ESTTA Tracking number: **ESTTA701437**
Filing date: **10/09/2015**

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

Proceeding	91221438
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Date	10/09/2015
Attachments	Memorandum to Supplement Opposition to Motion to Dismiss.pdf(92609 bytes) Shaw Declaration.pdf(1338797 bytes) McCann Declaration.pdf(630230 bytes) Exhibit A.pdf(49506 bytes) Exhibit B.pdf(213570 bytes) Exhibit C.pdf(244224 bytes) Exhibit D.pdf(442100 bytes) Exhibit E.pdf(250404 bytes) Exhibit F.pdf(261308 bytes) Exhibit G.pdf(311018 bytes)

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

In re Application Serial No.	:	86/174,797
Mark	:	THE NODE FIRM
International Class	:	42
Applicant	:	YLD Limited
Filed	:	January 24, 2014
Published	:	October 7, 2014

The Node Firm, LLC Opposer, v. YLD Limited Applicant.	:	Opposition No. 91221438

MEMORANDUM OF OPPOSER THE NODE FIRM, LLC TO SUPPLEMENT ITS OPPOSITION TO APPLICANT YLD LIMITED'S MOTION TO DISMISS

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In response to the order of the Board (the "Order") mailed September 9, 2015 in the above-referenced Opposition No. 912214389 (the "Opposition"), Opposer The Node Firm, LLC ("Opposer" or "TNF II") respectfully submits this memorandum to supplement its opposition to the motion to dismiss filed by YLD Limited ("Applicant" or "YLD"), subsequently converted by the Order to a motion for summary judgment (the "Motion").

I. PRELIMINARY STATEMENT

Both this Opposition filed by Opposer against Applicant, and corresponding Civil Action No. 1:15-cv-00855-JPO (S.D.N.Y. Feb. 5, 2015) (the "Pending Civil Action") filed by Applicant against Opposer and others, present related and complex factual and legal disputes that warrant denial of summary disposition. As detailed herein, the Opposition and Pending Civil Action present opposite sides of the same coin – in the Pending Civil Action, Applicant alleges that it owns rights in THE NODE FIRM mark, while in the Opposition (and in counterclaims and third party claims filed in the Pending Civil Action), Opposer alleges that it owns rights in THE NODE FIRM mark.

In an unusual twist, Applicant challenges the relationship between Opposer and Node Source, LLC ("NSLLC", i.e. the party that filed two extensions of time to file the Opposition) in this Opposition. However, in the Pending Civil Action, Applicant argues vehemently and repeatedly that Opposer and NSLLC are one and the same, in an effort to support Applicant's assertions of alleged fraud made in connection with two state law claims. While both Opposer and NSLLC deny any wrongdoing, Opposer and NSLLC agree with the core of Applicant's contentions asserted in the Pending Civil Action that Mr. Daniel Shaw ("Shaw") and Mr. Joe McCann ("McCann") control the property and assets of both Opposer and NSLLC. More than that, Shaw and McCann unified and built the reputation of THE NODE

FIRM name/mark, leveraging their professional skills and amassing goodwill such that Shaw and McCann *were* THE NODE FIRM, with their identities mutually intertwined.

It therefore follows, and the evidence submitted herewith establishes, that Opposer and NSLLC are in privity for purposes of § 206.02 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"). Applicant's contention that the Notice of Opposition filed in this Opposition was untimely, and that the Board lacks jurisdiction to decide it as a result, should therefore be denied.

At the very least, the arguments and evidence submitted with this memorandum raise genuine issues of material fact concerning the relationship between Opposer and NSLLC, and the rights of each party (including Applicant) in the mark THE NODE FIRM. For this reason as well, summary judgment is not warranted.

Moreover, the same issues raised here are central to the Pending Civil Action (wherein Applicant argues the contrary position it takes here), and thus the Pending Civil Action will have a bearing on the Board's decision in this Opposition. Suspension of this proceeding pending final determination of the Pending Civil Action is therefore appropriate; accordingly, Opposer submits Opposer's Motion Under 37 C.F.R. § 2.117 to Suspend Proceedings Pending Final Determination of Civil Action concurrently with the filing of this memorandum.

II. RECAP OF RELEVANT ACTIONS

Opposer provides below a summary of actions relevant to the posture of this Opposition, intended as foundation to guide the Board's review of this memorandum.

Date	**Action**
10/7/14	YLD's application for THE NODE FIRM is published for opposition
11/5/14	NSLLC files 90 Day Extension of Time to Oppose

Date	**Action**
2/4/15	NSLLC files 60 Day Extension of Time, with Consent of YLD
2/5/15	YLD files Pending Civil Action against TNF II, NSLLC, Shaw and McCann
2/17/15	NSLLC converts to Node Source, Inc. ("NSI")
4/6/15	TNF II files Opposition Against YLD, indicating that NSLLC, now NSI, is in privity with TNF II

III. STATEMENT OF FACTS

A. THE NODE FIRM Name/Mark Created by Informal Alliance to Leverage Individual Reputations

In or around November 2011, Mr. Nuno Job ("Job," who subsequently founded Applicant) joined together with Shaw, and three other persons named Mikeal Rogers ("Rogers"), Pedro Teixeira ("Teixeira") and Paolo Fragomeni ("Fragomeni") (Job, Shaw, Rogers, Teixeira and Fragomeni, collectively, the "Collaborators"), in an informal collaboration of computer programmers knowledgeable about the Node.js computer programming platform. Shaw Decl. ¶ 5. Node.js – also known as Node – is a server-side, open source framework used to build scalable, lightweight, cross-platform applications. Shaw Decl. ¶ 6. The Collaborators sought to grow the significance of Node.js through building a community of experts who worked in Node.js. Shaw Decl. ¶ 5.

Rogers – i.e. not Job, Applicant's subsequent founder – suggested that the community brand their collective efforts under the name THE NODE FIRM, which suggestion was adopted by the other Collaborators. Shaw Decl. ¶ 7. In or around November 2011, the Collaborators all commenced using THE NODE FIRM name/mark in connection with services including computer programming; computer programming consultancy; computer software consulting; computer software development and computer programming development for others; and creating of computer programs (the "Node Consulting Services"). Shaw Decl. ¶ 7.

The alliance that used THE NODE FIRM name/mark grew to approximately twenty (20) independent experts in Node.js, inclusive of the Collaborators (collectively, the "Members"). Shaw Decl. ¶ 8. The Members each had their own reputations, though they shared the goal of increasing awareness and use of Node.js, and thus heralded their association with THE NODE FIRM name/mark as a collective marketing tool. Shaw Decl. ¶ 8.

The Collaborators did not form a corporate entity under THE NODE FIRM name/mark, and did not administer the offering of services under THE NODE FIRM mark in any formal manner. Shaw Decl. ¶ 9. The Members offering services under THE NODE FIRM name/mark had no shared offices, and none were employees of any entity that purported to *be* THE NODE FIRM. Shaw Decl. ¶ 9. In this regard, there were no written contracts regarding who owned rights in THE NODE FIRM name/mark, and no written license agreements granting any person or company the rights to use it. Shaw Decl. ¶ 10. Moreover, during this early period, no Collaborator or Member promoted himself/herself solely and exclusively as the face of THE NODE FIRM. Shaw Decl. ¶ 11. To the contrary, while each of the Collaborators and Members promoted themselves under THE NODE FIRM name/mark with respect to certain initiatives, they each also worked for separate third party companies, or pursued their own independent projects/ventures unrelated to THE NODE FIRM, under different names and marks. Shaw Decl. ¶ 11.

B. Shaw Formalizes THE NODE FIRM, McCann Engaged to Co-Steer

At the end of 2012, the Collaborators undertook to systemize services offered under THE NODE FIRM name/mark. Shaw Decl. ¶ 12. In November 2012, upon the urging of the Collaborators, Shaw formed Node Firm LLC ("TNF I"), a Nevada single member LLC, with Shaw as the sole managing member. Shaw Decl. ¶ 13, Exh. A. In an email from Job to the Collaborators dated December 21, 2012 under the subject line "Rejoice" ("Job's December 21

Email"), Job recognized that THE NODE FIRM venture was getting a lot of traction, but stated that the "only problem" was that "we dont [sic] really have dedicated management, so we are moving slower than customer [sic] would like us to." Shaw Decl. ¶ 14, Exh. B. Job's December 21 Email went on to announce, annotated with a happy face emoticon, that "Daniel [Shaw] is dedicated to finding someone that dedicates a lot of love to the firm!" Shaw Decl. ¶ 14, Exh. B. Shaw announced in a follow up email to the Collaborators that he would be working on organizational issues for THE NODE FIRM venture over the holidays, in response to which several of the Collaborators lauded Shaw's efforts. Shaw Decl. ¶ 14, Exh. B.

Around January 2013, Shaw enlisted the assistance of McCann in connection with day-to-day operations and business development efforts for THE NODE FIRM. Shaw Decl. ¶ 15; McCann Decl. ¶ 5. Shaw and McCann assumed leadership roles among the Collaborators, and avidly pursued building a reputation for THE NODE FIRM name/mark in connection with Node Consulting Services. Shaw Decl. ¶ 16; McCann Decl. ¶ 6. To this end, Shaw and McCann regularly offered Node Consulting Services and other projects under THE NODE FIRM name/mark, spoke at conferences identifying themselves under THE NODE FIRM name/mark, wrote extensively on issues of interest to the Node community under THE NODE FIRM name/mark, and otherwise actively engaged in efforts that amassed goodwill in THE NODE FIRM name/mark, with them as the forces behind it. Shaw Decl. ¶ 16; McCann Decl. ¶ 6. Shaw and McCann also oversaw use of THE NODE FIRM name/mark by others, and maintained the integrity of the name/mark's quality and reputation. Shaw Decl. ¶ 17; McCann Decl. ¶ 7.

