

ESTTA Tracking number: **ESTTA733647**

Filing date: **03/15/2016**

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

Proceeding	91221569
Party	Plaintiff Snapchat, Inc.
Correspondence Address	ROBERT POTTER KILPATRICK TOWNSEND & STOCKTON LLP 1114 AVENUE OF THE AMERICAS, 21ST FLOOR NEW YORK, NY 10036 UNITED STATES rpotter@ktslaw.com, svayner@ktslaw.com, tmadmin@ktslaw.com, dwilson@ktslaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Robert Potter
Filer's e-mail	rpotter@ktslaw.com, svayner@ktslaw.com, tmadmin@ktslaw.com, dwilson@ktslaw.com
Signature	/Robert Potter/
Date	03/15/2016
Attachments	2016.03.15 Motion for Leave to Amend NOO.pdf(3560908 bytes)

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

In the Matter of Application Serial No. **86/358,450**
For the mark: **SCRAP CHAT**
Filed: August 6, 2014
Published: January 20, 2015

-----X	
SNAPCHAT, INC.,	:
	:
Opposer,	:
	:
v.	:
	:
JUSTIN SCHWARTZ,	:
	:
Applicant.	:
-----X	

Opposition No. 91221569

**OPPOSER SNAPCHAT, INC.’S MOTION AND BRIEF IN SUPPORT FOR
LEAVE TO AMEND NOTICE OF OPPOSITION AND TO SUSPEND PROCEEDING**

Pursuant to Rule 2.107 of the Trademark Rules of Practice, 37 C.F.R. § 2.107, Trademark Board Manual of Procedure (“TBMP”) §§ 315 and 507, and Rule 15(a) of the Federal Rules of Civil Procedure, and on the basis of information recently obtained through discovery, Opposer Snapchat, Inc. (“Opposer” or “Snapchat”) respectfully moves the Board for leave to amend its Notice of Opposition against Applicant Justin Schwartz (“Applicant” or “Schwartz”) to add a claim that application Serial No. 86/358,450 to register the mark SCRAP CHAT is void *ab initio* because the Applicant currently does not own the SCRAP CHAT mark and did not own that mark as of the filing date of the application, as required by 15 U.S.C. § 1051(a) and 37 C.F.R. § 2.71(d).

In accordance with TBMP § 507.01, a signed copy of the proposed Amended Notice of Opposition is attached as **Exhibit A**, and a redlined copy of the Amended Notice of Opposition, showing the proposed changes from the original Notice of Opposition, is attached as **Exhibit B**.

Additionally, pursuant to 37 C.F.R. § 2.117(c) and TBMP § 510.03, Snapchat requests

that the Board suspend this proceeding pending disposition of Snapchat's Motion for Leave to Amend its Notice of Opposition (the "Motion").

Snapchat's counsel requested Applicant's consent to this amendment on February 26, but as of the filing of this Motion has not yet received a substantive response, despite several attempts to follow up with Applicant's counsel regarding this issue. *See* Declaration of Robert Potter ("Potter Decl.") ¶ 2, Ex. 1. Given the passage of two weeks since Snapchat initially requested Applicant's consent, Snapchat had no choice but to file the present Motion to avoid any further delay.

I. FACTS AND PROCEDURAL HISTORY

On August 6, 2014, Applicant filed a use-based application to register the mark SCRAP CHAT for "computer application software for mobile phones, tablets, and handheld computers, namely, software for allowing users to share pictures, videos, links, and other content and lets them post them to their own pages if they enjoy the content" in Class 9, claiming a date of first use in commerce of January 2, 2014 (Serial No. 86/358,450) (the "Application"). Snapchat timely filed a Notice of Opposition against the Application on April 20, 2015, objecting on likelihood of confusion grounds. *See* Dkt. No. 1.

As part of ongoing discovery between the parties, counsel for Snapchat took Applicant's deposition on January 6, 2016. *See* Potter Decl. ¶ 3, Ex. 2.¹ Applicant's deposition testimony revealed that Applicant was not the current owner of the SCRAP CHAT mark, that Applicant was not the owner of the SCRAP CHAT mark on the filing date of the Application, and that,

¹ Although discovery in this proceeding closed on December 26, 2015, the parties stipulated – and the Board granted – a thirty (30) day extension of this deadline for the limited purpose of taking Applicant's deposition, which had been properly noticed within the discovery period, but which ultimately was scheduled for January 2016 to accommodate Applicant's schedule. *See* Dkt. Nos. 5-6.

instead, the mark is and always has been owned by Keatman Inc. (“Keatman”), an active New York corporation.²

Specifically, among other related statements, Applicant testified that Keatman is the owner of the SCRAP CHAT mark and the application to register that mark with the USPTO:

Q: Does Keatman own the SCRAP CHAT application?

A: Yes.

Q: Does Keatman own the mark you’ve applied for to register SCRAP CHAT?

A: Yes.

Q: Does Keatman own that mark 100 percent?

A: I believe so.

Potter Decl. ¶ 3, Ex. 2 at 17:11-18.

Consequently, and based on this, it appears that Applicant is not, and has never been, the owner of the SCRAP CHAT mark. Under these circumstances, Snapchat respectfully requests that the Board grant Snapchat leave to amend its Notice of Opposition to include a claim that the Application is void *ab initio* because Applicant did not own the SCRAP CHAT mark as of the filing date of the Application.

II. ARGUMENT AND CITATION OF AUTHORITY

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action. *See* 37 C.F.R. § 2.107; TBMP §§ 315 and 507. Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading by leave of court, which should be freely given when justice so requires. Fed. R. Civ. P. 15(a). The Trademark

² Documents filed with the Department of State for the State of New York on June 3, 2013 confirm that Keatman was an active New York corporation on the filing date of the Application and that it remains an active New York corporation as of the filing date of this Motion. *See* Potter Decl. ¶ 4, Ex. 3.

Trial and Appeal Board Manual of Procedure provides that “the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties.” TBMP § 507.02; *see also, e.g., Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993) (granting leave to include a claim that applicant lacked a *bona fide* intent to use the mark in commerce); *Combs v. Pac. Rim Mktg. Inc.*, Opp. No. 91187342, 2010 WL 5522991, at *2 (T.T.A.B. Dec. 16, 2010); *Am. Univ. v. Van Niekerk*, Can. No. 92040938, 2003 WL 22970623, at *1-2 (T.T.A.B. Dec. 15, 2003). Here, entry of the proposed Amended Notice of Opposition would neither violate settled law nor be prejudicial to Applicant’s rights.

A. Justice Requires that Snapchat’s Motion for Leave to Amend Its Notice of Opposition Be Granted

Numerous Board decisions have granted motions for leave to amend an opposer’s notice of opposition to add various claims based on facts developed during or after the discovery period, including the claim that the application at issue was void *ab initio*. *See, e.g., PB Brands, LLC v. KRBL Ltd.*, Opp. No. 91197238, 2013 WL 11247071, at *1 (T.T.A.B. Dec. 5, 2013) (granting motion for leave to amend answer to add several counterclaims, including counterclaim that “the application underlying opposer’s pleaded registration was filed by the wrong applicant and therefore is void *ab initio*”); *McCauley v. Jillybeans Shoes Corp.*, Can. No. 92056192, 2013 WL 11248342 (T.T.A.B. Dec. 13, 2013) (granting motion to amend petition for cancellation to add claim that registration was void because respondent was not using its mark in commerce as of the filing date of the application); *Combs*, 2010 WL 5522991 (granting opposer’s motion for leave to amend to add claim that application was void *ab initio* because applicant did not use mark in commerce prior to filing date of application); *Universal City Studios, LLP v. Valen Brost*, Opp. No. 91153683, 2004 WL 1957207 (T.T.A.B. Aug. 18, 2004) (granting opposer’s

motion for leave to amend to add claim that application was void *ab initio* as a result of applicant's non-use of mark in commerce prior to filing date of use-based application in light of new information discovered during applicant's deposition); *see also, e.g., Commodore*, 26 U.S.P.Q.2d at 1508 (granting opposer's motion for leave to amend notice of opposition where opposer learned "through discovery" that applicant "did not have a single document to establish a bona fide intention to use" applied-for mark); *L.C. Licensing, Inc. v. Berman*, 86 U.S.P.Q.2d 1883 (T.T.A.B. 2003) (granting opposer's motion for summary judgment on lack of *bona fide* intent to use grounds; noting opposer had amended its notice of opposition).

As discussed above, Snapchat's Motion seeks to add a claim that the Application is void *ab initio* because Applicant does not own the SCRAP CHAT mark and did not own the mark as of the filing date of the Application, as Applicant's recent deposition testimony disclosed that the SCRAP CHAT mark is, and always has been, owned by Keatman. *See* Potter Decl. ¶ 3, Ex. 2. Accordingly, and consistent with the Board's practice of granting such amendments "liberally," justice requires that Snapchat be permitted to amend its Notice of Opposition to add this claim.

B. Applicant Will Not Suffer Any Prejudice as a Result of the Amended Notice of Opposition

Applicant will not suffer any prejudice as a result of the proposed amendment. Snapchat is moving the Board for leave to amend shortly after the discovery of this new information, and prior to its pretrial disclosures deadline and the opening of its testimony period.³ Moreover, all relevant information and documents concerning the ownership of the SCRAP CHAT mark are

³ A few weeks after the deposition, the parties began discussing the possibility of an amicable resolution to their dispute, and filed a consent motion with the Board on February 5, requesting a 60-day extension of all proceeding deadlines to accommodate the parties' settlement discussions, which the Board granted the same day. *See* Dkt. Nos. 7-8. Regardless of whether the parties are ultimately able to reach settlement, Snapchat seeks to amend its Notice of Opposition to assert all relevant and potentially dispositive claims.

already in Applicant's possession and control. Consequently, there is no discovery of Snapchat by Applicant that could clarify this issue for the benefit of the Board or the parties.

In determining whether the proposed amendment is prejudicial, an important factor for consideration is the timing of the motion for leave to amend, and the Board generally considers motions for leave to amend timely if filed prior to the opening of the opposer's testimony period in the proceeding. *See* TBMP § 507.02; *Commodore*, 26 U.S.P.Q.2d at 1505-06 (finding no undue delay prejudicing applicant where opposer moved for leave to amend pleadings in view of pending motions for summary judgment); *Focus 21 Int'l Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316, 1318 (T.T.A.B. 1992) (finding no prejudice where petitioner filed motion to amend petition for cancellation to add claim of abandonment prior to opening of petitioner's testimony period); *see also Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1703-04 (T.T.A.B. 2000) (finding no undue delay where motion to add claim of dilution was filed two years after commencement of the proceeding because the motion was promptly filed after such claim became available); *U.S. Olympic Comm. v. O-M Bread Inc.*, 26 U.S.P.Q.2d 1221, 1223 (T.T.A.B. 1993) (granting opposer's motion to amend notice of opposition where proceeding was still in pre-trial stage and discovery had been extended).

