

ESTTA Tracking number: **ESTTA689142**

Filing date: **08/12/2015**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Codename Enterprises, Inc.
Granted to Date of previous extension	10/11/2015
Address	111 West 67th Street, Suite 20B New York, NY 10023 UNITED STATES

Correspondence information	Codename Enterprises, Inc. 111 West 67th Street, Suite 20B New York, NY 10023 UNITED STATES emsussman@gmail.com Phone:(646) 283-9427
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**Applicant Information**

Application No	86451967	Publication date	04/14/2015
Opposition Filing Date	08/12/2015	Opposition Period Ends	10/11/2015
Applicant	FremantleMedia North America, Inc 8th Floor Burbank, CA 91505 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, creation, development, production and distribution of audio and video content and programming for television, radio and internet media; entertainment services, namely, providing a website featuring a large variety of educational and informational topics on the topic of game shows; entertainment services, namely, providing on-line journals and blogs featuring information and stories in the field of game shows; providing on-line entertainment programs and information, namely, non-downloadable videos, non-downloadable web series, non-downloadable television series and non-downloadable continuing programs in the field of game shows delivered via wireless communications, wired communications, and global communications networks
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Reverse Confusion

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3890887	Application Date	06/23/2009
Registration Date	12/14/2010	Foreign Priority Date	NONE
Word Mark	BUZZR		
Design Mark			
Description of Mark	The mark consists of the following: the word "BUZZR" in green, with the "b" in the word "buzzr" containing a petal design in the colors purple and green, and adesign of a bee in the colors yellow and black with grey wings and antennae.		
Goods/Services	<p>Class 009. First use: First Use: 2009/04/19 First Use In Commerce: 2009/04/19 Computer Software, namely, software forcreating and managing web sites, creating, publishing, managing and organizing content for use on the Internet or an intranet</p> <p>Class 035. First use: First Use: 2009/04/19 First Use In Commerce: 2009/04/19 Providing a website for connecting sellers with buyers, including via connections between buyers on different websites on a common network, and buyers connected to the seller via external online social networks and social media websites; Providing advertising service to distribute advertisements for display on Internet, namely, in websites, social conversations over the Internet, emails, microblogs, blogs, electronic messages, instant messages, text messages, multimedia messages, social networks, status updates, forums, electronic bulletin boards</p> <p>Class 042. First use: First Use: 2009/04/19 First Use In Commerce: 2009/04/19 Building and maintaining websites; Design of homepages and websites; Design, creation, hosting and maintenance of websites for others, including computer software design for controlling self-service terminals; Designing websites for advertising purposes; Providing an online website for creating and hosting micro websites for businesses, non-profits, bloggers, hobbyists, publishers and others</p>		

U.S. Application No.	86511295	Application Date	01/22/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BUZZR		

Design Mark	<h1>Buzzr</h1>
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2009/04/13 First Use In Commerce: 2009/04/13 Computer Software, namely, software for creating and managing web sites, creating, publishing, managing and organizing content for use on the Internet or an intranet</p> <p>Class 035. First use: First Use: 2009/04/13 First Use In Commerce: 2009/04/13 Providing a website for connecting sellers with buyers, including via connections between buyers on different websites on a common network, and buyers connected to the seller via external online social networks and social media websites; Providing advertising service to distribute advertisements for display on Internet, namely, in websites, social conversations over the Internet, emails, microblogs, blogs, electronic messages, instant messages, text messages, multimedia messages, social networks, status updates, forums, electronic bulletin boards</p> <p>Class 042. First use: First Use: 2009/04/13 First Use In Commerce: 2009/04/13 Building and maintaining websites; Design of homepages and websites; Design, creation, hosting and maintenance of websites for others, including computer software design for controlling self-service terminals; Designing websites for advertising purposes; Providing an online website for creating and hosting micro websites for businesses, non-profits, bloggers, hobbyists, publishers and others</p>

Attachments	77766254#TMSN.png( bytes ) 86511295#TMSN.png( bytes ) OppositionSerial #86451976.pdf(120781 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/es/
Name	Edward Sussman
Date	08/12/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of trademark application Serial No: Serial #: 86451976

For the mark **BUZZR**

Published for Opposition in the Official Gazette on April 14, 2015

Codename Enterprises, Inc.

v.

FreemantleMedia North America, Inc.

**NOTICE OF OPPOSITION**

Codename Enterprises, Inc.