C. THE NODE FIRM Continues to Evolve Under Leadership of Shaw and McCann

From November 2012 through the end of January 2013, Shaw and McCann undertook to review records, learn about liabilities, and otherwise conduct due diligence directed

at illuminating the scope of activities engaged in by Members under THE NODE FIRM name/mark. Shaw Decl. ¶ 18; McCann Decl. ¶ 8. Shaw and McCann thereafter endeavored to corral and further grow the nascent notoriety inuring to use of THE NODE FIRM name/mark. Shaw Decl. ¶ 19; McCann Decl. ¶ 9. They began to operate THE NODE FIRM like a proper business fiscally and legally, and implemented measures to build and protect THE NODE FIRM brand going forward. Shaw Decl. ¶ 19; McCann Decl. ¶ 9.

On February 28, 2013, Shaw formed The Node Firm LLC, a Texas limited liability company (previously defined as "TNF II"). Shaw Decl. ¶ 20, Exh. C. Shaw and McCann are the majority members of TNF II.[1] Shaw Decl. ¶ 20; McCann Decl. ¶ 10. As Co-Founder, Managing Partner, and Chief Executive Officer of TNF II, Shaw oversaw the development and implementation of TNF II's training, consulting and support services and materials. Shaw Decl. ¶¶ 2, 20. Similarly, as Managing Director and Partner of TNF II, McCann oversaw TNF II's business development, business operations, product development and client communications. McCann Decl. ¶¶ 2, 10. Shaw and McCann have authority to exercise control over the operations and decisions regarding TNF II's provision of services under THE NODE FIRM name/mark, use by other entities of THE NODE FIRM name/mark, and any other matters under their responsibility. Shaw Decl. ¶ 21; McCann Decl. ¶ 11.

Throughout the remainder of 2013, under the leadership of Shaw and McCann, TNF II became an organized, accountable, and professionally-run venture operating under THE NODE FIRM name and mark. Shaw Decl. ¶ 22; McCann Decl. ¶ 12. Shaw and McCann undertook several targeted business development initiatives to establish goodwill in THE NODE FIRM name and mark, including holding monthly office hours, typically led by Shaw, where

[1]Another individual, Isaac Schlueter, was also a member of TNF II. Applicant also sued Schlueter as a defendant in the Pending Civil Action, but Schlueter has since been dismissed from the action.

members of the tech community could learn about Node.js, raise specific problems they encountered, and the like. Shaw Decl. ¶ 22; McCann Decl. ¶ 12. During the latter two-thirds of 2013, Shaw and McCann also participated in several Node.js conferences, posted in online forums, and otherwise engaged in industry-relevant promotional activities under THE NODE FIRM name and mark directed at imbuing THE NODE FIRM name/mark with goodwill, and presenting themselves as the face of the brand. Shaw Decl. ¶ 23; McCann Decl. ¶ 13.

During the time that Shaw and McCann were aggressively building the reputation of THE NODE FIRM, the remaining Collaborators pursued other, unrelated professional ambitions. Shaw Decl. ¶ 24. According to Job's LinkedIn profile, from December 2011 to August 2013, Job served as Chief Commercial Officer of a company called Nodejitsu, Inc., and additionally acted as an Advisor and Board Member of Nodejitsu from December 2011 to February 2015, and as an Advisor of a company called AuthO from December 2013 to present. Shaw Decl. ¶ 24, Exhs. D, E. Job's LinkedIn profile has also stated that Job founded YLD (Applicant in this Opposition) in November 2013, and that Job served as Founder and Managing Director, or CEO, of YLD from November 2013 to present. Shaw Decl. ¶ 24, Exhs. D, E.

D. Job Shuts Down TNF II; Shaw and McCann's Efforts Evolve Through Node Source

At the end of 2013, Job approached Shaw to propose an arrangement whereby Job could get back involved with THE NODE FIRM, and run European operations for TNF II. Shaw Decl. ¶ 25. Shaw conveyed that he was open to exploring possibilities, though stated that any such arrangement would require Job to work with McCann. Shaw Decl. ¶ 25. Job rejected Shaw's proposal. Shaw Decl. ¶ 25.

In or around early 2014, Job autonomously, and without warning, surreptitiously terminated access to THE NODE FIRM website, and rerouted incoming email and calendar

requests intended for TNF II.[2] Shaw Decl. ¶ 26. Because TNF II was locked out of its own email and website, it could no longer conduct day-to-day business using the operational infrastructure that it had previously utilized as back-end support for promoting the services that Shaw, McCann, and others within their team offered under THE NODE FIRM name/mark. Shaw Decl. ¶ 26.

As a result of Job's willful, reckless and malevolent actions, Shaw and McCann could not conduct the business of TNF II that they had built, for which their reputation was intertwined with THE NODE FIRM name/mark. Shaw Decl. ¶ 27. Nonetheless, TNF II remains an existing limited liability company. Shaw Decl. ¶ 28. Shaw and McCann own the majority of the ownership interests in TNF II, and have the right to control its activities. Shaw Decl. ¶ 28; McCann Decl. ¶ 11.

Shaw and McCann had previously recognized the market need for a company that specialized in Node.js, but catered to large enterprise customers and provided Node-based software development tools, support, and related products and services. Shaw Decl. ¶ 29. A firm that focused on Node, whose primary business was to develop and sell products, and provide training, consulting and support services ancillary to its sale of products. Shaw Decl. ¶ 29.

Thus, on February 25, 2014, Shaw and McCann formed NSLLC, a Texas limited liability company, to continue leveraging their reputation from services they performed through TNF II under THE NODE FIRM name/mark. Shaw Decl. ¶ 30, Exh. F. Shaw and McCann were the only members of NSLLC. Shaw Decl. ¶ 30, Exh. F. On February 17, 2015, NSLLC

[2]Opposer, NSLLC, Shaw and McCann have filed claims against Job, as part of the Pending Civil Action, for trespass to chattel, conversion and breach of fiduciary duty, to seek redress for Job's actions summarized above.

converted to Node Source, Inc., a Delaware corporation ("NSI"). Shaw Decl. ¶ 31, Exh. G.[3] Shaw and McCann each own at least 33.33% of the shares of common stock of NSI. Shaw Decl. ¶ 31; McCann Decl. ¶ 14. Shaw and McCann are also both elected to serve NSI as directors on the Board of Directors. Shaw Decl. ¶ 31; McCann Decl. ¶ 14.

As a result of the conversion from NSLLC to NSI, NSLLC ceased to exist as a corporate entity. Shaw Decl. ¶ 32. For ease of understanding, NSLLC and NSI are hereinafter collectively referred to as "NS" (which, by way of reminder, is the party that filed the extension requests leading to this Opposition).

In addition to Shaw's equity ownership and Board directorship, Shaw is Co-Founder, President, and Chief Product Officer of NS, and oversees the product development, engineering, operational and support aspects of the company. Shaw Decl. ¶¶ 1, 33. Similarly, in addition to McCann's equity ownership and Board directorship, McCann is Co-Founder and Chief Executive Officer of NS, and oversees business development, business operations, product development and client communications for the company. McCann Decl. ¶¶ 1, 15. Shaw and McCann have authority to exercise control over the operations and decisions regarding provision of services under any trademarks owned or licensed by NS, and any other matters of NS under their responsibility. Shaw Decl. ¶ 33; McCann Decl. ¶ 15.

Like TNF I and TNF II, NS is also closely aligned with the reputation of its principals Shaw and McCann. Shaw Decl. ¶ 34; McCann Decl. ¶ 16. While TNF I, TNF II and NS have different specific focuses, the goods and services that they offer all center on the Node programing language, and all are under the control of Shaw and McCann, who are the source of the reputation and goodwill of the names and marks used thereby, which such reputation and

[3]The conversion of NSLLC to Node Source, Inc. occurred after both the 90 Day and 60 Day extension requests were filed, but before the Notice of Opposition was filed, in this Opposition. The conversion of NSLLC to NSI is referenced in the Notice of Opposition.

goodwill has transferred with Shaw and McCann through their successive Node ventures. Shaw Decl. ¶ 35; McCann Decl. ¶ 17. The nature and quality of the services provided under THE NODE FIRM name and mark has been controlled by, or is subject to control by, the entities operated and controlled by Shaw and McCann offering Node goods and services, first through Shaw's operation and control of THE NODE FIRM name and mark around TNF I, then through Shaw and McCann's operation and control of THE NODE FIRM name and mark through TNF II, then through their operation and control of all names and marks owned or licensed through NS. Shaw Decl. ¶ 36; McCann Decl. ¶ 18.

THE NODE FIRM name/mark is not currently in use by TNF II or NS, as (i) TNF II and NS are seeking judicial affirmation that Applicant owns no rights in THE NODE FIRM name or mark; and (ii) YLD (Job's company) is asserting trademark infringement of THE NODE FIRM name/mark. Shaw Decl. ¶ 37. In this regard, this Opposition seeks to prevent registration of THE NODE FIRM by Applicant on several grounds, including likelihood of confusion, fraud, nonuse, and abandonment. Likewise, in the Pending Civil Action, TNF II, NS, Shaw and McCann are seeking against Applicant a Declaration of Noninfringement of Alleged Trademark Rights, a Declaration of Trademark Invalidity, and a Declaration of False Designation of Origin.[4] None of TNF II, NS, or Shaw and McCann who operate and control these related entities, have an intent not to resume use of THE NODE FIRM mark. Shaw Decl. ¶ 37; McCann Decl. ¶ 19.

IV. LEGAL STANDARD

TBMP § 206.02 states that "[a] request for a further extension, or an opposition, filed by a different party will not be rejected on that ground if it is shown to the satisfaction of the Board that the different party is in privity with the party granted the previous extension."