Here, Snapchat's Motion is being filed prior to the opening of its testimony period (April 25), and indeed almost a month prior to its pretrial disclosures deadline (April 9). *See* Dkt. Nos. 7-8. Snapchat thus did not unduly delay in seeking leave to amend its Notice of Opposition, having only learned the supporting facts for its new claim at Applicant's January 2016 deposition.

Moreover, because Snapchat's proposed amendment concerns ownership of the SCRAP CHAT mark, Applicant need not take discovery to ascertain the underlying facts, as all information necessary to respond to this new claim is already within Applicant's possession

and/or control. *See, e.g., Combs*, 2010 WL 5522991, at *2 (“[W]e agree with opposer that because the facts relevant to whether and when applicant used its mark are within applicant’s control, applicant should not require discovery on this claim and would not be prejudiced by the addition of the proposed claim.”); *Am. Univ.*, 2003 WL 22970623, at *2 (“Inasmuch as . . . information regarding the two new claims resides with respondent, allowance of the proposed amendment would not be prejudicial to respondent.”).

III. CONCLUSION

For each of the foregoing reasons, Snapchat respectfully requests that the Board grant its motion for leave to amend its Notice of Opposition to add a claim that the Application is void *ab initio* because Applicant did not own the SCRAP CHAT mark as of the filing date of the Application (and presently does not own the SCRAP CHAT mark).

Additionally, pursuant to 37 C.F.R. § 2.117(c) and TBMP § 510.03, Snapchat requests that the Board suspend this proceeding pending disposition of Snapchat’s Motion.

This 15th day of March, 2016.

Respectfully submitted,

/Robert Potter/

Robert Potter
Kilpatrick Townsend & Stockton LLP
The Grace Building
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8700
rpotter@kilpatricktownsend.com

Sabina A. Vayner
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
Telephone: (404) 815-6500
svayner@kilpatricktownsend.com

Attorneys for Opposer Snapchat, Inc.

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

In the Matter of Application Serial No. **86/358,450**
For the mark: **SCRAP CHAT**
Filed: August 6, 2014
Published: January 20, 2015

-----X	:	
SNAPCHAT, INC.,	:	
	:	Opposition No. 91221569
Opposer,	:	
	:	
v.	:	
	:	
JUSTIN SCHWARTZ,	:	
	:	
Applicant.	:	
-----X	:	

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Opposer Snapchat, Inc.’s Motion and Brief in Support for Leave to Amend Notice of Opposition and to Suspend Proceeding** (with all supporting exhibits and declaration) has been served on Applicant’s counsel of record on March 15, 2016 by depositing said copy with the United States Postal Service as First Class Mail, postage prepaid, addressed to:

Jean-Marc Zimmerman, Esq.
Zimmerman, Weiser & Paray LLP
233 Watchung Fork
Westfield, NJ 07090

/Kris Teilhaber/
Kris Teilhaber

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true and correct copy of the foregoing **Opposer Snapchat, Inc.’s Motion and Brief in Support for Leave to Amend Notice of Opposition and to Suspend Proceeding** (with all supporting exhibits and declaration) is being filed electronically with the TTAB via ESTTA on this day, March 15, 2016.

/Kris Teilhaber/
Kris Teilhaber

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

In the Matter of Application Serial No. **86/358,450**
For the mark: **SCRAP CHAT**
Filed: August 6, 2014
Published: January 20, 2015

-----X	:	
SNAPCHAT, INC.,	:	
	:	Opposition No. 91221569
Opposer,	:	
	:	
v.	:	
	:	
JUSTIN SCHWARTZ,	:	
	:	
Applicant.	:	
-----X	:	

**DECLARATION OF ROBERT POTTER IN SUPPORT OF
OPPOSER SNAPCHAT, INC.’S MOTION FOR LEAVE TO AMEND
NOTICE OF OPPOSITION AND TO SUSPEND PROCEEDING**

I, Robert Potter, declare as follows:

1. I am an attorney at the law firm of Kilpatrick Townsend & Stockton LLP (“Kilpatrick Townsend”), and I am counsel of record for Opposer Snapchat, Inc. (“Opposer” or “Snapchat”) in the above-referenced opposition proceeding. I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge or on files maintained in the ordinary course of business by Kilpatrick Townsend employees under my supervision.

2. I contacted Applicant Justin Schwartz’s (“Applicant” or “Schwartz”) counsel by email on February 26, 2016 to inform him that Snapchat intended to amend its Notice of Opposition to add a new claim, and to request Applicant’s consent to this amendment. I sent

follow-up emails to Applicant's counsel on March 2 and March 8. A true and correct copy of my February 26-March 9 email correspondence with Applicant's counsel is attached as **Exhibit 1**.

3. True and correct copies of relevant transcript pages from Applicant's January 6, 2016 deposition are attached as **Exhibit 2**.

4. A true and correct copy of a March 15, 2016 electronic printout from the website of the Department of State for the State of New York is attached as **Exhibit 3**.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that the facts set forth in this Declaration are true; that all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

This 15th day of March, 2016.

/Robert Potter/
Robert Potter

EXHIBIT 1

From: <jmz@zimllp.com>
Date: March 9, 2016 at 6:57:43 AM EST
To: "Potter, Rob" <RPotter@kilpatricktownsend.com>
Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

Rob,

I'll get back to you by tomorrow. Thanks.

JM

Jean-Marc Zimmerman
Zimmerman, Weiser & Paray LLP
233 Watchung Fork
Westfield, NJ 07090
Tel: (908) 768-6408
Fax: (908) 935-0751
jmz@zimllp.com
www.znwlaw.com

----- Original Message -----

Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

From: "Potter, Rob" <RPotter@kilpatricktownsend.com>

Date: Tue, March 08, 2016 8:37 am

To: "jmz@zimllp.com" <jmz@zimllp.com>, "jmz@zwpllp.com" <jmz@zwpllp.com>

Cc: "Wilson, Dennis" <DWilson@kilpatricktownsend.com>, "Vayner, Sabina" <SVayner@kilpatricktownsend.com>, "0935250 - US:OPP. V. SCHWARTZ (TM: SCRAP..." <0935250.eml.townsend@wcs.kilpatricktownsend.com>

Jean-Marc,

Following up once more. Please advise as to consent to Snapchat's amendment of its Notice of Opposition.

Thanks,

Rob

Rob Potter

Kilpatrick Townsend & Stockton LLP

The Grace Building | 1114 Avenue of the Americas | New York, NY 10036-7703
office 212 775 8733 | cell 917 392 1066 | fax 212 775 8816
rpotter@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Potter, Rob

Sent: Wednesday, March 02, 2016 3:03 PM

To: 'jmz@zimllp.com'; jmz@zwpllp.com

Cc: Wilson, Dennis; Vayner, Sabina; 0935250 - US:OPP. V. SCHWARTZ (TM: SCRAP...

Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

Jean-Marc,

Thanks, please get back to me as soon as you possibly can.

Thanks,

Rob

Rob Potter

Kilpatrick Townsend & Stockton LLP

The Grace Building | 1114 Avenue of the Americas | New York, NY 10036-7703
office 212 775 8733 | cell 917 392 1066 | fax 212 775 8816
rpotter@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: jmz@zimllp.com [<mailto:jmz@zimllp.com>]

Sent: Wednesday, March 02, 2016 3:00 PM

To: Potter, Rob; jmz@zwpllp.com

Cc: Wilson, Dennis; Vayner, Sabina; 0935250 - US:OPP. V. SCHWARTZ (TM: SCRAP...

Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

Rob,

I'll get back to you before the end of the week.

JM

Jean-Marc Zimmerman
Zimmerman, Weiser & Paray LLP
233 Watchung Fork
Westfield, NJ 07090
Tel: (908) 768-6408
Fax: (908) 935-0751
jmz@zimllp.com

----- Original Message -----

Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

From: "Potter, Rob" <RPotter@kilpatricktownsend.com>

Date: Wed, March 02, 2016 12:50 pm

To: "jmz@zimllp.com" <jmz@zimllp.com>, "jmz@zwpllp.com"

<jmz@zwpllp.com>

Cc: "Wilson, Dennis" <DWilson@kilpatricktownsend.com>, "Vayner, Sabina"

<SVayner@kilpatricktownsend.com>, "0935250 - US:OPP. V. SCHWARTZ (TM:

SCRAP..." <0935250.eml.townsend@wcs.kilpatricktownsend.com>

Jean-Marc,

I'm following up on the below, and would appreciate your reply. We would obviously prefer to have your client's consent here but, unless we hear otherwise, will assume he does not consent and has not provided any reasons for that position.

Thanks,

Rob

Rob Potter

Kilpatrick Townsend & Stockton LLP

The Grace Building | 1114 Avenue of the Americas | New York, NY 10036-7703

office 212 775 8733 | cell 917 392 1066 | fax 212 775 8816

rpotter@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Potter, Rob

Sent: Friday, February 26, 2016 3:56 PM

To: 'jmz@zimllp.com'; jmz@zwpllp.com

Cc: Wilson, Dennis; Vayner, Sabina; 0935250 - US:OPP. V. SCHWARTZ (TM: SCRAP...

Subject: RE: Snapchat, Inc. v. Justin Schwartz (SCRAP CHAT), TTAB Opp. No. 91221569

Jean-Marc,

Based on information we learned during Mr. Schwartz's deposition last month, we intend to amend Snapchat's Notice of Opposition to add a new claim that Mr. Schwartz's application is void *ab initio* because the application was filed in the name of the wrong owner. See TMEP 1201.02(b)-(c); 37 C.F.R. § 2.71(d). Specifically, Mr. Schwartz testified that Keatman Inc. is the owner of the SCRAP CHAT mark, but the application to register that mark was filed in Mr. Schwartz's name in his individual capacity.

Please let us know as soon as possible if your client will consent to Snapchat's amendment of its Notice of Opposition. Absent consent, Snapchat intends to seek leave of the Board to amend its Notice next week.

Regards,

Rob

Rob Potter

Kilpatrick Townsend & Stockton LLP

The Grace Building | 1114 Avenue of the Americas | New York, NY 10036-7703

office 212 775 8733 | cell 917 392 1066 | fax 212 775 8816

rpotter@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

KILPATRICK TOWNSEND & STOCKTON, LLP
Attorneys for Opposer
1114 Avenue of the Americas
New York, New York 10036

BY: ROBERT POTTER, ESQUIRE
rpotter@kilpatricktownsend.com
(212) 775-8733

ZIMMERMAN, WEISER & PARAY, LLP
Attorneys for Applicant
226 St. Paul Street
Westfield, New Jersey 07090

BY: JEAN-MARC ZIMMERMAN, ESQUIRE
jmz@zwpllp.com
(908) 654-8000

1 J. Schwartz

2 him as, but there is nothing super official.