111 West 67<sup>th</sup> Street. 20B

New York, NY 10023

A Delaware Corporation

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same:

The grounds for opposition are as follows:

1. Codename Enterprises, Inc. (doing business as “BUZZR” and holder of a federally registered trademark for BUZZR), is a Delaware-incorporated and New York-based and registered corporation with principal offices at 111 West 67<sup>th</sup> Street, New York, NY., has standing to oppose the application to Serial #: 86451976 and is entitled to relief as the holder of Registration #:3890887 Mark:BUZZR; and pending application Serial #:86511295 Mark:BUZZR See 15 U.S.C. § 1063(a) [Trademark Act § 13(a)] (*Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered.*)
2. In opposing the proposed registration of the application for the mark “BUZZR” by FreemantleMedia North America (“Freemantle”), Codename Enterprises, Inc. (“Opponent”) states and alleges as follows:
3. Freemantle is one of the largest television production companies in the world and its North American division, FreemantleMedia North America. Freemantle is the producer of some of the most successful television shows and famous brands in the world, such as “American Idol” and variants of “Idol” in some 150 countries around the world; the “The X-Factor” and

variants of “The X-factor” in dozens of countries around the world; “America’s Got Talent” and variants of “Got Talent” in dozens of countries around the world; “Family Feud and variants of “Family Feud” in dozens of countries around the world; “The Price is Right” and variants of “The Price Is Right” in dozens of countries around the world; “Let’s Make a Deal” and variants of “Let’s Make a Deal” in dozens of countries around the world; etc. Freemantle Limited had estimated revenue of \$1.65 billion dollars in 2014 and is a division of European broadcast giant RTL Group, with 2014 revenue of \$5.8 billion.

4. Freemantle has already launched multiple infringing entities using the unregistered mark:
  - a) BUZZR , a 24x7 broadcast television network carried on 23 television stations, including 17 stations owned and operated by Fox Television Stations, Inc., featuring programming, advertising services and distributed advertising;
  - b) BUZZR, a channel on YouTube.com featuring hundreds of episodes of broadcast-quality original programming, presented in a video blogging format, on a social network, with distributed advertisements and advertising services;
  - c) a website published by Freemantle at the URL “buzzrgames.com”, promoted under the brand name BUZZR, featuring a regularly updated video blog;
  - d) a website published by Freemantle at the URL “buzzrplay.com”, promoted under the brand name BUZZR;
  - e) a Twitter micro-blog published by Fremantle under the name @buzzrgames (related to Internet programming),, promoted under the brand name BUZZR, featuring text and video micro-blogging content, on a social network, potentially including advertising services and distributed advertising;
  - f) a Twitter micro-blog published by Fremantle under the name @buzzrplay (related to old game shows), promoted under the brand name BUZZR, featuring text and video micro-blogging content, on a social network, potentially including advertising services and distributed advertising;
  - g) a Facebook page (related to old game shows), published by Fremantle and promoted under the brand name BUZZR, featuring text and video blogging content, on a social network, potentially including advertising services and distributed advertising;
  - h) a second Facebook page account (related to Internet programming), published by Fremantle and promoted under the brand name BUZZR, featuring text and video blogging content, on a social network, potentially including advertising services and distributed advertising;
  - i) a website published by Fremantle at <http://buzzrgames.tumblr.com/>, part of the Tumblr blogging network and social network (owned and operated by Yahoo! Inc.), promoted under the brand name BUZZR, and featuring text and video blogging content, potentially including advertising services and distributed advertising;
  - j) an Instagram channel published by Fremantle, under the brand name BUZZR (related to old game shows), featuring photo and video blogging content,

on a social network, potentially including advertising services and distributed advertising;

k) a second, separate Instagram channel published by Fremantle, promoted under the brand name BUZZR (related to Internet programming), featuring photo and video blogging content, on a social network, potentially including advertising services and distributed advertising;

5. The BUZZR television network features broadcasts from its library of 154 game shows, featuring 40,000 episodes of well-known television shows such as “Let’s Make a Deal”, “To Tell the Truth”, “Password”, “What’s My Line” and “Family Feud.”

Freemantle says on its website that it is the owner of the largest game show library in the world. Former FreemantleMedia North America CEO Thom Beers was quoted in television trade publications as saying “Launching BUZZR TV and growing its footprint is one of the top priorities for the business this year.”