[4] TNF II, NS, Shaw and McCann are also seeking claims against Job in the Pending Civil Action arising out of the same facts and circumstances underlying this Opposition.

TBMP § 303.05(b) similarly states that "[a] party in privity with a potential opposer may step into the potential opposer's shoes and file a notice of opposition or may join with the potential opposer as a joint opposer." TBMP § 206.02 goes on to explain that "[i]n the field of trademarks, the concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g., assignor, assignee) and the relationship of 'related companies' within the meaning of Trademark Act § 5 and Trademark Act § 45, 15 U.S.C. § 1055 and 15 U.S.C. § 1127." Section 5 of the Trademark Act, 15 U.S.C. § 1055, states, in part, as follows:

> Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.

Trademark Act § 45 defines "related company" as "any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used." Thus, § 5 of the Act permits applicants – or in this case, opposers and extension filers – to rely on use of the mark by related companies. Either a natural person or a juristic person may be a related company. 15 U.S.C. § 1127.

The granting of summary judgment in an opposition proceeding is only appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *See, e.g., Copelands' Enters. Inc. v. CNV Inc.*, 945 F.2d 1563, 1565

(Fed. Cir. 1991). A material fact is a fact that could have a legal impact on the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist. *Lloyd's Food Prods. Inc. v. Eli's Inc.*, 987 F.2d 766, 767 (Fed. Cir. 1993); *see also* TBMP § 528.01. The Board must construe the evidentiary record and all reasonable inferences in the light most favorable to the nonmoving party. *Bad Boys Bail Bonds, Inc. v. Yowell*, 115 U.S.P.Q.2d 1925, 1929 (T.T.A.B. 2015).

Whenever it comes to the attention of the Board that parties to a case pending before it are involved in a civil action which may have a bearing on the Board's proceeding, the Board's proceeding may be suspended until final determination of the civil action. 37 CFR § 2.117(a); TBMP § 510.02(a). If a motion that is potentially dispositive of the case is pending at the time when the question of suspension of the Board's proceeding is raised, the Board, in its discretion, may elect to suspend its proceeding without first deciding the potentially dispositive motion. TBMP § 510.02(a).

V. ARGUMENT

A. TNF II and NS are "Related Companies" Under the Trademark Act § 5 and § 45

The evidence submitted here establishes that TNF II and NS are "related companies" well within the parameters of § 5 and § 45 of the Trademark Act, and certainly within the precedent of the Board and Courts interpreting that requirement. Pursuant to Section 45 of the Act, the essence of related-company use is the control exercised over the nature and quality of the goods or services on or in connection with which the mark is used. *See Rockland Exposition, Inc. v. Alliance of Auto. Serv. Providers of NJ*, 894 F. Supp. 2d 288, 309-10 (S.D.N.Y. 2012). As the reputation of services provided under THE NODE FIRM mark is closely tied to the personal identities and experiences of Shaw and McCann, Shaw and

McCann's unified control over TNF II and NS with respect to THE NODE FIRM mark demonstrates that TNF II and NS are "related companies" for the purposes of establishing privity.

1. *The History of TNF II and NS Demonstrates that THE NODE FIRM Mark is an Identifier of Personal Goodwill of Shaw and McCann*

From the time when Rogers proposed THE NODE FIRM name/mark in or around November 2011, use of the name and mark THE NODE FIRM leveraged the reputation of each Collaborator's personal expertise on behalf of the loose, collective efforts. From November 2011 – November 2012, the Collaborators gained some traction in developing THE NODE FIRM name/mark, but their efforts suffered from a lack of dedicated management to lead the group and control its direction. Shaw was an integral member of the Collaborators since November 2011, when services were first offered under THE NODE FIRM name/mark. Shaw's individual efforts were fundamental to the capabilities and successes of the nascent stages of THE NODE FIRM, such that Shaw's renown and that of THE NODE FIRM were closely aligned.

It follows, both logically and factually, that the Collaborators turned to Shaw for building and controlling the goodwill of THE NODE FIRM mark as the venture matured. Shaw was *the sole member of TNF I*, a Nevada single member LLC formed in November 2012 as the first formalized entity contemplated to impose structure for control of the services provided under THE NODE FIRM mark.

Upon being handed the reins of THE NODE FIRM, Shaw immediately brought in McCann to co-steer. From the end of 2012 through the beginning of 2013, Shaw and McCann began to control THE NODE FIRM as an entity and as a service mark, and they subsequently became closely tied with THE NODE FIRM name and mark. In February 2012, *TNF II was*

formed, with Shaw and McCann as majority members. Shaw and McCann together, both according to corporate records and according to commercial business realities, controlled the nature and quality of the services provided under THE NODE FIRM mark, which was inextricably tied to them.

Like TNF I and TNF II, NS is also closely aligned with the reputation of its principals Shaw and McCann. While NS has a different specific focus than TNF I and TNF II, they all center on Node offerings, and significantly share Shaw and McCann, who are the source of the reputation and goodwill of the names and marks used thereby. Shaw and McCann were *the only members of NSLLC*. Following conversion of NSLLC to NSI, Shaw and McCann are *the majority equity holders of NSI*. Shaw and McCann also sit on the Board of Directors of NSI, with Shaw also Co-Founder, President and Chief Product Officer, and McCann also Co-Founder and Chief Executive Officer.

It has long been recognized that in certain businesses, the name of a group acts as the identification of the personal goodwill of an individual, or the collective goodwill and talent of specific individuals. 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 16:45, at 16-100 (4th ed. 2015); *see Lyon v. Lyon*, 246 Cal. App. 2d 519 (Ct. App. 1966) (goodwill personal to partners in a legal partnership). Whether a service mark is identified with particular persons, or with a style or quality of a group regardless of personalities, is an issue of fact. *See Crystal Entm't & Filmworks, Inc. v. Jurado*, 634 F.3d 1313, 1322 (11th Cir. 2011).

In performing group cases, which present an analogous situation to the Collaborators who initially promoted themselves under THE NODE FIRM name/mark, two tests are utilized to determine mark ownership: (1) whether the group name is personal to the

individual members, in which case it is owned by the members; and (2) whether someone controls the quality or characteristic for which the group is known, in which case the group name is owned by the person exercising such control. *See McCarthy* at 16-100; *see also Cheng v. Dispeker*, 35 U.S.P.Q.2d 1993 (S.D.N.Y. 1995). Here, under either test, Shaw was at the crux of THE NODE FIRM "group name" since the beginning, and through the efforts of Shaw and McCann to promote and build the reputation of THE NODE FIRM name/mark, both individuals became central to the control of the quality of services provided under such name/mark, and became intricately tied to the reputation and goodwill of THE NODE FIRM.

2. *Shaw and McCann Exercise Unity of Control Over TNF II and NS with Respect to THE NODE FIRM Mark*

As noted above, Shaw and McCann were the majority members of TNF II formed in February 2013. Shaw was also Co-Founder, Managing Partner and Chief Executive Officer of TNF II, and McCann was also Managing Director and Partner. They collectively directed and controlled development and implementation of training, consulting, support, business development, business operations, product development and client communications for TNF II, i.e. all significant services provided by the company. Given their notoriety and connections in the Node industry, and their extensive efforts on behalf of TNF II, the quality and reputation of services provided by TNF II were closely tied to Shaw and McCann.

Shaw and McCann are likewise the only members of NSLLC, and are the majority equity holders of NSI. Both sit on NSI's Board of Directors, and are NSI executives. They collectively direct and control product development, engineering, operations, support, business development, product development and client communications for NSI, i.e. all significant services provided by the Company.

Through the activities of Shaw and McCann, THE NODE FIRM name/mark was owned by TNF II, and the goodwill of THE NODE FIRM name/mark inured to TNF II and transferred to NS through the integrated involvement of, and control by, Shaw and McCann. Shaw and McCann solely own TNF II, and are the majority equity holders of NS, for both of which they control the nature and quality of the goods and services offered thereby. Shaw and McCann have the right to determine what trademarks are used or licensed by TNF II, and for what products or services. They also have the right to determine what trademarks are used or licensed by NS, and for what products or services. THE NODE FIRM name/mark has been used by TNF II under the control of Shaw and McCann, and NS under the control of Shaw and McCann has the right to use THE NODE FIRM mark.[5] TNF II and NS are thus "related companies" for purposes of § 5 of the Trademark Act, and privity is established for purposes of TBMP § 510.02.

Indeed, the Board has found privity, or at the very least a question of fact (to preclude summary judgment) regarding whether two entities constitute related companies, in cases with similar factual backgrounds. For example, in *Mo. Silver Pages Directory Publ'g Corp. Inc. v. Sw. Bell Media, Inc.*, 6 U.S.P.Q.2d 1028 (T.T.A.B. 1988), the Board similarly converted Applicant's motion to dismiss to a motion for summary judgment, and considered whether a Notice of Opposition filed by Silver Pages Advertising and Publishing Co. Inc. ("SPA") should be dismissed as untimely where an extension of time to oppose was not secured by SPA, but instead was secured by Mr. John Carlon ("Carlon") and Missouri Silver Pages Directory Publishing Corporation, Inc. ("MSP"). In considering whether there was privity between SPA and MSP, Carlon submitted an affidavit indicating that he was the president and

[5] NS is not currently using THE NODE FIRM mark, given the assertion of trademark claims by YLD (Job's company) in the Pending Civil Action.

sole shareholder of both SPA and MSP, and had incorporated both companies, developed their business plans, hired sales representatives and solicited business for them. *Mo. Silver Pages*, 6 U.S.P.Q.2d at 1028. On this record, the Board concluded that there was a question of fact as to whether SPA (which filed the opposition) was or is in privity with either Mr. Carlon or MSP (which filed the extension request), and therefore summary judgment was denied.