3 Q And, similarly, he is not the chief
4 technical officer?

5 A Same sort of thing. I could call him the
6 CTO, because, again, he is the technical guy. But
7 we don't have any official documents.

8 Q We're going to talk a lot today about a
9 mobile application called Scrap Chat.

10 A Sure.

11 Q Does Keatman own the Scrap Chat
12 application?

13 A Yes.

14 Q Does Keatman own the mark you've applied
15 for to register Scrap Chat?

16 A Yes.

17 Q Does Keatman own that mark 100 percent?

18 A I believe so.

19 Q Other than the Scrap Chat mark, does
20 Keatman own any other trademarks?

21 A Not that I'm aware of.

22 Q Does it license any marks to or from
23 anyone?

24 A No.

25 Q Has it assigned any marks to anyone or

EXHIBIT 3

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through March 14, 2016.

Selected Entity Name: KEATMAN INC.

Selected Entity Status Information

Current Entity Name: KEATMAN INC.

DOS ID #: 4411835

Initial DOS Filing Date: JUNE 03, 2013

County: NASSAU

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

KEATMAN INC.

37 TUTHILL POINT ROAD

EAST MORICHES, NEW YORK, 11940

Chief Executive Officer

JUSTIN SCHWARTZ

3105 QUENTIN ROAD

BROOKLYN, NEW YORK, 11234

Principal Executive Office

JUSTIN SCHWARTZ

3105 QUENTIN ROAD

BROOKLYN, NEW YORK, 11234

Registered Agent

REGISTERED AGENT REVOKED

» »

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above.

Professional corporations must include the name(s) and address(es) of the initial

officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate.](#)

NOTE: New York State does not issue organizational identification numbers.

*Stock Information	
# of Shares	Type of Stock
10000000	No Par Value

*Stock information is applicable to corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 03, 2013	Actual	KEATMAN INC.

Search

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

- [Services/Programs](#) |
 [Privacy Policy](#) |
 [Accessibility Policy](#) |
 [Disclaimer](#) |
 [Return to DOS Homepage](#) |
 [Contact Us](#)

EXHIBIT A

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

In the Matter of Application Serial No. **86/358,450**
For the mark: **SCRAP CHAT**
Filed: August 6, 2014
Published: January 20, 2015

-----X	:	
SNAPCHAT, INC.,	:	
	:	Opposition No. 91221569
Opposer,	:	
	:	
v.	:	
	:	
JUSTIN SCHWARTZ,	:	
	:	
Applicant.	:	
-----X	:	

AMENDED NOTICE OF OPPOSITION

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Opposer Snapchat, Inc. (“Opposer” or “Snapchat”), a corporation organized and existing under the laws of Delaware with a principal place of business at 63 Market Street, Venice, California 90291, submits this Amended Notice of Opposition. Opposer believes that it will be damaged by the issuance of a registration for the SCRAP CHAT mark shown in Application Serial No. 86/358,450 for goods in International Class 9, and hereby opposes the same.

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

Facts Relevant to All Claims

1. Opposer is the designer and distributor of the enormously popular SNAPCHAT messaging application that, among other things, allows users to share photographs, videos, and messages with others via mobile devices.

2. Since its launch in 2011, Opposer has extensively promoted and distributed its application in connection with its highly distinctive SNAPCHAT trademark (the “SNAPCHAT Mark”). These efforts have been extraordinarily successful. Opposer and its SNAPCHAT application have been the subject of thousands of articles in a wide range of media venues and the SNAPCHAT application is currently among the fastest growing and most popular smartphone applications in the world.

3. Indeed, an early 2015 report indicated that the SNAPCHAT application was the fourth most popular social media application among 18-24 year olds, and a November 2014 study indicated that 71% of U.S. social media users between 18-29 years of age accessed the SNAPCHAT application. Attached as **Exhibit 1** is a printout of DEFY Media’s Acumen Report, released on or about March 3, 2015, reporting (on page 8) usage of the SNAPCHAT application across various age groups, and attached as **Exhibit 2** is a printout of emarketer.com’s January 9, 2015 article reporting that a November 2014 survey by Cowen and Company revealed 71% of 18-29 year olds access the SNAPCHAT application. Currently, there are over 100 million daily active users of the SNAPCHAT application, with that number growing steadily.

4. As a testament to Opposer’s success, SNAPCHAT was declared the “Best Mobile Application” at the 2013 Crunchies Awards. Since then, Opposer’s SNAPCHAT application growth and development have skyrocketed, with recent high-profile advertising partnerships with the National Football League, BuzzFeed, Mashable, Cosmopolitan, CNN, and the 2016 MTV Movie Awards, among others. Since 2011, Opposer’s millions of registered users have shared billions of photo and video messages and, as of today, approximately 8 billion videos are viewed daily via the SNAPCHAT application (equal to Facebook’s daily video views).

5. As a result of Opposer's extensive use of the SNAPCHAT Mark in connection with its application, the SNAPCHAT Mark is strong, has acquired enormous goodwill, and has come to be identified immediately with Opposer as the source of its application. Moreover, through Opposer's widespread use of the SNAPCHAT Mark, significant and continuous media coverage, the high degree of consumer recognition of the SNAPCHAT Mark, Snapchat's enormous and loyal fan base, and other factors, the SNAPCHAT Mark is famous under the Lanham Act, specifically 15 U.S.C. §§ 1125, *et seq.*

6. Opposer is the owner of United States Registration No. 4,375,712 of the SNAPCHAT Mark for “[c]omputer application software for mobile phones, portable media players, and handheld computers, namely software for sending digital photos, videos, images, and text to others via the global computer network” in International Class 9. The application for this registration was filed on December 12, 2012, citing a first use date of September 30, 2011, and the SNAPCHAT Mark was registered on July 30, 2013. This registration is valid and in full force and effect, and a copy of the registration certificate and printout from the United States Patent and Trademark Office's online database is attached as **Exhibit 3**.

7. On August 6, 2014, Justin Schwartz (“Applicant”) filed a use-based application, Serial No. 86/358,450 (“Application”), to register the SCRAP CHAT mark (“Applicant's Mark”) for “[c]omputer application software for mobile phones, tablets, and handheld computers, namely, software for allowing users to share pictures, videos, links, and other content and lets them post them to their own pages if they enjoy the content” in International Class 9 (the “Applicant's Goods”).

Count I: Likelihood of Confusion

8. Opposer incorporates by reference the allegations contained in Paragraphs 1-7 as if fully set forth herein.

9. Applicant filed the Application to register Applicant's Mark notwithstanding Opposer's prior rights, and well after Opposer's SNAPCHAT Mark became distinctive and famous.

10. There is no issue as to priority. Opposer began using the SNAPCHAT Mark in commerce at least as early as September 2011, well prior to the January 2, 2014 first use date claimed in the Application.

11. Consumers encountering Applicant's Mark, particularly in connection with Applicant's Goods, are likely to associate the mark with Opposer. Applicant's SCRAP CHAT Mark is extremely similar to Opposer's SNAPCHAT Mark in appearance, pronunciation, and connotation, and—but for two letters—the marks are identical.

12. Applicant's Goods are also essentially identical—or at the very least highly related and/or complementary—to the goods Opposer has long offered and provided in connection with the SNAPCHAT Mark, and for which Opposer owns a registration of the SNAPCHAT Mark. Specifically, Applicant's Goods are defined as computer application software for mobile phones, handheld computers, and similar devices, allowing users to share photos, videos, and other content with one another. Opposer's registration of its SNAPCHAT mark covers exactly these goods.

13. On information and belief, Applicant's Mark was adopted with knowledge of the SNAPCHAT Mark, and with the intent to call to mind and create a likelihood of confusion with, and/or trade off the goodwill in, the SNAPCHAT Mark. On information and belief, Applicant's

targeted consumers and channels of trade for the goods offered under Applicant's SCRAP CHAT Mark overlap with—and, indeed, are identical to—the consumers and channels of trade for the goods offered under Opposer's registered SNAPCHAT Mark.

14. Opposer will be damaged by the registration of Applicant's Mark because Applicant's Mark so closely resembles the SNAPCHAT Mark as to be likely to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of Applicant's Goods or the affiliation between Applicant and Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Furthermore, any complaints in connection with Applicant's Goods marketed under Applicant's Mark would necessarily reflect upon and seriously injure the reputation that Opposer has established for its own goods.

15. If Applicant is granted the registration herein opposed, he would thereby obtain a *prima facie* exclusive right to the use of Applicant's Mark in connection with Applicant's Goods. Such registration would be a source of damage and injury to Opposer.

Count II: Application Void *Ab Initio*

16. Opposer incorporates by reference the allegations contained in Paragraphs 1-15 as if fully set forth herein.

17. The Application identifies the owner of Applicant's Mark as Justin Schwartz, an individual who is a United States citizen, with a correspondence address in Brooklyn, New York.

18. Based on information obtained through discovery, Keatman Inc. ("Keatman") is the true and rightful owner of Applicant's Mark and was the true and rightful owner of Applicant's Mark on the filing date of the Application.

19. On information and belief, Keatman was an active New York corporation on the filing date of the Application and remains an active New York corporation as of the filing date of

this Amended Notice of Opposition.

20. Based on information obtained through discovery, Keatman used Applicant's Mark in United States commerce in connection with Applicant's Goods prior to and on the filing date of the Application, with use of Applicant's Mark inuring to its benefit.

21. During his January 6, 2016 deposition, Applicant admitted that: (1) Keatman owns the SCRAP CHAT mark; (2) Keatman owns the SCRAP CHAT mark application; and (3) the SCRAP CHAT mark is "associated only with Keatman."

22. Because the Application was filed in the name of an individual who did not own Applicant's Mark on the filing date of the Application, the Application is void *ab initio* in accordance with 37 C.F.R. § 2.71(d) and 15 U.S.C. § 1051(a).

23. If Applicant, as the wrongful owner, is granted the registration herein opposed, he would thereby obtain a *prima facie* exclusive right to the use of Applicant's Mark in connection with Applicant's Goods. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer requests that this opposition be sustained and that the registration of Application Serial No. 86/358,450 in connection with Applicant's Goods be denied.

This 15th day of March, 2016.

Respectfully submitted,

/Robert Potter/

Robert Potter
Kilpatrick Townsend & Stockton LLP
The Grace Building
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8700
rpotter@kilpatricktownsend.com

Sabina A. Vayner
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
Telephone: (404) 815-6500
svayner@kilpatricktownsend.com

Attorneys for Opposer Snapchat, Inc.