6. Freemantle’s strategy to maximize its revenue with its YouTube channel, website branded BUZZR at the URL buzzrgames.com, and its Twitter, Facebook and Instagram publishing accounts with original Internet game show programming, is to appeal to the youth market. Game show contestant are in their 20s or younger and many are known as “social media stars” with hundreds of thousands of followers. As such, Freemantle has regularly created salacious, sexist and sexually-themed programming on its YouTube channel. For example, a) the most popular video clip produced by Freemantle for YouTube is entitled “Another word for slut - Password”, a game involving contestants guessing the words “slut” and “hoe”, with more than 1,238,000 views as of June 2, 2015; b) on February 11, 2015, the “word of the day” on the “Family Feud” YouTube program was “masturbation”; c) on March 20, 2015, Freemantle posted a clip on its BUZZR-branded website at buzzrgames.com entitled “Ally Hills and her Buns” featuring a woman bending over and slapping her own buttocks; d) on April 7, 2015, the “Family Feud” YouTube program featured the clue “name something you might do at night instead of falling sleeping”, with contestants’ answering “have sex” and “masturbate”, the latter accompanied by a very crude hand motion simulating masturbation (an answer rewarded by the show as correct); e) on April 9, 2015, Freemantle isolated the answer “masturbate” as a short video clip, including the crude hand motion, and featured it prominently on its “Buzzrgames.com” website. f) on July 7, 2009, Freemantle posted a clip on its BUZZR-branded website at buzzrgames.com entitled “Filed Under: Random shit Steve says before hosting Password.”; g) On July 17, 2015, Freemantle posted a clip on its BUZZR-branded website at buzzrgames.com entitled “Hulk Hal” featuring a semi-nude man; etc.

7. Upon information and belief, Freemantle has hired a public relations firm to promote the BUZZR brand, already resulting in hundreds of news articles, including a feature-length story in USA Today on the day BUZZR television network debuted. These efforts have already resulted in 9 out of 10 first-page Google search results for the term BUZZR to show results related to the Defendant’s television network, YouTube channel, and social media publishing channels, displacing Plaintiff’s domination of Google search results of the term “Buzzr” for more than five years.

8. Upon information and belief, Freemantle is engaged in advanced search engine optimization (“SEO”) practices to promote the brand BUZZR on search engines, particularly on Google search, when the term BUZZR is searched, resulting in every search result on the first page to result in an item related to Defendants, except for one result for Plaintiff’s Buzzr.com website; and as a result, pushing Plaintiff’s Buzzr.com search result from number one on the page (for six years) to as low as number seven of eleven as of June 3, 2015.

9. Freemantle’s goal is to saturate the mass market in the United States with the brand BUZZR, making it synonymous with its digital and broadcast channels of the same name. As a multi-billion dollar company, Defendant Freemantle has the resources, expertise and experience to build brands into household names, as it has done with “American Idol”, “The X Factor”, “America’s Got Talent”, “Storage Wars”, “Family Feud”, “Password”, “Let’s Make a Deal” and many other properties.

10. The acts of the Freemantle have, are and will continue to infringe, tarnish and dilute Codename Enterprises’ registered and continuous use trademark rights in and to the BUZZR mark, in violation of (15 U.S.C. §1051 et. seq. (the “Lanham Act”).

11. Allowing registration of the mark has and will continue to result in both forward confusion and in reverse confusion, where a junior (or new) user adopts a mark already in use by a senior user and the junior user may become more recognized for the trademark than the senior user through advertising and other expenditures used to promote the mark. The Second Circuit in *Polaroid Corp. v. Polarad Electronics, Corp.*, 287 F.2d 492 (2d Cir. 1961); *Nora Beverages, Inc. v. Perrier Group of Am., Inc.*, 269 F.3d 114, 119 (2d Cir. 2001); by the Ninth Circuit in *Dreamwerks Production Group, Inc. v. SKG Studio* (9th Cir. 1998) 142 F.3d 1127, 1130

12. The Federal Circuit and the Trademark Trial and Appeals Board have recognized both forward and reverse confusion as valid grounds for opposition. The Federal Circuit has noted that, in a reverse confusion case, “the weighing of the relevant factors must take into account the confusion that may flow from extensive promotion of a similar or identical mark by the junior user.” In *Re Shell Oil Co.*, 992 F. 2<sup>nd</sup> 1204, 1208, 26 USPQ2d 1688, 1690 (Fed. Cir. 1993), reh’g, en banc, denied In *Re Shell Oil Co.*, 1993 U.S. App. LEXIS 17258 (Fed. Cir. July 2, 1993). See also *Hilson Research v. Society for Human Resources Management*, 27 USPQ2s 1423, 1429 (TTAB 1992) (“The concept of reverse confusion has been recognized by this Board and our primary reviewing court.”).