A similar analysis by the District Court of the Southern District of New York, i.e. the court in which Applicant initiated the Pending Civil Action, in *Rockland, supra*, is likewise instructive. In *Rockland*, the Court considered whether Rockland Exposition, Inc. ("REI") could assert trademark rights based on use of a mark by Northeast RV Shows ("RV"), where REI and RV shared the same current president and shareholder, and the former president of REI was one of only two persons involved in RV. 894 F. Supp. 2d at 310-11. The Court noted that "the hallmark of related companies is control over use of the mark." *Id*. at 310 (internal citations omitted). The Court further stated that the statute does not expressly require formal corporate control for companies to be considered related, and thus "the fact that REI and [RV] are not subsidiaries or related through their corporate structure is not fatal to REI's claim." *Id*. The Court stressed that it "need not find that REI will prevail on its claim, but merely that it has presented a disputed issue of material fact." *Id*. at 312. Thus, the Court found that even though the evidence of related companies in *Rockland* "admittedly is minimal," a disputed issue of material fact existed, and summary judgment was denied. *Id*.

B. <u>Under Any Circumstances, There Are Several Unresolved Genuine Issues of Material Fact</u>

Opposer demonstrated above that TNF and NS are "related companies" sufficient to establish privity for purposes of this Opposition.

Nevertheless, Opposer further submits that, at the very least, there are genuine issues of material fact that remain unresolved in light of Opposer's present submission, including:

- Whether THE NODE FIRM name/mark was owned by TNF I, or was owned by one or more individual Collaborators, as a result of use of THE NODE FIRM name/mark from November 2011 through November 2012.
- Whether rights in THE NODE FIRM name/mark transferred to TNF II in connection with the formalization efforts, and business development activities, undertaken by Shaw and McCann from November 2012 through early 2014.
- Whether rights in THE NODE FIRM name/mark transferred from TNF II to NSLLC through the integrated involvement of, and control by, Shaw and McCann.
- Whether rights in THE NODE FIRM name/mark transferred from NSLLC to NSI upon conversion of NSLLC to NSI.
- Whether, if transfer did not occur, an implied license was granted from TNF II to NSLLC and/or NSI concerning the right to use THE NODE FIRM mark, with Shaw and/or McCann controlling both the grant and acceptance thereof on behalf of all referenced companies.
- Whether rights in THE NODE FIRM name/mark, regardless of owner, were abandoned when use of that mark terminated by all parties (including Job, principal of Applicant) as of early 2014.

It is Applicant's burden to demonstrate the absence of any genuine issue of material fact. *See, e.g., Copelands' Enters.*, 945 F.2d at 1565. For the Board to find that Applicant is entitled to judgment as a matter of law, it would be required to conclude that none of the material factual issues raised herein could have a legal impact on the outcome of this case. *See Anderson*, 477 U.S. at 248. Opposer must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist. *Lloyd's Food Prods.*, 987 F.2d at 267; *see also* TBMP § 528.01.

Accordingly, so long as there remain unresolved issues of fact in the record that are material to Applicant's request for summary judgment concerning the issue of privity, the

granting of a motion for summary judgment is not appropriate. *See Mo. Silver Pages*, 6 U.S.P.Q.2d 1028 (denying summary judgment because there was a question of fact in the record as to privity).

C. In Any Event, Suspension is Warranted Because the Pending Civil Action and This Opposition Share Several Common Material Issues

The issues raised in this Opposition are at the core of the Pending Civil Action. Applicant is the Plaintiff in the Pending Civil Action, and TNF II, NSLLC, NSI, Shaw and McCann are Defendants. Applicant's founder and sole shareholder, Job, is a named Third Party Counterclaim Defendant.

It is within the discretion of the Board to suspend a Board proceeding whenever it comes to the Board's attention that parties to a case pending before it are involved in a civil action which may have a bearing on such Board proceeding. 37 CFR § 2.117(a); TBMP § 510.02(a). Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board. *See, e.g., New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 U.S.P.Q.2d 1550, 1552 (T.T.A.B. 2011) (civil action need not be dispositive of Board proceeding, but only needs to have a bearing on issues before the Board). If a motion that is potentially dispositive of the case is pending at the time when the question of suspension of the Board's proceeding is raised, the Board, in its discretion, may elect to suspend its proceeding without first deciding the potentially dispositive motion. TBMP § 510.02(a).

In the Pending Civil Action, Applicant alleges trademark infringement in violation of 15 U.S.C. § 1125(a), common law unfair competition and unjust enrichment arising out of Opposer/Defendants' use of the name/mark THE NODE FIRM. Applicant also proffers claims of fraudulent conveyance against NSLLC and NSI, based on *Applicant*'s theory found in

the Amended Complaint that NSLLC, and then NSI, has taken over the business of TNF II, both of which *Applicant* alleges are continuations of, and benefit from, the reputation and goodwill associated with THE NODE FIRM brand. As part of these claims, throughout its moving papers filed in the Pending Civil Action, *Applicant* aims to convince the District Court that TNF II, NSLCC and NSI are under common control, i.e. the same showing being requested here of *Opposer*.[6]

The Answer submitted by Opposer/Defendants in the Pending Civil Action admits that TNF II, NSLLC and NSI are under common control (i.e. the same position asserted through this memorandum), though denies any allegations of fraudulent conveyance or other wrongdoing. In its Affirmative Defenses, Opposer/Defendants assert, *inter alia*, that Applicant/ Plaintiff has no valid or enforceable trademark rights in THE NODE FIRM mark; that Applicant/Plaintiff has not acquired secondary meaning in THE NODE FIRM mark; and that Applicant/Plaintiff was not assigned any rights in THE NODE FIRM mark from Job because Job never possessed any such rights. Opposer/Defendants also counterclaim against Applicant/Plaintiff for, *inter alia*, a Declaration of Noninfringement of Alleged Trademark Rights; a Declaration of Trademark Invalidity; and False Designation of Origin Under 15 U.S.C. § 1125, all arising out of Opposer/Defendants' rights in THE NODE FIRM mark as summarized above.[7]

Because this Opposition and the Pending Civil Action involve several material factual and legal issues in common, the decision of the federal district court is likely to be

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[6] Opposer's Memorandum in opposition to Applicant's motion to dismiss previously filed in this Opposition includes copies of over 20 allegations proffered by *Applicant* in the Pending Action to show that The Node Firm, LLC, Node Source, LLC and Node Source, Inc. are under common control by Shaw and McCann.

[7] The Pending Civil Action also includes claims relating to copyright rights alleged by Plaintiff, and denied by Defendants, relating to certain training materials allegedly distributed by Defendants under THE NODE FIRM name/mark, as well as claims brought by Defendants against Job for conversion, trespass to chattel and breach of fiduciary duty in connection with the actions detailed in Section III(A)(4) above.

binding upon the Board, while the decision of the Board may not be binding upon the court.[8] TBMP § 510.02(a). Moreover, the significant complexities presented by the facts underlying both the Opposition and the Pending Civil Action warrant full consideration by the trial judge, and the jury, to the extent that any non-trademark claims alleged by either party in the Pending Civil Action could have an impact on the trademark claims alleged in this Opposition.

Therefore, for the sake of judicial integrity and economy, Opposer submits that suspension of this Opposition is warranted, pending final disposition of the Pending Civil Action. Opposer respectfully submits Opposer's Motion Under 37 C.F.R. § 2.117 to Suspend Proceedings concurrently herewith to solicit such action.

VI. CONCLUSION

For each of the foregoing reasons, Opposer respectfully submits that the Board should deny Applicant's motion to dismiss, now treated as a motion for summary judgment, in all respects.

Respectfully submitted,

Dated: New York, NY
October 9, 2015

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[8]While Opposer acknowledges the Supreme Court's recent holding in *B&B Hardware, Inc. v Hargis Industries, Inc.*, No. 13-352, 575 U.S. ____, 2015 WL 1291915 (Mar. 24, 2015) regarding the potential precedential value of Board decisions in federal district court cases, the facts and circumstances of the instant matter render it outside the ruling and reasoning of that decision.

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2015, I caused one true and correct copy of the foregoing MEMORANDUM OF OPPOSER THE NODE FIRM, LLC TO SUPPLEMENT ITS OPPOSITION TO APPLICANT YLD LIMITED'S MOTION TO DISMISS, and the accompanying Declarations of Daniel Shaw (with Exhibits) and Joe McCann, to be served by first class mail upon Applicant YLD Limited by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to counsel for Applicant as follows:

Sarah M. Matz
Adelman Matz P.C.
1173A Second Avenue, Suite 153
New York, NY 10065

Erica D. Klein

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

In re Application Serial No.	:	86/174,797
Mark	:	THE NODE FIRM
International Class	:	42
Applicant	:	YLD Limited
Filed	:	January 24, 2014
Published	:	October 7, 2014

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The Node Firm, LLC

Opposer,

v. : Opposition No. 91221438

YLD Limited

Applicant.

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DECLARATION OF DANIEL SHAW

I, Daniel Shaw, under penalty of perjury, declare as follows:

1. I am the Co-Founder, President, and Chief Product Officer of NodeSource, Inc., formerly called Node Source, LLC (collectively, "NS"). As the Co-Founder, President, and Chief Product Officer, I assume an active operational role in NS, and oversee the product development, engineering, operational and support aspects of the company through direct, hands-on interaction with management. As part of my responsibilities, I am aware of the company's history and current activities.

2. Prior to my involvement with NS, I was the Co-Founder, Managing Partner, and Chief Executive Officer of The Node Firm, LLC ("TNF II"). As the Co-Founder, Managing Partner, and Chief Executive Officer, I assumed an active operational

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role in TNF II, and oversaw the development and implementation of TNF II's training, consulting and support services and materials. As a result of my responsibilities for TNF II, I am aware of the company's history and activities.