EXHIBIT 1

[Acumen](#)

- [Home](#)
- [Categories](#)
- [Our Research](#)
- [About Acumen](#)
- [Search](#)

- [Advertising](#)
- [Entertainment](#)
- [Food & Alcohol](#)
- [Health](#)
- [Media & Internet](#)
- [Money & Career](#)
- [Partners & Parenting](#)
- [Shopping](#)
- [Style](#)
- [Technology](#)

[Media & Internet](#) | Mar 03, 2015

The Acumen Report: Constant Content

DEFY Media's research on the content choices of youth 13-24

The big news about youth 13-24 is the decline in TV watching and increase in digital consumption. Even heavyweight Nielsen concedes, "Traditional television viewing...is down, especially for younger viewers." DEFY believes the shift stems from youth's "digital native" upbringing and their specific lifestyle needs. This cohort has been able to download or stream whatever content they want—whenever they want—from the day they could work a keyboard. Digital is second-nature, highly relevant, and uniquely suited for their always-on lifestyle—and we credit these factors for driving youth's increased consumption of online content.

The Acumen Report: Constant Content looks at time spent watching different types of media with specific insights into why TV time is not even close to digital. It explores the role of social media in content discovery and how "thumbstoppers" are crucial to getting youths' attention, with a deep-dive into the thematic elements that appeal to youth. The phenomenon of YouTube celebrities and their role influencing youths' content choices also is explored.

We invite you to download the [Executive Study](#) for further insights into the 13-24 year-old consumers we believe are driving the future of media consumption.

Tags: [internet](#), [media consumption](#), [Millennials](#), [online](#), [smartphone](#), [teens](#), [TV](#), [YouTube](#)



Pass it around
NEXT INSIGHT

5

12

0

10

[Digital Content Better Fits Youth Lifestyles](#)

PREVIOUS INSIGHT

[Staying Out of Trouble](#)

Brought to you by [DEFY Media](#)

ACUMEN REPORT
CONSTANT
CONTENT

DEFY
MEDIA

The **ACUMEN REPORT** is DEFY Media's original research uncovering insights on the audiences we connect with through our brands and content.

Our earlier studies focused on men as consumers, but when Break Media and Alloy Digital merged into DEFY Media in 2013 it generated a digital footprint of 125 million 13-34 year olds. However these consumers often had been studied as a single age block—or scarcely addressed in the case of 13-17 year olds. Thus we've turned our research lens to the transformative consumers we believe are driving the future of media consumption: 13-24 year olds.

The big news about youth is the decline in television watching and increase in digital consumption, particularly via social media. Even heavyweight Nielsen concedes, "Traditional television viewing on a TV screen is down, especially for younger viewers," despite its inclusion of any time watching

a TV screen—even if the content originates on the internet.¹ Crowdtap finds Millennials spend 30% of their media time on content created by their peers or sources followed on social networks—more than the time they devote to TV.² The TRU Youth Monitor says the shift results from youth opting for the medium that "meets the right need at the right moment."³

We believe the movement stems from youth's "digital native" upbringing and their particular lifestyle needs. This cohort has had the opportunity to download or stream whatever content they want—whenever they want—from the day they could work a keyboard. Digital is second-nature, highly relevant, and uniquely suited for their always-on lifestyle—and we credit these factors for driving youth's increased consumption of online content.



'OFFLINE' ISN'T IN THEIR LEXICON

Exposure to online content and social media at a young age means digital is second nature to 13-24 year olds; they have different notions of “alone” and “sharing” compared to older generations.

For example, you're never alone when you can go back-and-forth via text and social media in real time. Watching a video “with other people” can mean texting each other while watching in different geographic locations. And “offline” has no meaning; life is never offline when the internet is available 24/7 and you've grown up with FOBO—the fear of being offline. ⁴

FOBO
THE FEAR OF BEING OFFLINE

This age group also differs in how they build relationships. Connection largely occurs in the digital domain, and the sharing of videos and photos is an indispensable tool for developing relationships. The video I share with you becomes a common experience between us—a bond—in

“ the same way shared life experiences create bonds.



I have [a friend] who refused to join Facebook. I haven't talked to her in 5 years.

AMBER, 21



Contrary to popular belief...

...not all teenagers walk around with smartphones glued to their thumbs. We found 13-year olds most often access the internet via family laptops and only 40% have personal smartphones, 59% of 14-17 year olds have personal smartphones.

TV TIME IS NOT EVEN CLOSE TO DIGITAL

Youth 13-24 view fewer hours of traditional TV than content from digital sources. Online video, viewed in social media or on sites like YouTube, is watched by 96% of youth at an average of 11 hours weekly. Traditional TV, by comparison, is viewed by only 81% at an average of 8 hours weekly.



ONLINE VIDEO
YouTube & similar, social media
96% WATCH
AVG. 11.3 HRS/WEEK



SUBSCRIPTION ONLINE VIDEO
Netflix, Hulu+, Amazon, etc.
71% WATCH
AVG. 10.8 HRS/WEEK



FREE ONLINE TV
amctv.com, ABC app, etc.
57% WATCH
AVG. 6.4 HRS/WEEK



SCHEDULED TV
broadcast, cable, satellite
81% WATCH
AVG. 8.3 HRS/WEEK



RECORDED TV
DVR, TiVo
56% WATCH
AVG. 7.5 HRS/WEEK

We believe digital's rise results from its better fit with youth lifestyles. Online video allows them to "watch any time I want" and "has what I want to watch" more so than TV. Online video has other notable benefits including it is "easy to relate to" and "makes me feel good about myself"—a meaningful trait for the angst of the teen years. And youth say online offers a better chance of avoiding advertising or ignoring it, pointing to the importance of native solutions that marry content with advertising.



Whatever you want to watch online . . . it'll be there; TV, you have to deal with what's there.

JOE, 15



WHAT THEY WANT, WHEN THEY WANT IT	Online Video	Scheduled TV
Can watch anytime I want	81%	28%
Has what I want to watch	69%	56%
KIDS ARE ALRIGHT		
Easy to relate to	67%	41%
Makes me feel good about myself	62%	40%
SHARED EXPERIENCES		
I watch with other people	47%	61%
I talk about in social media	58%	47%
CHILL OUT		
For when I want to relax	66%	47%
AVOID ADS		
Has ads I can easily ignore	60%	42%
Has way too many ads	41%	63%

IMPORTANCE OF THUMB- STOPPER MOMENTS

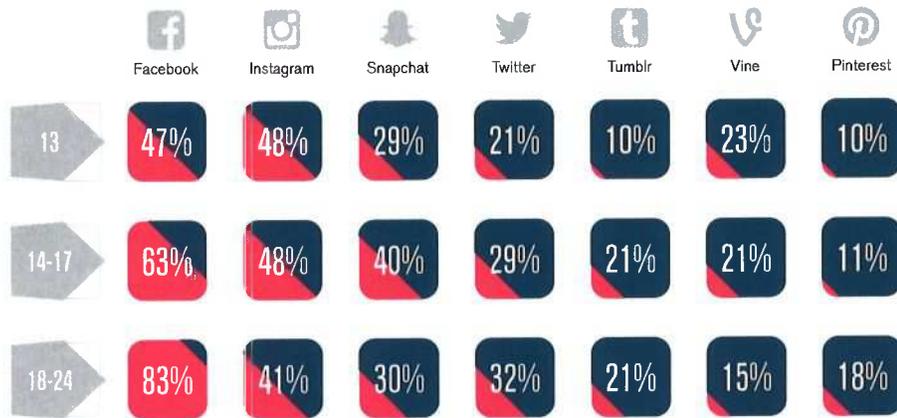
Youth say they frequently discover content via feeds, particularly social networks. Youth would use their thumbs to scroll through feeds and suddenly come to a halt on an item. We call these *thumbstopper* moments, meaning the instant you stop scrolling and start paying attention.



Thumbstoppers can be unrelated to the content—such as “sent by someone I respect,” “viewed by a lot of people,” and “polished and professional looking.” They also can be entirely about the subject matter; for instance, an “activity I can imagine doing with my friends” or “something I don’t expect.”

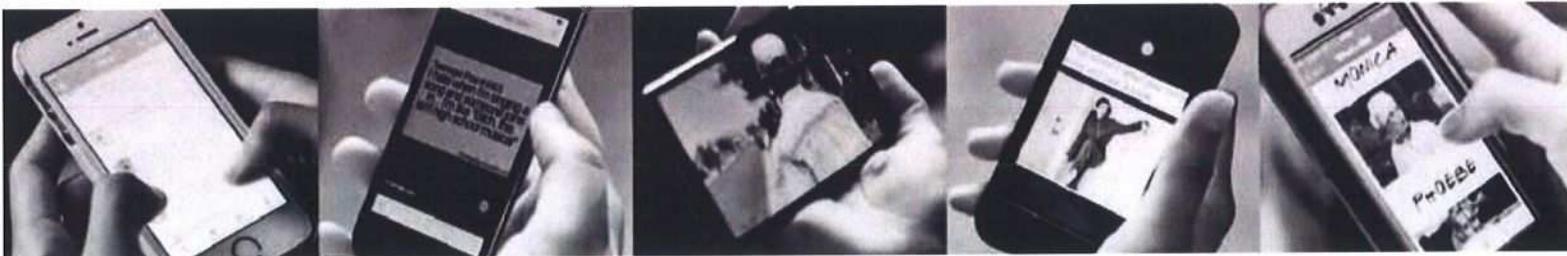
THUMBSTOPPER	Effectiveness
Liked or viewed by a lot of people	59%
Sent by someone I respect	58%
Something that happened to people I know	55%
Activity I can imagine doing with my friends	53%
Thought I've had but never said out loud	53%
Polished and professional looking	52%
Something I don't expect	51%
Has a message or is about a cause	49%

NETWORK USAGE



If thumbstoppers are the track signals, then social media is the train. Facebook is the most often used network among 18-24 year olds despite a decline among teens, and Instagram is garnering significant use at the younger end of

the age spectrum. We've read interviews where teens say they use Facebook only to stay in touch with family; thus we can envision a future where Facebook is for family and Instagram is for peers—but both are still in use.



IMPORTANCE OF THUMBSTOPPER MOMENTS CONT.

