’s services will be offered to the same of consumers and at least through some of the same channels of trade as Opposer’s services. As applied to Applicant’s services, Applicant’s Mark so resembles the Opposer’s Mark that it is likely to cause confusion, or to cause mistake, or to deceive as to the source of the services.

10. Upon information and belief, registration of Applicant’s Mark will diminish and dilute the distinctive quality of Opposer’s Mark. Customers and potential customers are likely to believe that Applicant’s services originate from, or are sponsored and approved by Opposer when that is not the case. Any dissatisfaction with Applicant’s services would reflect upon and irreparably damage Opposer’s reputation and goodwill embodied in Opposer’s Mark.

11. Upon information and belief, Opposer will be damaged by Applicant’s registration of Applicant’s Mark for the services identified in US Serial No. 86/243,085 as a result of the aforementioned confusion, mistake, and deception.

12. If Applicant is granted the registration of the application as more fully identified by Serial No. 86/243,085, it would support statutory rights for Applicant in violation and derogation of Opposer’s prior rights which would be a source of damage to Opposer.

13. Furthermore, Opposer believes that it will be damaged by Applicant’s registration insofar as Opposer’s Mark will not be permitted to register when Applicant’s mark registers.

14. By reason of the foregoing, Applicant is not entitled to registration of Applicant's Mark, as more fully identified in Federal Trademark Application Serial No. 86/243,085 in International Class 35.

WHEREFORE the Opposer, American Motor Company, LLC, respectfully requests that the Application, Serial No. 86/243,085 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Respectfully submitted this 10th day of March, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, PBM 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Opposer