3. As such, and unless otherwise stated, I have personal knowledge of the matters stated herein, and if called as a witness, I could and would competently testify to them under oath.

4. All capitalized terms not defined in this Declaration are used as defined in the Memorandum of Opposer The Node Firm, LLC to Supplement Its Opposition to Applicant YLD Limited's Motion to Dismiss being filed concurrently herewith.

5. In or around late November 2011, myself, Nuno Job ("Job"), Mikeal Rogers, Pedro Teixera and Paolo Fragomeni (collectively, the "Collaborators") joined together in an informal collaboration of computer programmers knowledgeable about the Node.js computer programming language. Our common goal was to grow the significance of Node.js through building a community of experts working in the field.

6. Node.js is a server-side, open source framework used to build scalable, lightweight, cross-platform applications. Node.js is commonly known as "Node."

7. Mikeal Rogers suggested that we brand our collective efforts under the name THE NODE FIRM, which suggestion was adopted by the other Collaborators. In or around November 2011, the Collaborators all commenced using THE NODE FIRM name/mark in connection with services including computer programming; computer programming consultancy; computer software consulting; computer software development and computer programming development for others; and creating of computer programs (the "Node Consulting Services").

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8. The alliance that used THE NODE FIRM name/mark grew to be a group of approximately twenty (20) independent experts in Node.js, inclusive of the Collaborators (collectively, the "Members"), who shared the goal of increasing awareness and use of Node.js, and heralded their association with THE NODE FIRM name/mark as a collective marketing tool.

9. During this stage, the Collaborators did not form a corporate entity under THE NODE FIRM name/mark, and did not administer the offering of services under THE NODE FIRM mark in any formal manner. The Members offering services under THE NODE FIRM name/mark had no shared offices, and none were employees of any entity that purported to *be* THE NODE FIRM.

10. Also during this stage, there were no written contracts regarding who owned rights in THE NODE FIRM name/mark, and no written license agreements granting any person or company the rights to use it.

11. Moreover, during this early period, no Collaborator or Member promoted himself or herself solely and exclusively as the face of THE NODE FIRM. To the contrary, while each of the Collaborators and Members promoted themselves under THE NODE FIRM name/mark with respect to certain initiatives, they each also worked for separate third party companies, or pursued their own independent projects/ventures unrelated to THE NODE FIRM, under different names and marks.

12. At the end of 2012, we undertook to systemize services offered under THE NODE FIRM name/mark.

13. In November 2012, upon the urging of the other Collaborators, I formed Node Firm LLC, a Nevada single member LLC ("TNF I"), with myself as the sole

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managing member. Attached as Exhibit A is a true and correct print-out of the entity details for TNF I retrieved from the website for the Nevada Secretary of State, located at http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=RcZJvoYkC%252fboCqwwixkvsw%253d%253d&nt7=0, as accessed on October 9, 2015, showing that TNF I was incorporated on November 14, 2012, with myself as the sole managing member.

14. Attached as Exhibit B is a true and correct print-out of a chain of email messages dated December 21, 2012 sent to and from certain of the Collaborators, including myself. In an email from Job under the subject line "Rejoice", Job recognized that THE NODE FIRM venture was getting a lot of traction, but stated that the "only problem" was that "we dont [sic] really have dedicated management, so we are moving slower than customer [sic] would like us to." Job's December 21 Email went on to announce, annotated with a happy face emoticon, that "Daniel [Shaw] is dedicated to finding someone that dedicates a lot of love to the firm!" I announced in a follow up email to the Collaborators that I would be working on organizational issues for THE NODE FIRM venture over the holidays, in response to which several of the Collaborators lauded my efforts.

15. Around January 2013, also upon the urging of the Collaborators, I enlisted the assistance of Joe McCann ("McCann") in connection with day-to-day operations and business development efforts for THE NODE FIRM.

16. McCann and I assumed leadership roles among the Collaborators, and avidly pursued building a reputation for THE NODE FIRM name/mark in connection with Node Consulting Services. To this end, McCann and I regularly offered Node Consulting Services and other projects under THE NODE FIRM name/mark, spoke at

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conferences identifying ourselves under THE NODE FIRM name/mark, wrote extensively on issues of interest to the Node community under THE NODE FIRM name/mark, and otherwise actively engaged in efforts that amassed goodwill in THE NODE FIRM name/mark, with me and McCann as the forces behind it.

17. Moreover, McCann and I oversaw use of THE NODE FIRM name/mark by others, and maintained the integrity of the name/mark's quality and reputation.

18. From November 2012 through the end of January 2013, McCann and I undertook to review records, learn about liabilities, and otherwise conduct due diligence directed at illuminating the scope of activities engaged in by Members under THE NODE FIRM name/mark.

19. Thereafter, we endeavored to corral and further grow the nascent notoriety inuring to use of THE NODE FIRM name/mark. We began to operate THE NODE FIRM like a proper business fiscally and legally, and we implemented measures to build and protect THE NODE FIRM brand going forward.

20. On February 28, 2013, I formed The Node Firm LLC, a Texas limited liability company (previously defined as "TNF II"), with McCann, Isaac Schlueter and myself as members. As Co-Founder, Managing Partner, and Chief Executive Officer of TNF II, I oversaw the development and implementation of TNF II's training, consulting and support services and materials. Attached as Exhibit C true and correct copy of the Certificate of Incorporation for The Node Firm, LLC.

21. McCann and I have authority to exercise control over the operations and decisions regarding TNF II's provision of services under THE NODE FIRM name/mark,

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use by other entities of THE NODE FIRM name/mark, and any other matters under our responsibility.

22. Throughout the remainder of 2013, under the leadership of McCann and myself, TNF II was transformed from a loose collective of individuals into an organized, accountable, and professionally-operated venture operating under THE NODE FIRM mark and name. McCann and I initiated several targeted business development initiatives to establish goodwill in THE NODE FIRM name and mark, including holding monthly office hours, which I typically led, where members of the tech community could learn about Node.js, raise specific problems they encountered, and the like.

23. During the latter two-thirds of 2013, McCann and I also participated in several Node.js conferences, posted in online forums, and otherwise engaged in industry-relevant promotional activities under THE NODE FIRM name and mark directed at imbuing THE NODE FIRM name/mark with goodwill, and presenting ourselves as the face of the brand.

24. During the time that we were aggressively building the reputation of THE NODE FIRM, the remaining Collaborators pursued other, unrelated professional ambitions. Attached as Exhibits D and E are true and correct print-outs of the LinkedIn profile posted for Nuno Job, located at https://uk.linkedin.com/in/nunojob, as accessed on May 4, 2015 and October 9, 2015, respectively, showing that (a) from December 2011 to August 2013, Job served as Chief Commercial Officer for Nodejitsu; (b) from December 2011 to February 2015, Job acted as an Advisor and Board Member of Nodejitsu; (c) from December 2013 to present, Job acted as an Advisor of a company called AuthO; (d) Job founded YLD Limited in November 2013 (Exhibit D); and (e) Job served as

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Founder and Managing Director (Exhibit D), or CEO (Exhibit E), of YLD Limited from November 2013 to present.

25. At the end of 2013, Job approached me to propose an arrangement whereby Job could get back involved with THE NODE FIRM, and run European operations for TNF II. I conveyed that I was open to exploring possibilities, though stated that any such arrangement would require Job to work with McCann. Job rejected my proposal.

26. In or around early 2014, Job autonomously, and without warning, surreptitiously terminated access to THE NODE FIRM website, and rerouted incoming email and calendar requests intended for TNF II. Because TNF II was locked out of its own email and website, it could no longer conduct day-to-day business using the operational infrastructure that it had previously utilized as back-end support for promoting the services that McCann, myself, and others within our team, offered under THE NODE FIRM name/mark.

27. As a result of Job's willful, reckless and malevolent actions, McCann and I could not conduct the business of TNF II that we had built, and for which our reputation was intertwined with THE NODE FIRM name/mark.

28. Nonetheless, TNF II remains an existing limited liability company. McCann and I own the majority of the ownership interests in TNF II, and we have the right to control its activities.

29. McCann and I had previously recognized the market need for a company that specialized in Node.js, but catered to large enterprise customers and provided Node-based software development tools, support, and related products and services. A firm

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that focused on Node, whose primary business was to develop and sell products, and provide training, consulting and support services ancillary to its sale of products.

30. Thus, on February 25, 2014, McCann and I formed NSLLC, a Texas limited liability company, to continue leveraging our reputation from services we performed through TNF II under THE NODE FIRM name/mark. McCann and I were the only members of NSLLC. Attached as Exhibit F is a true and correct copy of the Certificate of Incorporation for Node Source, LLC.

31. On February 17, 2015, NSLLC converted to Node Source, Inc., a Delaware corporation ("NSI"). Attached as Exhibit G is a true and correct copy of the Certificate of Conversion evidencing the conversion of Node Source, LLC to NodeSource, Inc. I own at least 33.33% of the shares of common stock of NSI. I am also elected to serve NSI as a director on the Board of Directors.

32. As a result of the conversion from NSLLC to NSI (collectively referred to as "NS"), NSLLC ceased to exist as a corporate entity.

33. In addition to my equity ownership and Board directorship, I am Co-Founder, President, and Chief Product Officer of NS, and oversee the product development, engineering, operational and support aspects of the company. McCann and I have authority to exercise control over the operations and decisions regarding provision of services under any trademarks owned or licensed by NS, and any other matters of NS under our responsibility.

34. Like TNF I and TNF II, NS is also closely aligned with the reputation of myself and McCann.

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35. While TNF I, TNF II and NS have different specific focuses, the goods and services that they offer all center on the Node programing language, and all are under the control of myself and McCann, who are the source of the reputation and goodwill of the names and marks used thereby, which such reputation and goodwill has transferred with me and McCann through our successive Node ventures.