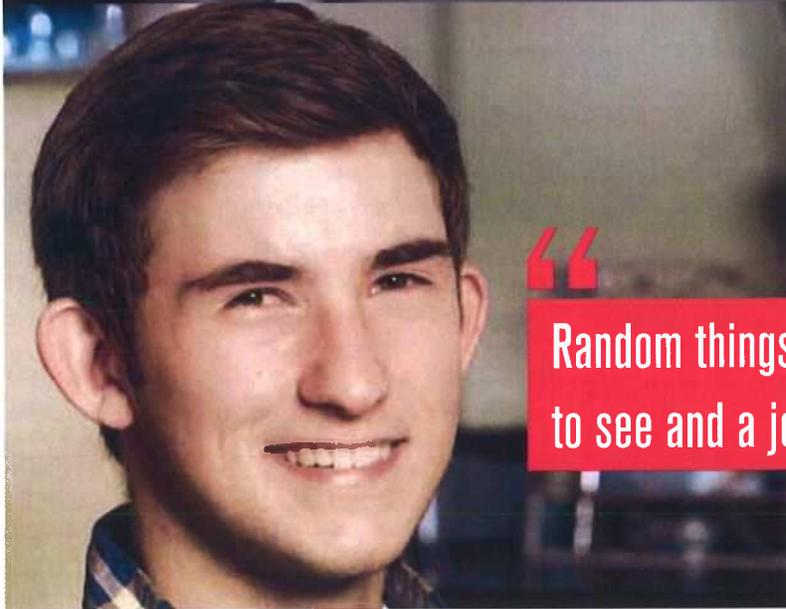


A thumbstopper may get youths' attention but it doesn't guarantee the content will be appealing. *Rebellion* and *Reflection* were themes we observed most often when youth described appealing content. Rebellion is a check on the mainstream or a message that you-don't-have-to-grow-up. Youth in the study described this content as "random and hilarious." Reflection normalizes common events and engenders feelings of, "That's me!" and youth described such content as "relatable." Rebellion and Reflection don't cover every theme 13-24 year olds enjoy, but these are what we heard most often.

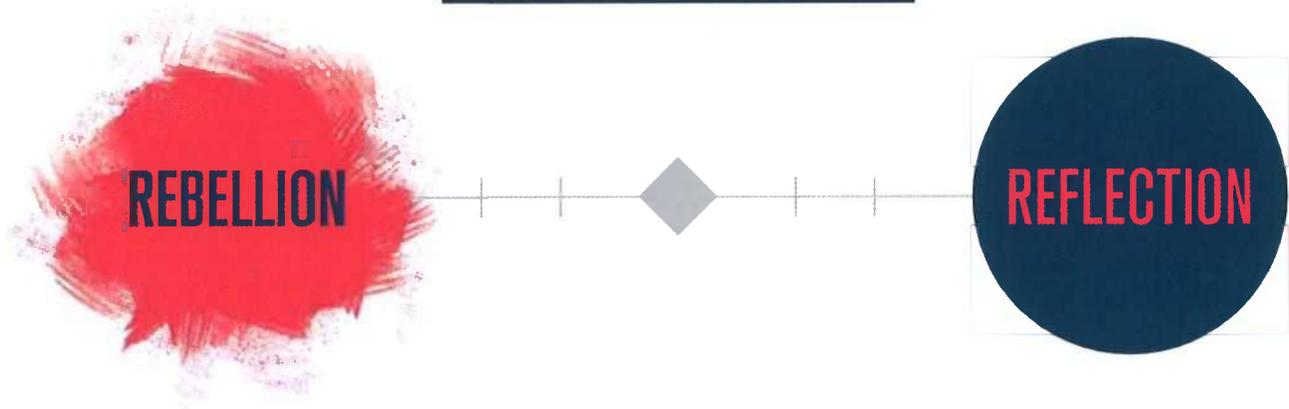


Random things [are] funny to see and a joy to watch.

JOSH, 16



THEMES THAT APPEAL TO 13-24 YEAR-OLDS



Rebellion and Reflection materialize as two ends of a spectrum rather than either-or. An “activity I could imagine doing with friends” may seem Reflective, but if the activity is a stunt gone wrong (“major fail”), it can look like Rebellion.



Role of Personas: Caring Is Not Sharing

Youth say after enjoying a piece of content, they don't automatically share it because youth carefully craft their online personas. Teens cultivate an image for their peers: 18-24 year olds ensure there are no red flags for potential employers and colleges. Some develop social media devoted to topics of personal interest and assiduously maintain the theme to increase their followings.

YOUTUBE STARS ARE THE NEW INFLUENCERS

Variety magazine commissioned a study to measure the awareness, likability and purchase influence of YouTube stars and traditional TV/Movie stars among 13-18 year olds; six of the top ten personalities were YouTube stars.⁹ We built on this notion to discover why YouTubers are more popular, and it boils down to relatability.

YouTubers are described as: just like me, understands me, someone I trust, has the best advice, doesn't try to be perfect, genuine, someone I feel close to, and likes the same things I do. YouTubers and TV/Movie stars are viewed equally as aspirational, meaning they have traits youth strive to achieve: someone I look up to / I respect / I'd like to be, does the things I want to do, and has unique or special talents.

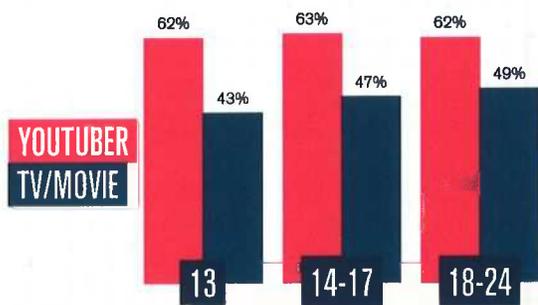


You know...what they've been through. You can be like, I dealt with that a couple years ago, too. I'm not alone.

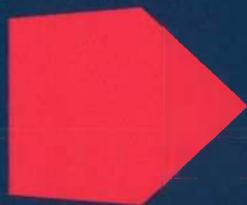
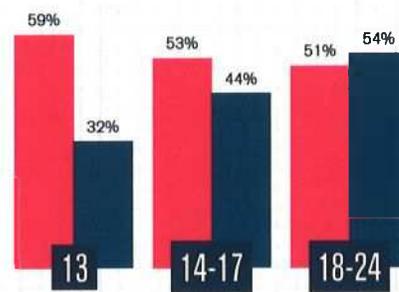
MAGGIE, 18

Is this a fad or a trend that will carry forth as youth age? We believe it's a trend because YouTubers have equal influence on teens and young adults. Over 60% of all age groups say they would buy a brand recommended by a YouTuber, and YouTubers are followed in social media at nearly equal rates across the age spectrum.

WOULD YOU TRY A PRODUCT OR BRAND SUGGESTED BY...



FOLLOWS ON SOCIAL MEDIA



THE FUTURE FOR TODAY'S 13-24 YEAR OLDS IS DIGITAL. ONLINE SOURCES DELIVER THEMES AND PERSONALITIES MORE RELATABLE THAN THOSE OFFERED BY TV—ON THE TIMETABLE AND DEVICES "NATIVE" TO THIS GENERATION.

Methodology

We partnered with Hunter Qualitative Research and child psychologists at KnoWhy Research to conduct a 2-week online forum with 18 “buddy pairs” (36 total) ages 13–24 who were diverse in terms of ethnicity, race, income, and parent’s educational attainment. All lived in the Atlanta, Los Angeles, or Minneapolis metropolitan areas. Participants gave access to their social media feeds for observation of content received and shared. Nine of the buddy pairs participated in 90-minute interviews. The interviews were followed by an online survey of 1,350 youth ages 13-24, representative by age, gender, Hispanic origin and race.

For additional insights on youth, please visit

acumen.defymedia.com



NOTES

1. Nielsen, Total Audience Report, December 2014
2. CrowdTap, Social Influence, March 2014
3. The Futures Company, TRU Youth Monitor, Spring 2014
4. Facebook IQ, Coming of Age On Screens, December 2014
5. Variety.com, YouTube Stars More Popular Than Mainstream Celebs Among U.S. Teens, August 2014

About DEFY Media

DEFY Media is the top digital producer and programmer for 13-34 year olds, and the largest owner of YouTube channels and leading media brands across the comedy, lifestyle and gaming verticals. Each month, DEFY-produced content generates 500 million video views and reaches 125 million viewers across our 50 million YouTube subscribers, 80 million unique web visitors and consumers of our apps, which have been downloaded over 22 million times. DEFY Media brands include Smosh, recently named by Variety as the top brand for 13-18 year olds; Break, known for its top program "Prank It Forward"; and Screen Junkies, home to the highly influential digital series Honest Trailers. The world's top brands partner with DEFY to build immersive advertising solutions that deliver unparalleled access to this influential audience. With uniquely integrated capabilities in content development, studio production, distribution and promotion, DEFY Media is built for content delivery in the digital age. Please visit us at www.DEFYMedia.com.

Contacts

Andy Tu, Executive Vice-President Marketing, atu@defymedia.com

Nichole Becker, Vice-President Research, nbecker@defymedia.com



EXHIBIT 2



Customer Stories (/Corporate/Clients)

Articles (/Articles)

Products (/Corporate/Products) Why eMarketer (/Corporate/Why-eMarketer) Research Topics (/Corporate/Coverage)



(http://ads.undertone.com/c/

caparams=2_bannerid=779929_campaignid=266554_zoneid=107045_ccat=7531,7546,7553,7554,12940,183A%2F%2Fwww.undertone.com%2Fhighimpactprogrammatic%3Futm_source%3DEMAR%26utm_medium%3D728x90%26utm_campaign%3DHIPProgrammatic)

Go

Young Users Zoom In on Instagram

Around one-third of US social networkers use Instagram

January 9, 2015 | Demographics (/articles/results.aspx?t=1000) | Social Media (/articles/results.aspx?t=1045)

SHARE

EMAIL (/ARTICLES/EMAIL.ASPX?R=1011795)

PRINT (/ARTICLES/PRINT.ASPX?R=1011795)

Taking photos and recording videos via smartphone (/Article.aspx?R=1011669) is getting big, and photo-sharing social network Instagram may be benefiting as a result. According to a November 2014 study by Frank N. Magid Associates (http://www.magid.com/), the percentage of US social users who used Instagram rose from 24% to 32% between 2013 and 2014—a figure more than double that in 2012 and in line with eMarketer’s estimate that Instagram penetration among social users in the US was 24.9% in 2013 and 30.4% last year. We expect this to reach 33.8% this year.

Social Networks Used by US Social Network Users, 2012-2014
% of respondents

	2012	2013	2014
Facebook	93%	93%	90%
Twitter	36%	41%	39%
Google+	30%	30%	37%
Instagram	15%	24%	32%
Pinterest	21%	25%	30%
LinkedIn	23%	25%	29%
Snapchat	2%	9%	18%

Note: ages 13-64
Source: Frank N. Magid Associates, "Social Media Study," Dec 30, 2014
183694 www.eMarketer.com

Meanwhile, Magid found that the percentage of social media users who used Facebook and Twitter dropped slightly to 90% and 39%, respectively. Google+ was the only network that sat between fourth-place Instagram and second-place Twitter.