36. The nature and quality of the services provided under THE NODE FIRM name and mark has been controlled by, or is subject to control by, the entities operated and controlled by myself and McCann offering Node goods and services, first through my operation and control of THE NODE FIRM name and mark around TNF I, then through our operation and control of THE NODE FIRM name and mark through TNF II, then through our operation and control of all names and marks owned or licensed through NS.

37. THE NODE FIRM name/mark is not currently in use by TNF II or NS, as (i) TNF II and NS are seeking judicial affirmation that Applicant owns no rights in THE NODE FIRM name or mark; and (ii) YLD is asserting trademark infringement of THE NODE FIRM name/mark. However, none of TNF II, NS, or myself and McCann who operate and control these related entities, have an intent not to resume use of THE NODE FIRM mark.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9th day of October, 2015.

Daniel Shaw

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

In re Application Serial No.	:	86/174,797
Mark	:	THE NODE FIRM
International Class	:	42
Applicant	:	YLD Limited
Filed	:	January 24, 2014
Published	:	October 7, 2014

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The Node Firm, LLC

Opposer,

v. : Opposition No. 91221438

YLD Limited

Applicant.

----------X

DECLARATION OF JOE MCCANN

I, Joe McCann, under penalty of perjury, hereby declare as follows:

1. I am Co-Founder and Chief Executive Officer of NodeSource, Inc. ("NSI"), formerly Node Source, LLC ("NSLLC"). As Co-Founder and CEO, I assume an active operational role in NSI, and oversee business development, business operations, product development and client communications for the company. As part of my responsibilities, I am aware of the company's history and current activities.

2. Prior to my involvement with NSI and NSLLC (collectively, "NS"), I was a Managing Director and Partner of The Node Firm, LLC ("TNF II"). As a Managing Director and Partner, I assumed an active operational role in TNF I, and oversaw TNF I's business

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development, business operations, product development and client communications. As a result of my responsibilities for TNF I, I am aware of the company's history and activities.

3. As such, and unless otherwise stated, I have personal knowledge of the matters stated herein, and if called as a witness, I could and would competently testify to them under oath.

4. All capitalized terms not defined in this Declaration are used as defined in the Memorandum of Opposer The Node Firm, LLC to Supplement Its Opposition to Applicant YLD Limited's Motion to Dismiss being filed concurrently herewith.

5. Around January 2013, Daniel Shaw ("Shaw") enlisted my assistance in connection with day-to-day operations and business development efforts for THE NODE FIRM.

6. Shaw and I assumed leadership roles among the Collaborators, and avidly pursued building a reputation for THE NODE FIRM name/mark in connection with Node Consulting Services. To this end, Shaw and I regularly offered Node Consulting Services and other projects under THE NODE FIRM name/mark, spoke at conferences identifying ourselves under THE NODE FIRM name/mark, wrote extensively on issues of interest to the Node community under THE NODE FIRM name/mark, and otherwise actively engaged in efforts that amassed goodwill in THE NODE FIRM name/mark, with me and Shaw as the forces behind it.

7. Moreover, Shaw and I oversaw use of THE NODE FIRM name/mark by others, and maintained the integrity of the name/mark's quality and reputation.

8. From November 2012 through the end of January 2013, Shaw and I undertook to review records, learn about liabilities, and otherwise conduct due diligence directed at illuminating the scope of activities engaged in by Members under THE NODE FIRM name/mark.

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9. Thereafter, we endeavored to corral and further grow the nascent notoriety inuring to use of THE NODE FIRM name/mark. We began to operate THE NODE FIRM like a proper business fiscally and legally, and we implemented measures to build and protect THE NODE FIRM brand going forward.

10. On February 28, 2013, Shaw formed The Node Firm LLC, a Texas limited liability company (previously defined as "TNF II"), with Shaw, Isaac Schlueter and myself as members. As Managing Director and Partner of TNF II, I oversaw TNF II's business development, business operations, product development and client communications.

11. As majority owners of TNF II, Shaw and I have authority to exercise control over the operations and decisions regarding TNF II's provision of services under THE NODE FIRM name/mark, use by other entities of THE NODE FIRM name/mark, and any other matters under our responsibility.

12. Throughout the remainder of 2013, under the leadership of Shaw and myself, TNF II was transformed from a loose collective of individuals into an organized, accountable, and professionally-operated venture operating under THE NODE FIRM name and mark. Shaw and I initiated several targeted business development initiatives to establish goodwill in THE NODE FIRM name and mark, including holding monthly office hours, which Shaw typically led, where members of the tech community could learn about Node.js, raise specific problems they encountered, and the like.

13. During the latter two-thirds of 2013, Shaw and I also participated in several Node.js conferences, posted in online forums, and otherwise engaged in industry-relevant promotional activities under THE NODE FIRM name and mark directed at imbuing THE NODE FIRM name/mark with goodwill, and presenting ourselves as the face of the brand.

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14. With regard to NSI, I own at least 33.33% of the shares of NSI's common stock. I am also elected to serve NSI as a director on the Board of Directors.

15. In addition to my equity ownership and Board directorship, I am Co-Founder and Chief Executive Officer of NS, and oversee business development, business operations, product development and client communications for the company. Shaw and I have authority to exercise control over the operations and decisions regarding provision of services under any trademarks owned or licensed by NS, and any other matters of NS under our responsibility.

16. Like TNF I and TNF II, NS is also closely aligned with the reputation of myself and Shaw.

17. While TNF I, TNF II and NS have different specific focuses, the goods and services that they offer all center on the Node programing language, and all are under the control of myself and Shaw, who are the source of the reputation and goodwill of the names and marks used thereby, which such reputation and goodwill has transferred with me and Shaw through our successive Node ventures.

18. The nature and quality of the services provided under THE NODE FIRM name and mark has been controlled by, or is subject to control by, the entities operated and controlled by myself and Shaw offering Node goods and services, first through Shaw's operation and control of THE NODE FIRM name and mark around TNF I, then through our operation and control of THE NODE FIRM name and mark through TNF II, then through our operation and control of all names and marks owned or licensed through NS.

19. None of TNF II, NS, or myself and Shaw who operate and control these related entities, have an intent not to resume use of THE NODE FIRM mark.

Doc ID: 866273a43bf9ee75911501a8028638e657f353e2

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed October 9, 2015

Joe McCann

Doc ID: 866273a43bf9ee75911501a8028638e657f353e2

EXHIBIT A

NODE FIRM LLC

Business Entity Information

Status:	Dissolved	File Date:	11/14/2012
Type:	Domestic Limited-Liability Company	Entity Number:	E0588452012-0
Qualifying State:	NV	List of Officers Due:	11/30/2014
Managed By:	Managing Members	Expiration Date:	
NV Business ID:	NV20121686079	Business License Exp:	11/30/2014

Additional Information

Central Index Key:	

Registered Agent Information

Name:	UNITED STATES CORPORATION AGENTS, INC.	Address 1:	500 N RAINBOW BLVD STE 300A
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89107
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

Include Inactive Officers

Managing Member - DANIEL SHAW

Address 1:	1117 TENNESSEE ST #3	Address 2:	
City:	SAN FRANCISCO	State:	CA
Zip Code:	94107	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	20120769352-07	# of Pages:	1
File Date:	11/14/2012	Effective Date:	

(No notes for this action)

Action Type:	Initial List		
Document Number:	20130054005-70	# of Pages:	1
File Date:	1/28/2013	Effective Date:	

(No notes for this action)

Action Type:	Annual List		
Document Number:	20130781808-98	# of Pages:	1
File Date:	11/29/2013	Effective Date:	

(No notes for this action)

Action Type:	Dissolution		
Document Number:	20140801946-25	# of Pages:	1
File Date:	12/10/2014	Effective Date:	

(No notes for this action)

EXHIBIT B

Gmail by Google

Rejoice

Nuno Job <nunojobpinto@gmail.com> Fri, Dec 21, 2012 at 9:39 AM
To: "discuss@thenodefirm.com" <discuss@thenodefirm.com>

Hi guys,

About a year ago, me and Mikeal where trying to get a name for this idea we had. He came up with a really strong one, "The Node Firm". We loved it and launched on Jan 3rd I believe.

We had some ups and downs this year, but mostly we got traction and some good contracts. Some highlights of what happened last year.

* Two major contracts with Fortune 500 companies
* Paolo delivered probably about 10 workshop to promote awareness of The Node Firm, growing our brand and helping Node.js grow
* We launched a revamped website that kicks ass, thanks Karolina!
* We launched subscription that will enable us to deliver support without all the hassle of long term consulting
* Our very own Isaac now runs Node, and he's quite good at it
* Some of our members have been in companies acquired for a billion dollars. I'm not even kidding! :)
* Our community exploded, but the roots remain.
* We toured the world, not even kidding. We been everywhere talking about Node, it was CRAZY!

Right now we are getting a LOT of traction with subscriptions. The only problem is we dont really have dedicated management, so we are moving slower than customer would like us to. So Daniel is dedicated to finding someone that dedicates a lot of love to the firm! :)

I know this is the node firm, but for me its more. You guys are some of my closest friends, or at the very least people I admire deeply. I'm proud to be working with you all, and I thank you for last year.

I sent this tweet showing how proud I am with this moment, feel free to RT. Wish you all a 2013 that is at least as good as this year (but probably better):

* https://twitter.com/TheNodeFirm/status/282176014262620160

Thank you all, happy holidays and hope to see you soon.
Nuno

Paolo Fragomeni <paolo@async.ly> Fri, Dec 21, 2012 at 9:58 AM
To: Nuno Job <nunojobpinto@gmail.com>, discuss@thenodefirm.com

Nuno, great recap and congratulations to everyone for their contributions and successes. To clarify we actually had 3 major customers -- i'll try to find out if we can use the Wells Fargo logo. :D

I'm curious about subscriptions, if we are getting lots of traction is there a way to make that transparent? If not publicly at least doing so for the team would be a strategic advantage.