Research points to millennials as the key drivers of Instagram usage among the adult population.

Social Networks Accessed by US Internet Users, by Age, Nov 2014
% of respondents

	18-29	30-44	45-60	60+
Facebook	23%	27%	26%	24%
LinkedIn	19%	28%	29%	23%
Pinterest	27%	28%	25%	19%
Twitter	33%	31%	19%	16%
Instagram	44%	28%	18%	10%
Snapchat	71%	19%	9%	1%
Tumblr	51%	21%	21%	7%
Tinder	50%	41%	4%	4%
Elo	43%	29%	14%	14%



(http://oascentral.emarketer.com/RealMedia/ads/x)



(http://ads.awdmg.com/click/557)

Latest Articles

Latest Webinars

US Adults Spend 5.5 Hours with Video Content Each Day (/Article/US-Adults-Spend-55-Hours-with-Video-Content-Each-Day/1012362)

Do Millennials Actually Use Smartphones for Shopping? (/Article/Do-Millennials-Actually-Use-Smartphones-Shopping/1012363)

Travelers Are Map App-Happy Once on Trips (/Article/Travelers-Map-App-Happy-Once-on-Trips/1012355)

AdChat

More Articles » (/articles)

eMarketer Daily Newsletter » (/newsletter)

Note: in the past 30 days; numbers may not add up to 100% due to rounding
Source: Cowen and Company, "Twitter/Social User Survey," Nov 10, 2014
181910 www.eMarketer.com

November 2014 polling by Cowen and Company (<http://www.cowen.com/>) found that 18-to-29-year-old US internet users were more likely than any other age group to use Instagram. Fully 44% of respondents who had used the social network in the past 30 days were in that age range.

Moving down the age spectrum, teens are also big fans of Instagram, as evidenced by an AVG (<http://www.avg.com/us-en/homepage>) study conducted in September 2014. Here, 62% of 11-to-16-year-old US internet users reported using Instagram—the second-highest percentage, trailing Facebook (80%) and well ahead of third-place Twitter (39%).

eMarketer estimates that there will be 60.3 million Instagram users in the US this year, and 12- to 34-year-olds will represent a whopping 78% of that total (18.2% share for teens, 27.6% for those 18 to 24 and 32.2% for adults 25 to 34). Fully 56.0% of 18-to-24-year-old US internet users will access Instagram via any device at least monthly in 2015, as will 45.5% of web users ages 12 to 17 and 47.5% of those 25 to 34.

Go beyond the articles

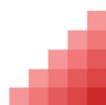
Corporate subscribers get quick and easy access to the exact data and analysis they need to make critical business decisions:

- Explore eMarketer products (</Corporate/Products>)
- Read how companies use eMarketer to make smarter decisions (</Corporate/Clients>)

PREVIOUS ARTICLE (</ARTICLE/MARKET-WEARABLES-STILL-EARLY-STAGES/1011796>)

NEXT ARTICLE (</ARTICLE/NEARLY-400-MILLION-LATIN-AMERICA-USED-MOBILE-PHONES-2014/1011818>)

Go beyond the articles:



eMarketer Products

You've never experienced research like this.

[SEE FEATURES » \(/corporate/products\)](/corporate/products)

Hear from our clients:



Customer Stories

Nearly all Fortune 500 companies rely on us.

[READ MORE » \(/corporate/clients\)](/corporate/clients)



Join eMarketer for a free webinar:

Key Trends in Social Advertising
(<http://on.emarketer.com/Webinar-04232015-registration.html?Source=eMarketer-articles>)
eMarketer Webinar

Thursday, April 23, 1pm ET

Click to Register.

(<http://on.emarketer.com/Webinar-04232015-registration.html>)

Source: eMarketer articles
Space is limited.

Want to learn more?

made possible by



([https://www.adroll.com/resources/reports/state-of-the-industry-14?](https://www.adroll.com/resources/reports/state-of-the-industry-14?utm_source=emarketer.com&utm_medium=sponsored_webinar&utm_campaign=)

Contact Us

Inquire about corporate subscriptions today.

[CONTACT SALES » \(/corporate/inquire\)](/corporate/inquire)



[About eMarketer \(/About\)](#)
[Contact Us \(/About/ContactUs\)](#)
[Newsroom \(/newsroom\)](#)
[Advertising Opportunities \(/Advertise\)](#)
[Career Opportunities \(/About/Careers\)](#)
[Privacy Policy \(/About/Privacy\)](#)

Call Us:
1-800-405-0844

Coverage by Topic

[Advertising & Marketing \(/articles/results.aspx?t=1040\)](#)
[B2B \(/articles/results.aspx?t=1132\)](#)
[Demographics \(/articles/results.aspx?t=1000\)](#)
[Ecommerce \(/articles/results.aspx?t=1047\)](#)
[Email \(/articles/results.aspx?q=Email\)](#)
[Media Usage, Buying & Planning \(/articles/results.aspx?t=1306\)](#)
[Mobile \(/articles/results.aspx?t=1046\)](#)
[Search \(/articles/results.aspx?q=Search\)](#)
[Social \(/articles/results.aspx?t=1045\)](#)
[Video \(/articles/results.aspx?t=1044\)](#)

Coverage by Industry

[Automotive \(/articles/results.aspx?t=1307\)](#)
[Consumer Products \(/articles/results.aspx?t=1309\)](#)
[Financial Services \(/articles/results.aspx?t=1308\)](#)
[Media & Entertainment \(/articles/results.aspx?t=1311\)](#)
[Pharma & Healthcare \(/articles/results.aspx?t=1310\)](#)
[Retail \(/articles/results.aspx?t=1047\)](#)
[Travel \(/articles/results.aspx?t=1315\)](#)

Coverage by Geography

[Asia-Pacific \(/articles/results.aspx?q=Asia%20Pacific\)](#)
[Central & Eastern Europe \(/articles/results.aspx?q=Central%20and%20Eastern%20Europe\)](#)
[Latin America \(/articles/results.aspx?q=Latin%20America\)](#)
[Middle East & Africa \(/articles/results.aspx?q=Middle%20East\)](#)
[North America \(/articles/results.aspx?q=North%20America\)](#)
[Western Europe \(/articles/results.aspx?q=Western%20Europe\)](#)

EXHIBIT 3

United States of America
United States Patent and Trademark Office

SNAPCHAT

Reg. No. 4,375,712

SNAPCHAT, INC. (DELAWARE CORPORATION)

Registered July 30, 2013

523 OCEAN FRONT WALK
VENICE, CA 90291

Int. Cl.: 9

FOR: COMPUTER APPLICATION SOFTWARE FOR MOBILE PHONES, PORTABLE MEDIA PLAYERS, AND HANDHELD COMPUTERS, NAMELY, SOFTWARE FOR SENDING DIGITAL PHOTOS, VIDEOS, IMAGES, AND TEXT TO OTHERS VIA THE GLOBAL COMPUTER NETWORK, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 9-30-2011; IN COMMERCE 9-30-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-800,506, FILED 12-12-2012.

PATRICIA EVANKO, EXAMINING ATTORNEY



Lisa Street Lee

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Generated on: This page was generated by TSDR on 2016-03-15 16:06:04 EDT

Mark: SNAPCHAT

SNAPCHAT

US Serial Number: 85800506

Application Filing Date: Dec. 12, 2012

US Registration Number: 4375712

Registration Date: Jul. 30, 2013

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jul. 30, 2013

Publication Date: May 14, 2013

Mark Information

Mark Literal Elements: SNAPCHAT

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Computer application software for mobile phones, portable media players, and handheld computers, namely, software for sending digital photos, videos, images, and text to others via the global computer network

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 30, 2011

Use in Commerce: Sep. 30, 2011

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Snapchat, Inc.

Owner Address: 523 Ocean Front Walk
Venice, CALIFORNIA 90291
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jennifer D. Arkowitz **Docket Number:** 97246-926648
Attorney Primary Email Address: tmadmin@kilpatricktownsend.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Jennifer D. Arkowitz
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, 8th Floor
San Francisco, CALIFORNIA 94111
UNITED STATES
Phone: 415-576-0200 **Fax:** 415-576-0300
Correspondent e-mail: tmadmin@kilpatricktownsend.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 18, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 18, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jul. 30, 2013	REGISTERED-PRINCIPAL REGISTER	
Jun. 13, 2013	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jun. 13, 2013	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
May 14, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 14, 2013	PUBLISHED FOR OPPOSITION	
Apr. 24, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 02, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 28, 2013	ASSIGNED TO EXAMINER	68603
Dec. 22, 2012	NOTICE OF PSEUDO MARK MAILED	
Dec. 21, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 15, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION **Date in Location:** Jul. 30, 2013

Proceedings

Summary

Number of Proceedings: 7

Type of Proceeding: Opposition

Proceeding Number: [91222498](#) **Filing Date:** Jun 23, 2015
Status: Terminated **Status Date:** Nov 27, 2015
Interlocutory Attorney: YONG OH (RICHARD) KIM

Defendant

Name: Wang, Donald Saodon
Correspondent Address: NICOLE CHIU-WANG
74 NEW MONTGOMERY ST, UNIT 214
SAN FRANCISCO CA , 94105-3417
UNITED STATES
Correspondent e-mail: nicole@nicolechiu.com

mail: _____

Mark	Application Status	Serial Number	Registration Number
SNAPVITE	Abandoned - After Inter-Partes Decision	86406614	

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent Address: ROBERT POTTER
KILPATRICK TOWNSEND & STOCKTON LLP
1114 AVENUE OF THE AMERICAS
NEW YORK NY , 10036
UNITED STATES

Correspondent e-mail: rpotter@kilpatricktownsend.com, sroe@ktslaw.com, jarkowitz@ktslaw.com, itomlinson@ktslaw.com, mmm@ktslaw.com, awells@ktslaw.com, tmadmin@ktslaw.com

Mark	Application Status	Serial Number	Registration Number
SNAPCHAT	Registered	85800506	4375712

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 23, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 23, 2015	Aug 02, 2015
3	PENDING, INSTITUTED	Jun 23, 2015	
4	ANSWER	Jul 31, 2015	
5	STIP TO SUSP PEND SETTL NEGOTIATIONS	Nov 04, 2015	
6	SUSPENDED	Nov 04, 2015	
7	W/DRAW OF APPLICATION	Nov 12, 2015	
8	BD DECISION: SUSTAINED	Nov 27, 2015	
9	TERMINATED	Nov 27, 2015	