On Fri, Dec 21, 2012 at 12:39 PM, Nuno Job <nunojobpinto@gmail.com> wrote:
> our mem

--
Paolo Fragomeni
Founder, @Oqulr

github.com/hij1nx
twitter.com/hij1nx

Nuno Job <nunojobpinto@gmail.com> Fri, Dec 21, 2012 at 10:35 AM
To: Paolo Fragomeni <paolo@async.ly>
Cc: "discuss@thenodefirm.com" <discuss@thenodefirm.com>

Hi Paolo,

As for the Wells Fargo logo, well go right ahead. Also feel free to get a quote and sell them on subscriptions (we can sync up on it if you like).

All our inbound leads come via email. We have had 2/3 of these a week lately, and most of the responses (even from startups) is that they want to buy one of the entry level packages. I would love to make this more transparent but I don't know how to do that without making hello -> team and that would be very annoying :)

Nuno

On Fri, Dec 21, 2012 at 5:58 PM, Paolo Fragomeni <paolo@async.ly> wrote:
> use the Wells Fargo logo. :D

Paolo Fragomeni <paolo@async.ly> Fri, Dec 21, 2012 at 10:37 AM
To: Nuno Job <nunojobpinto@gmail.com>
Cc: "discuss@thenodefirm.com" <discuss@thenodefirm.com>

How about a google doc of confirmed subscriptions and responsible persons?
[Quoted text hidden]
--
[Quoted text hidden]

Dan Shaw <dshaw@dshaw.com> Fri, Dec 21, 2012 at 11:19 AM
To: Nuno Job <nunojobpinto@gmail.com>
Cc: Paolo Fragomeni <paolo@async.ly>, "discuss@thenodefirm.com" <discuss@thenodefirm.com>

I'm going to be working on this over the holidays. As more subscriptions come in, we're going to be on the hook to fulfill these engagements and keep our subscribers happy too.

Daniel Shaw
@dshaw
[Quoted text hidden]

Paolo Fragomeni <paolo@async.ly> Fri, Dec 21, 2012 at 12:11 PM
To: Dan Shaw <dshaw@dshaw.com>
Cc: Nuno Job <nunojobpinto@gmail.com>, "discuss@thenodefirm.com" <discuss@thenodefirm.com>

Yay dshaw! You rock!
[Quoted text hidden]
--
[Quoted text hidden]

Joe McCann <joseph.isaac@gmail.com> Fri, Dec 21, 2012 at 12:36 PM
To: Paolo Fragomeni <paolo@async.ly>
Cc: Dan Shaw <dshaw@dshaw.com>, Nuno Job <nunojobpinto@gmail.com>, "discuss@thenodefirm.com" <discuss@thenodefirm.com>

I will be working with Nuno to help drive the biz dev efforts as well. Lots of opportunities there.

--

Joe McCann
Creative Technologist

subPrint Interactive

Fon: +1.718.577.2343
Fax: +1.718.218.3499
Email: joe@subprint.com
Web: http://subprint.com

[Quoted text hidden]

Christian Sanz <chris@geekli.st> Fri, Dec 21, 2012 at 1:29 PM
To: Joe McCann <joseph.isaac@gmail.com>
Cc: Paolo Fragomeni <paolo@async.ly>, Dan Shaw <dshaw@dshaw.com>, Nuno Job <nunojobpinto@gmail.com>, "discuss@thenodefirm.com" <discuss@thenodefirm.com>

RTied, nice work Nuno and the rest of the team.
[Quoted text hidden]
--

Chris Sanz
Cofounder
@csanz

Mikeal Rogers <mikeal.rogers@gmail.com> Fri, Dec 21, 2012 at 1:44 PM
To: Nuno Job <nunojobpinto@gmail.com>
Cc: "discuss@thenodefirm.com" <discuss@thenodefirm.com>

I'd like to call out Nuno, Paolo, Karolina and Daniel for all the work they put in this year as it was much more than me or any of the other members :)

Love you guys, and I'm super excited to see what happens in the new year.

-Mikeal
[Quoted text hidden]

EXHIBIT C

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: $300

Certificate of Formation
Limited Liability Company

Filed in the Office of the Secretary of State of Texas
Filing #: 801742121 02/28/2013
Document #: 468626320002
Image Generated Electronically for Web Filing

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

The Node Firm, LLC

Article 2 – Registered Agent and Registered Office

☐ A. The initial registered agent is an organization (cannot be company named above) by the name of:

OR

☑ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:
Costa Anestos

C. The business address of the registered agent and the registered office address is:

Street Address:
111 Congress Avenue, Suite 400 Austin TX 78701

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☑ B. The consent of the registered agent is maintained by the entity.

Article 3 - Governing Authority

☑ A. The limited liability company is to be managed by managers.

OR

☐ B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: **Joe McCann** Title: **Manager**

Address: **800 West 5th Street #601 Austin TX, USA 78703**

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer are set forth below.

Costa Anestos **111 Congress Avenue, Suite 400, Austin, TX 78701**

Effectiveness of Filing

☑ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Costa Anestos

Signature of Organizer

FILING OFFICE COPY

EXHIBIT D

What is LinkedIn? Join Today Sign In

Nuno Job

Founder, Managing Director at YLD!

London, Greater London, United Kingdom | Computer Software

500+ connections

Current	YLD, Auth0
Previous	Nodejitsu, The Node Firm, MarkLogic
Education	Engineering College of Aarhus
Recommendations	**19** people have recommended **Nuno**
Websites	Website Github Resume

Join LinkedIn and access Nuno's full profile. It's free!

As a LinkedIn member, you'll join 300 million other professionals who are sharing connections, ideas, and opportunities.

- See who you know in common
- Get introduced
- Contact **Nuno** directly

View Nuno's Full Profile

Summary

open-source & business geek. founder @yldio. creator of @LXJS & @ContainerCamp. advisor to @nodejitsu and @auth0.

Experience

Founder, Managing Director
YLD
November 2013 – Present (1 year 7 months) | London, United Kingdom

Advisor
Auth0
December 2013 – Present (1 year 6 months) | Greater Seattle Area

Advisor & Board Member
Nodejitsu
December 2011 – February 2015 (3 years 3 months) | New York

Chief Commercial Officer
Nodejitsu

Search by name

Over 300 million professionals are already on LinkedIn. Find who you know.

First Name Last Name

Example: Jeff Weiner

Ads You May Be Interested In

43 New MA Clients
43 new legal clients seeking a MA attorney. View their cases today.

Harvard Is Rewarding
Introducing the Harvard Alumni Card With Best-in-Class Rewards. Learn More!

Dont Buy Leads, Buy Calls
We make your phone ring with qualified prospects. Receive live calls now!

December 2011 – August 2013 (1 year 9 months) | New York, New York

What is LinkedIn? Join Today Sign In

Founder, Chief Executive Officer
The Node Firm
December 2011 – January 2013 (1 year 2 months)

Developer Advocate
MarkLogic
May 2011 – December 2011 (8 months)

node.js
xquery

Technical Instructor
MarkLogic
October 2010 – May 2011 (8 months)

- Customer facing role
- Specialized & Advanced classes delivery
- Courseware development

Pre-Sales Consultant
MarkLogic UK
August 2010 – January 2011 (6 months)

- Financial Services instruments store POC (Swaps, Foreign Exchange Trades, Bonds, Securities, Balances, Journals)
- XQuery / MarkLogic development
- Qlikview
- Customer management & Interaction

Consultant
MarkLogic
December 2009 – August 2010 (9 months)

- Strong customer focus
- Consulting
- Technical Trainer in Mark Logic Server, Enterprise search, Web applications and XML Related Technologies
- Evangelist for MarkLogic technologies
- Independent research and open-source development in XQuery
- NoSQL

DB2 Technical Enablement Specialist
IBM
September 2009 – December 2009 (4 months)

- Strong customer focus
- Customer relations on IBM Enterprise Information Management Go to Market Programs
- Partner and ISVs certification on Ready For and IOD Speciality Programs
- Ruby on Rails Development / Maintenance
- Internal training on disruptive technologies

ISV Solutions Engineer - Data Specialist: DB2 pureXML
IBM

What is LinkedIn? Join Today Sign In

October 2008 – September 2009 (1 year)

- Customer enablement - PureXML prototyping and consulting for financial, health-care and government institutions (DB2 / XQuery / SQL/XML / Websphere / Java / JDBC / XForms).
- Lectured XQuery and SQL/XML for customers and partners.
- Co-author and Team leader on an emerging technologies book on DB2 and Ruby on Rails.
- Cross product integration & whitespace exploration
- Technical writing on DB2 pureXML related articles
- Industry specific solutions using XML standards (i.e. FpML, SEPA, HL7)

Reseacher
ISEP
November 2007 – January 2008 (3 months)

Web Application for GAED in Ruby on Rails.

Software Engineer
MobiComp
October 2006 – March 2007 (6 months)

Outsourcing. C#/.NET/VSTO. Created the user interface and implemented the client logic for the MobileKeeper Outlook Client. Developed a parser for the IMC personal data interchange formats (vCard and vCalendar) using DOM & Regular Expressions. Acquired basic knowledge on SyncML XML Industry Standard.

Web Developer
Self-employed
January 1998 – April 2006 (8 years 4 months)

Developed a reasonable number (>50) of websites using ASP/PHP/Flash/CSS/HTML.

Web Developer
Triplo W
May 2001 – October 2001 (6 months)

Developed the first version of the Interportas Web Portal. After I quitted the project was reassigned to a different designer so I have no responsibility on the current layout.
Used CSS/HTML/PHP.

Test Scores

Testing
Score: WOW SO MUCH

Languages

English
Full professional proficiency

Portuguese
Native or bilingual proficiency

Spanish
Limited working proficiency

French
Elementary proficiency

Italian
Elementary proficiency

What is LinkedIn? Join Today Sign In

Skills

MarkLogic | XQuery | Ruby | NoSQL | Prolog | C# | Java | Haskell
XML | HTML | CSS | Ruby on Rails | XPath | SQL | DB2
See 35+

Education

Engineering College of Aarhus
Human Technology, Innovation, Creativity, Requirements Engineering, Product Development
2008 – 2008

Intensive Erasmus course at Bang & Olufsen, Struer, Denmark on Conceptual Design and Development of Innovative Products

Universidade do Minho
BS, Computer Science, Systems Analysis, Maths, Physics, Economics
2004 – 2007

Most Relevant works:

SIGeo (Geographical Information System)
An GPS look-a-like Java application that could calculate the shortest path. Combined a good GUI with a flexible way to modify the roads/cities/etc and was animated when the path was being showed.

gEM (Multimedia Entertainment Manager)
An music database system coded in Java that allowed playing mp3. Similar to Winamp/other media player applications.

hZip (Haskell Zip)
Module that used Huffman coding to compress/decompress a file. Despite being called Haskell Zip i developed both a Haskell and a C# version.

Su-DoKu 9x9
A Haskell based Sudoku game that had a seriously good user interface. You could select different skins (there where 3 available) and the game had a cheat menu that allowed to solve the entire board in less than 5 seconds. Had also a hints system and did not allowed foul moves.
Activities and Societies: Developed a Point-Free Simplification Module for the PURe Project (FCT POSI/CHS/44304/2002, University of Minho, Department of Informatics); Volunteer for the European Joint Conferences on Theory and Practice of Software (ETAPS'07)

Universidade do Minho
MSc, Software Engineering, Software Architecture, Cryptography, WebServices, Scripting, XML, Web Apps
2007

Thesis:
Limiting Disclosure on an XML Database
Aims to provide a way to ensure limited disclosure in a hierarchical Hippocratic Database . It will explore the possibility of ensuring privacy according to individual preferences at node level granularity. For that purpose it will provide a proof of concept that uses techniques of query re-writing. Finally it will verify possible performance losses or gains when compared to a non-privacy enabled counter-part.

Other Work:

e-archia.net
Social Web application developed in Ruby on Rails/XHTML/CSS that defined a web archive for academic projects. Also experimented a different approach to the problem using XForms, Ruby on

Rails, METS, RESTful web services and IBM DB2.

What is LinkedIn? Join Today Sign In

anonymizer
Implemented Mondrian k-anonymity using ruby

Ivy
Statistics analysis on diagrams that represent behaviors of a system that is designed to measure usability of a software product.
Activities and Societies: Member of Open Source Support Center (CAOS, University of Minho, Department of Informatics); IBM DB2 Student Ambassador (University of Minho); Open Source Support Center (CAOS) Member.

Interests

Technology | Sports | Music | Movies | Photography and Art

Honors & Awards

Featured IBM DB2 Ambassador on IBM Website, 2007.

Groups

MarkLogic User Com... | AIESEC Alumni Toro... | IBM DB2 pureXML N... | Big Data Open Sourc...

The Star Tracker | FC Porto Supporter | Privacy Professionals

See 37 more

View Nuno's full profile to...

- See who you know in common
- Get introduced
- Contact **Nuno** directly

View Nuno's Full Profile

Not the Nuno Job you're looking for? View more

LinkedIn member directory: a b c d e f g h i j k l m n o p q r s t u v w x y z more | Browse members by country

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EXHIBIT E

What is LinkedIn? Join Today Sign In

Nuno Job

CEO at YLD!

London, Greater London, United Kingdom | Computer Software

500+ connections

Current	YLD, Breezy HR, Auth0
Previous	Nodejitsu, The Node Firm, MarkLogic
Education	Engineering College of Aarhus
Recommendations	**19** people have recommended **Nuno**
Websites	Website Github Resume

Search by name

Over 300 million professionals are already on LinkedIn. Find who you know.

First Name Last Name

Example: Jeff Weiner

Join LinkedIn and access Nuno's full profile. It's free!

As a LinkedIn member, you'll join 300 million other professionals who are sharing connections, ideas, and opportunities.

- See who you know in common
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View Nuno's Full Profile

Summary

open-source & business geek. founder @yldio. creator of @LXJS & @ContainerCamp. advisor to @nodejitsu and @auth0.

Experience

CEO
YLD
November 2013 – Present (2 years) | London, United Kingdom

Advisor
Breezy HR
August 2015 – Present (3 months) | London, United Kingdom

Advisor
Auth0
December 2013 – Present (1 year 11 months) | Greater Seattle Area

Advisor & Board Member
Nodejitsu

December 2011 – February 2015 (3 years 3 months) | New York

What is LinkedIn? Join Today Sign In

Chief Commercial Officer
Nodejitsu
December 2011 – August 2013 (1 year 9 months) | New York, New York

Founder, Chief Executive Officer
The Node Firm
December 2011 – January 2013 (1 year 2 months)

NODE FIRM

Developer Advocate
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xquery

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French
Elementary proficiency

Italian
Elementary proficiency

What is LinkedIn? Join Today Sign In

Skills

MarkLogic | XQuery | Ruby | NoSQL | Prolog | C# | Java | Haskell | XML | HTML | CSS | Ruby on Rails | XPath | SQL | DB2

See 35+

Education

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---

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Other Work:

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Implemented Mondrian k-anonymity using ruby

Ivy
Statistics analysis on diagrams that represent behaviors of a system that is designed to measure usability of a software product.
Activities and Societies: Member of Open Source Support Center (CAOS, University of Minho, Department of Informatics); IBM DB2 Student Ambassador (University of Minho); Open Source Support Center (CAOS) Member.

Recommendations

A preview of what LinkedIn members have to say about Nuno:

You need something, Nuno learn how to do it and you may consider it done.

See more

Nuno is very smart and can realize things faster than a normal person does, he is always doing what it takes to get the goal reached. Since I met him from IBM I've been learning a

See more

Sign up to see who recommended Nuno

Interests

Technology | Sports | Music | Movies | Photography and Art

Honors & Awards

Additional Honors & Awards

Featured IBM DB2 Ambassador on IBM Website, 2007.

Groups

XQuery Network **AIESEC** **Node.js** **.NET People**

Enterprise Search En... **Alumni UMinho** **FC Porto Supporter**

See 37 more

View Nuno's full profile to...

- See who you know in common
- Get introduced
- Contact **Nuno** directly

What is LinkedIn? Join Today Sign In

View Nuno's Full Profile

Not the Nuno Job you're looking for? View more

LinkedIn members in United Kingdom: a b c d e f g h i j k l m n o p q r s t u v w x y z more | Browse members by country

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EXHIBIT F

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: $300

Certificate of Formation
Limited Liability Company

Filed in the Office of the Secretary of State of Texas
Filing #: 801940874 02/25/2014
Document #: 531121080002
Image Generated Electronically for Web Filing

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Node Source, LLC

Article 2 – Registered Agent and Registered Office

☐ A. The initial registered agent is an organization (cannot be company named above) by the name of:

OR

☑ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:
Costa Anestos

C. The business address of the registered agent and the registered office address is:

Street Address:
111 Congress Avenue, Suite 400 Austin TX 78701

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☑ B. The consent of the registered agent is maintained by the entity.

Article 3 - Governing Authority

☑ A. The limited liability company is to be managed by managers.

OR

☐ B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: (Business Name) **Pillar Technology Holdings, LLC**

Address: **111 Congress Avenue, Suite 400 Austin TX, USA 78701**

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer are set forth below.

Costa Anestos **111 Congress Avenue, Suite 400, Austin, TX 78701**

Effectiveness of Filing

☑ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Costa Anestos

Signature of Organizer

FILING OFFICE COPY

EXHIBIT G

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697

Coby Shorter, III
Deputy Secretary of State

Office of the Secretary of State

CERTIFICATE OF CONVERSION

The undersigned, as Secretary of State of Texas, hereby certifies that a filing instrument for

Node Source, LLC
File Number: 801940874

Converting it to

NodeSource, Inc.
File Number: [Entity not of Record, Filing Number Not Available]

has been received in this office and has been found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the acceptance and filing of the conversion on the date shown below.

Dated: 02/13/2015

Effective: 02/13/2015

Coby Shorter, III
Deputy Secretary of State

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A TEXAS LIMITED LIABILITY COMPANY UNDER THE NAME OF "NODE SOURCE, LLC" TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "NODE SOURCE, LLC" TO "NODESOURCE, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF FEBRUARY, A.D. 2015, AT 7:12 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Jeffrey W. Bullock, Secretary of State

5694034 8100V

150209303

AUTHENTICATION: 2129152

DATE: 02-18-15

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:17 AM 02/18/2015
FILED 07:12 PM 02/17/2015
SRV 150209303 - 5694034 FILE

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A LIMITED LIABILITY COMPANY TO A CORPORATION PURSUANT TO SECTION 265 OF THE DELAWARE GENERAL CORPORATION LAW

1) The jurisdiction where the Limited Liability Company first formed is **Texas**.

2) The jurisdiction immediately prior to filing this Certificate is **Texas**.

3) The date the Limited Liability Company first formed is **February 25, 2014**.

4) The name of the Limited Liability Company immediately prior to filing this Certificate is **Node Source, LLC**.

5) The name of the Corporation as set forth in the Certificate of Incorporation is **NodeSource, Inc.**

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Limited Liability Company have executed this Certificate this 11th day of February, 2015.

By:_____

Name: Joseph McCann

Its: Member

By:_____

Name: Daniel Shaw

Its: Member

By: Gavon Renfroe

Name: Gavon Renfroe

Its: Member