Type of Proceeding: Opposition

Proceeding Number: [91222225](#)

Filing Date: Jun 03, 2015

Status: Terminated

Status Date: Oct 05, 2015

Interlocutory Attorney: MIKE WEBSTER

Defendant

Name: SpotHopper, LLC

Correspondent Address: JOHN P FREDRICKSON
BOYLE FREDRICKSON SC
840 N PLANKINTON AVE
MILWAUKEE WI , 53203
UNITED STATES

Correspondent e-mail: docketing@boylefred.com, jpf@boylefred.com, kmc@boylefred.com, sxs@boylefred.com

Mark	Application Status	Serial Number	Registration Number
SPOTCHAT	Abandoned - After Inter-Partes Decision	86168670	

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent Address: ROBERT POTTER
KILPATRICK TOWNSEND & STOCKTON LLP
1114 AVENUE OF THE AMERICAS
NEW YORK NY , 10036
UNITED STATES

Correspondent e-mail: rpotter@kilpatricktownsend.com, jarkowitz@kilpatricktownsend.com, itomlinson@kilpatricktownsend.com, tmadmin@kilpatricktownsend.com, agarcia@kilpatrick.com

Mark	Application Status	Serial Number	Registration Number
			Registration

Mark	Application Status	Serial Number	Number
SNAPCHAT	Registered	85800506	4375712
Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 03, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 03, 2015	Jul 13, 2015
3	PENDING, INSTITUTED	Jun 03, 2015	
4	ANSWER	Jul 13, 2015	
5	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Sep 03, 2015	
6	SUSPENDED	Sep 03, 2015	
7	W/DRAW OF APPLICATION	Sep 22, 2015	
8	BD DECISION: SUSTAINED	Oct 05, 2015	
9	TERMINATED	Oct 05, 2015	

Type of Proceeding: Opposition

Proceeding Number: [91221988](#)

Filing Date: May 18, 2015

Status: Terminated

Status Date: Jul 13, 2015

Interlocutory Attorney: ANDREW P BAXLEY

Defendant

Name: ParksByNature Network LLC

Correspondent Address: PHILIP I FRANKEL
BOND SCHOENECK & KING LLC
1 LINCOLN CENTER, SUITE 1800
SYRACUSE NY , 13202-1355
UNITED STATES

Correspondent e-mail: bskpto@bsk.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SNATCHIT	Notice of Allowance - Issued	86206363	

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent Address: ROBERT POTTER
KILPATRICK TOWNSEND & STOCKTON LLP
1114 AVENUE OF THE AMERICAS, THE GRACE BUILDING
NEW YORK NY , 10036
UNITED STATES

Correspondent e-mail: tmadmin@kilpatricktownsend.com , itomlinson@ktslaw.com , jarkowitz@ktslaw.com , rpotter@kilpatricktownsend.com , agarcia@kilpatricktownsend.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SNAPCHAT	Registered	85800506	4375712

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 18, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 18, 2015	Jun 27, 2015
3	PENDING, INSTITUTED	May 18, 2015	
4	MOT TO AMEND APPLICATION	May 26, 2015	
5	RESPONSE DUE 30 DAYS (DUE DATE)	Jul 01, 2015	Jul 31, 2015
6	MOT TO AMEND APPLICATION	May 21, 2015	
7	BD DECISION: DISMISSED W/O PREJ	Jul 09, 2015	
8	TERMINATED	Jul 13, 2015	

Type of Proceeding: Opposition

Proceeding Number: [91221801](#)

Filing Date: May 04, 2015

Number: _____

Status: Terminated

Status Date: Dec 09, 2015

Interlocutory Attorney: YONG OH (RICHARD) KIM

Defendant

Name: Cameron Lisa Calcagno-Newell

Correspondent Address: MARIA T GIAMMANCO
THE HECKER LAW GROUP PLC
1925 CENTURY PARK EAST STE 2300
LOS ANGELES CA , 90067
UNITED STATES

Correspondent e-mail: mgiammanco@hh.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SNAPAUDIO	Abandoned - After Inter-Partes Decision	86205539	

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent Address: ROBERT N POTTER
KILPATRICK TOWNSEND & STOCKTON LLP
THE GRACE BLDG, 1114 AVENUE OF THE AMERICAS
NEW YORK NY , 10036
UNITED STATES

Correspondent e-mail: tmadmin@kilpatricktownsend.com , itomlinson@ktslaw.com , jarkowitz@ktslaw.com , rpotter@kilpatricktownsend.com , agarcia@kilpatricktownsend.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
SNAPCHAT	Registered	85800506	4375712

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 04, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 04, 2015	Jun 13, 2015
3	PENDING, INSTITUTED	May 04, 2015	
4	D APPEARANCE / POWER OF ATTORNEY	Jun 10, 2015	
5	D MOT FOR EXT W/ CONSENT	Jun 10, 2015	
6	EXTENSION OF TIME GRANTED	Jun 10, 2015	
7	D MOT FOR EXT W/ CONSENT	Jul 10, 2015	
8	EXTENSION OF TIME GRANTED	Jul 10, 2015	
9	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Aug 05, 2015	
10	SUSPENDED	Aug 05, 2015	
11	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Oct 09, 2015	
12	SUSPENDED	Oct 09, 2015	
13	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Nov 09, 2015	
14	SUSPENDED	Nov 09, 2015	
15	W/DRAW OF APPLICATION	Dec 02, 2015	
16	BD DECISION: DISMISSED W/O PREJ	Dec 09, 2015	
17	TERMINATED	Dec 09, 2015	

Type of Proceeding: Opposition

Proceeding Number: [91221569](#)

Filing Date: Apr 20, 2015

Status: Pending

Status Date: Apr 20, 2015

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Schwartz, Justin

Correspondent JEAN-MARC ZIMMERMAN
Address: ZIMMERMAN WEISER & PARAY LLP
226 ST PAUL STREET
WESTFIELD NJ , 07090
UNITED STATES

Correspondent e-mail: jmz@zwpllp.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
SCRAP CHAT	Opposition Pending	86358450	
Plaintiff(s)			

Name: Snapchat, Inc.

Correspondent ROBERT POTTER
Address: KILPATRICK TOWNSEND & STOCKTON LLP
1114 AVENUE OF THE AMERICAS, 21ST FLOOR
NEW YORK NY , 10036
UNITED STATES

Correspondent e-mail: rpotter@ktslaw.com , svayner@ktslaw.com , tmadmin@ktslaw.com , dwilson@ktslaw.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
SNAPCHAT	Registered	85800506	4375712

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Apr 20, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 20, 2015	May 30, 2015
3	PENDING, INSTITUTED	Apr 20, 2015	
4	ANSWER	May 29, 2015	
5	STIP FOR EXT	Dec 10, 2015	
6	EXTENSION OF TIME GRANTED	Dec 10, 2015	
7	STIP FOR EXT	Feb 05, 2016	
8	EXTENSION OF TIME GRANTED	Feb 05, 2016	

Type of Proceeding: Opposition

Proceeding Number: [91215234](#) **Filing Date:** Mar 03, 2014
Status: Terminated **Status Date:** Jun 18, 2014
Interlocutory Attorney: CHERYL S GOODMAN

Defendant

Name: Team VMS, Inc.

Correspondent BRIAN P GREGG
Address: MCNEES WALLACE & NURICK LLC
100 PINE STREET, PO BOX 1166
HARRISBURG PA , 17108-1166
UNITED STATES

Correspondent e-mail: trademarks@mwn.com , bgregg@mwn.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
SNAP21	Registered	85884997	4570739

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent TIMOTHY S BONTEMPS
Address: COOLEY LLP
FIVE PALO ALTO SQUARE
PALO ALTO CA , 94306
UNITED STATES

Correspondent e-mail: trademarks@cooley.com , thance@cooley.com

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

SNAPCHAT Registered [85800506](#) [4375712](#)

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 03, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 03, 2014	Apr 12, 2014
3	PENDING, INSTITUTED	Mar 03, 2014	
4	D MOT FOR EXT W/ CONSENT	Apr 08, 2014	
5	EXTENSION OF TIME GRANTED	Apr 08, 2014	
6	MOT TO AMEND APPLICATION	May 13, 2014	
7	BD DECISION: DISMISSED W/ PREJ	Jun 18, 2014	
8	TERMINATED	Jun 18, 2014	

Type of Proceeding: Opposition

Proceeding Number: [91214299](#)

Filing Date: Jan 02, 2014

Status: Terminated

Status Date: May 22, 2015

Interlocutory Attorney: MIKE WEBSTER

Defendant

Name: Keyless Systems Ltd. DBA Keyless Systems Ltd.

Correspondent Address: L MARC ZELL
ZELL ARON & CO
350 FIFTH AVE, EMPIRE STATE BLDG 59TH FLOOR
NEW YORK NY , 10018-0069
UNITED STATES

Correspondent e-mail: mzell@fandz.com , imichels@fandz.com

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

LETSNAP Registered [85897302](#) [4874781](#)

Plaintiff(s)

Name: Snapchat, Inc.

Correspondent Address: ROBERT POTTER
KILPATRICK TOWNSEND & STOCKTON LLP
THE GRACE BUILDING, 1114 AVENUE OF THE AMERICAS 21ST FLOOR
NEW YORK NY , 10036-7703
UNITED STATES

Correspondent e-mail: rpotter@kilpatricktownsend.com , OHarris@kilpatricktownsend.com , agarcia@ktslaw.com , tmadmin@ktslaw.com

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

SNAPCHAT Registered [85800506](#) [4375712](#)

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jan 02, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jan 03, 2014	Feb 12, 2014
3	PENDING, INSTITUTED	Jan 03, 2014	
4	D MOT FOR EXT W/O CONSENT	Feb 12, 2014	
5	D APPEARANCE / POWER OF ATTORNEY	Feb 12, 2014	
6	EXTENSION OF TIME GRANTED	Feb 24, 2014	
7	ANSWER	Feb 25, 2014	
8	STIP FOR EXT	Aug 14, 2014	

9	EXTENSION OF TIME GRANTED	Aug 14, 2014
10	STIP FOR EXT	Sep 24, 2014
11	EXTENSION OF TIME GRANTED	Sep 24, 2014
12	STIP TO SUSP PEND SETTL NEGOTIATIONS	Nov 17, 2014
13	SUSPENDED	Nov 17, 2014
14	P APPEARANCE / POWER OF ATTORNEY	Mar 10, 2015
15	CHANGE OF CORRESP ADDRESS	Mar 10, 2015
16	STIP TO SUSP PEND SETTL NEGOTIATIONS	Mar 10, 2015
17	SUSPENDED	Mar 10, 2015
18	STIP TO SUSP PEND SETTL NEGOTIATIONS	Apr 09, 2015
19	SUSPENDED	Apr 09, 2015
20	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	May 11, 2015
21	SUSPENDED	May 11, 2015
22	W/DRAW OF OPPOSITION	May 12, 2015
23	BD DECISION: DISMISSED W/O PREJ	May 22, 2015
24	TERMINATED	May 22, 2015

EXHIBIT B

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

In the Matter of Application Serial No. **86/358,450**
For the mark: **SCRAP CHAT**
Filed: August 6, 2014
Published: January 20, 2015

X
SNAPCHAT, INC., :
Opposer, : Opposition No. [91221569](#)
v. : **NOTICE OF OPPOSITION**
JUSTIN SCHWARTZ, :
Applicant. :

-X

AMENDED NOTICE OF OPPOSITION

~~SNAPCHAT, INC~~ Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Opposer Snapchat, Inc. (“Opposer” or “Snapchat”), a corporation organized and existing under the laws of Delaware with a principal place of business at 63 Market Street, Venice, California 90291, submits this Amended Notice of Opposition. Opposer believes that it will be damaged by the issuance of a registration for the SCRAP CHAT mark shown in Application Serial No. 86/358,450 for goods in International Class ~~009,2~~ and hereby opposes the same.

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

Facts Relevant to All Claims

1. Opposer is the designer and distributor of the enormously popular SNAPCHAT messaging application that, among other things, allows users to share photographs, videos, and messages with others via mobile devices.

2. Since its launch in 2011, Opposer has extensively promoted and distributed its application in connection with its highly distinctive SNAPCHAT trademark (the “SNAPCHAT Mark”). These efforts have been extraordinarily successful. Opposer and its SNAPCHAT application have been the subject of thousands of articles in a wide range of media venues and the SNAPCHAT application is currently among the fastest growing and most popular ~~smart-phones~~[smartphone](#) applications in the world. ~~Since 2011, Opposer’s millions of registered users have shared billions of photo and video messages and, as of today, more than 700 million photos and videos are sent daily via the SNAPCHAT application.~~

3. ~~As a testament to Opposer’s success, SNAPCHAT was declared the “Best Mobile Application” at the 2013 Crunchies Awards. Recent reports indicate that SNAPCHAT is~~[Indeed, an early 2015 report indicated that the SNAPCHAT application was](#) the fourth most popular social media application among 18-24 year olds, and [a November 2014 study indicated that](#) 71% of ~~active~~-U.S. social media users between 18-29 years of age ~~have accessed the~~ SNAPCHAT ~~account~~[application](#). Attached as **Exhibit 1** is a printout of DEFY Media’s Acumen Report, released on or about March 3, 2015, reporting (on page 8) usage of the SNAPCHAT application across various age groups, and attached as **Exhibit 2** is a printout of emarketer.com’s January 9, 2015 article reporting that

a November 2014 survey by Cowen and Company revealed 71% of 18-29 year olds access the SNAPCHAT application. Currently, there are over 100 million daily active users of the SNAPCHAT application, with that number growing steadily.

4. As a testament to Opposer's success, SNAPCHAT was declared the "Best Mobile Application" at the 2013 Crunchies Awards. Since then, Opposer's SNAPCHAT application growth and development have skyrocketed, with recent high-profile advertising partnerships with the National Football League, BuzzFeed, Mashable, Cosmopolitan, CNN, and the 2016 MTV Movie Awards, among others. Since 2011, Opposer's millions of registered users have shared billions of photo and video messages and, as of today, approximately 8 billion videos are viewed daily via the SNAPCHAT application (equal to Facebook's daily video views).

5. ~~4.~~ As a result of Opposer's extensive use of the SNAPCHAT Mark in connection with its application, the SNAPCHAT Mark is strong, has acquired enormous goodwill, and has come to be identified immediately with Opposer as the source of its application. Moreover, through Opposer's widespread use of the SNAPCHAT Mark, significant and continuous media coverage, the high degree of consumer recognition of the SNAPCHAT Mark, Snapchat's enormous and loyal fan base, and other factors, the SNAPCHAT Mark is famous under the Lanham Act, specifically 15 U.S.C. §§ 1125, *et seq.*

6. ~~5.~~ Opposer is the owner of United States Registration No. 4,375,712 ~~for~~of the SNAPCHAT Mark for "[c]omputer application software for mobile phones, portable media players, and handheld computers, namely software for sending digital photos,

videos, images, and text to others via the global computer network” in International Class ~~009~~9. The application for this registration was filed on December 12, 2012, citing a first-use date of September 30, 2011, and the SNAPCHAT Mark was registered on July 30, 2013. This registration is valid and in full force and effect, and a copy of the registration certificate and ~~print-out~~printout from the United States Patent and Trademark Office’s online database is ~~annexed~~attached as **Exhibit 3**.

7. ~~6. Notwithstanding Opposer’s prior rights, and well after Opposer’s SNAPCHAT Mark became distinctive and famous,~~On August 6, 2014, Justin Schwartz (“Applicant”) filed ~~on August 6, 2014~~ a use-based ~~Application~~application, Serial No. ~~79/137,658~~86/358,450 (“Application”), to register the SCRAP CHAT mark (“Applicant’s Mark”) for “[c]omputer application software for mobile phones, tablets, and handheld computers, namely, software for allowing users to share pictures, videos, links, and other content and lets them post them to their own pages if they enjoy the content” in International Class ~~099~~9 (the “Applicant’s Goods”).

~~7. Opposer is timely filing this Notice of Opposition.~~

Count I: Likelihood of Confusion

8. Opposer incorporates by reference the allegations contained in Paragraphs 1-7 as if fully set forth herein.

9. Applicant filed the Application to register Applicant’s Mark notwithstanding Opposer’s prior rights, and well after Opposer’s SNAPCHAT Mark became distinctive and famous.

10. ~~8.~~ There is no issue as to priority. Opposer began using the SNAPCHAT Mark in commerce at least as early as September 2011, well prior to the January 2, 2014 first- use date claimed in ~~Applicant's application~~the Application.

11. ~~9.~~ Consumers encountering Applicant's Mark, particularly in connection with Applicant's Goods, are likely to associate the mark with Opposer. Applicant's SCRAP CHAT Mark is extremely similar to Opposer's SNAPCHAT Mark in appearance, pronunciation, and connotation, and—but for two letters—the marks are identical.

12. ~~10.~~ Applicant's Goods are also essentially identical—or at the very least highly related and/or complementary—to the goods Opposer has long offered and provided in connection with the SNAPCHAT Mark, and for which Opposer owns a registration ~~for~~of the SNAPCHAT Mark. Specifically, Applicant's Goods are defined as computer application software for mobile phones, handheld computers, and similar devices, allowing users to share photos, videos, and other content with one another. Opposer's registration ~~for~~of its SNAPCHAT mark covers exactly these goods.

13. ~~11.~~ On information and belief, Applicant's Mark was adopted with knowledge of the SNAPCHAT Mark, and with the intent to call to mind and create a likelihood of confusion with, and/or trade off the goodwill in, the SNAPCHAT Mark. On information and belief, Applicant's targeted consumers and channels of trade for the goods offered under Applicant's SCRAP CHAT Mark overlap with—and, indeed, are identical to—the consumers and channels of trade for the goods offered under Opposer's registered SNAPCHAT Mark.

14. ~~12.~~ Opposer will be damaged by the registration of Applicant's Mark because Applicant's Mark so closely resembles the SNAPCHAT Mark as to be likely to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of Applicant's Goods or the affiliation between Applicant and Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Furthermore, any complaints in connection with Applicant's Goods marketed under Applicant's Mark would necessarily reflect upon and seriously injure the reputation that Opposer has established for its own goods.

15. ~~13.~~ If Applicant is granted the registration herein opposed, ~~it~~ he would thereby obtain a *prima facie* exclusive right to the use of Applicant's Mark in connection with Applicant's Goods. Such registration would be a source of damage and injury to Opposer.

Count II: Application Void *Ab Initio*

16. Opposer incorporates by reference the allegations contained in Paragraphs 1-15 as if fully set forth herein.

17. The Application identifies the owner of Applicant's Mark as Justin Schwartz, an individual who is a United States citizen, with a correspondence address in Brooklyn, New York.

18. Based on information obtained through discovery, Keatman Inc. ("Keatman") is the true and rightful owner of Applicant's Mark and was the true and rightful owner of Applicant's Mark on the filing date of the Application.

19. On information and belief, Keatman was an active New York corporation

on the filing date of the Application and remains an active New York corporation as of the filing date of this Amended Notice of Opposition.

20. Based on information obtained through discovery, Keatman used Applicant's Mark in United States commerce in connection with Applicant's Goods prior to and on the filing date of the Application, with use of Applicant's Mark inuring to its benefit.

21. During his January 6, 2016 deposition, Applicant admitted that: (1) Keatman owns the SCRAP CHAT mark; (2) Keatman owns the SCRAP CHAT mark application; and (3) the SCRAP CHAT mark is "associated only with Keatman."

22. Because the Application was filed in the name of an individual who did not own Applicant's Mark on the filing date of the Application, the Application is void *ab initio* in accordance with 37 C.F.R. § 2.71(d) and 15 U.S.C. § 1051(a).

23. If Applicant, as the wrongful owner, is granted the registration herein opposed, he would thereby obtain a *prima facie* exclusive right to the use of Applicant's Mark in connection with Applicant's Goods. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer requests that this opposition be sustained and that the registration of Application Serial No. 86/358,450 in connection with Applicant's Goods be denied.

~~The opposition fee in the amount of \$300.00 for an opposition in one class is filed herewith. If for any reason this amount is insufficient, it is requested that Opposer's attorneys²~~

~~Deposit Account No. 20-1430 be charged with any deficiency. This paper is filed electronically.~~

~~Dated: New York, New York~~

~~April 20, 2015~~ Respectfully submitted,

**KILPATRICK TOWNSEND &
STOCKTON LLP**

By: ~~/s/ Robert Potter~~

~~Robert Potter
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8700
Facsimile: (212) 775-8800~~

~~Jennifer Arkowitz
Eighth Floor, Two Embarcadero Center
San Francisco, California 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300~~

~~Attorneys for Opposer Snapchat, Inc.~~

Respectfully submitted,

/Robert Potter/

Robert Potter

Kilpatrick Townsend & Stockton LLP

The Grace Building

1114 Avenue of the Americas

New York, New York 10036

Telephone: (212) 775-8700

rpotter@kilpatricktownsend.com

Sabina A. Vayner

Kilpatrick Townsend & Stockton LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4528

Telephone: (404) 815-6500

svayner@kilpatricktownsend.com

Attorneys for Opposer Snapchat, Inc.