13. The most important factors to consider in evaluating a reverse confusion case are (1) the similarity of the marks, (2) the relatedness of the goods or services, and (3) the 'simultaneous use of the Web as a marketing channel.' (*GoTo.com, Inc. v. Walt Disney Co.* (9th Cir. 2000) 202 F.3d 1199, 1206-07).

14. Codename Enterprises, Inc. (“Opponent”) has operated a business under the brand name “BUZZR” since April of 2009. It operates a website at Buzzr.com (since April 13, 2009), a Twitter account at @Buzzr and a Facebook page called BUZZR. It filed for a trademark for the word mark BUZZR, together with a Mark Drawing, on June 23, 2009

and was awarded a registered trademark on December 14, 2010 under IC 009, IC035 and IC 043.

15. Opponent as “BUZZR” operates a business that includes a consumer and business software-as-a-service website builder with the sites and their users networked together for content sharing, including under the BUZZR brand and with BUZZR sub-domain (e.g. website.buzzr.com); a network of publisher websites on a large variety of topics and in many industry verticals; downloadable website publishing software; blogging tools; a social network, and an Internet advertising platform. More than 100,000 websites have been built with the help of Opponent’s software.

16. Opponent’s products and services include a website with thousands of micro-sites created by independent publishers; drag and drop website builder; a network of publisher websites; a social network linking users, websites and external social media; blogging and micro-blogging tools; and a platform for providing various types of advertising. Video blogging and video galleries, specifically with placement of YouTube videos inside blog posts or on video gallery pages, has been a feature of the BUZZR-branded platform since its launch and expanded to include other video and image services such as Vimeo and Instagram when these services became available. Opponent also offers website and mobile website custom design services.

17. A core product focus of Opponent has been “ease of use,” leading Opponent to market to a broad audience of millions of consumers and business. As of March, 2015 there were more than 178 million active websites on the World Wide Web, up from 54 million active websites about seven years ago, according to Netcraft.com. The Opponent’s product is also a social media publishing network, linking its websites, blogs and users together in a manner very similar to Tumblr.com, a blogging platform that sold to Yahoo! for \$1.1 billion in 2013.

18. Opponent has already built, at great expense, much of the same publishing and social sharing technology as other famous social publishing platforms, like Tumblr, Twitter, Pinterest and Facebook, and intends to continue to expand its networking capabilities between users and websites, in order to compete with popular social media publishers platforms. These plans have been in place for several years, preceding Freemantle’s infringement.

19. Opponent’s BUZZR-branded platform was built so that all “websites” created with it are actually sub-sites (e.g. canewood1.buzzr.com) of the same massive website, residing at buzzr.com for the consumer edition (and other URLs on private-label editions for white label clients.) Since all the sub-sites are really just pages under the one giant website, user log in credentials and profiles are the same across the entire platform. When a user contributes content to a sub-site, their user name appears above the content and can be clicked, taking the sub-site visitor to the central user profile for the entire platform. Visitors to a sub-site can “join” a site, in much the same way visitors to social networks can “follow” a blog or page. Content from different sub-sites can then flow between users, although this particular feature remains in the planning stages. This system was intentionally constructed according to the same generally-accepted practices of all major social publishing platform platforms, such as Facebook, Twitter and Tumblr. It overlaps

with traditional website builders because the sub-site owners have the option to request that top-level domain (e.g. website.com) mask the sub-domain (e.g. website.buzzr.com). But the underlying social network construction remains the same even if the sub-site domain is masked.

20. The content of websites created using Opponent's BUZZR-branded social publishing platform is entirely up to individual publishers, and has included entertainment topics, historical topics, small business marketing, professional marketing, educational topics and higher education marketing from leading colleges. Publishers have the option to use the Buzzr.com domain as part of their brand identity, such as <http://peterblockcaseworks.buzzr.com/>, a site about design.

21. Opponent's BUZZR platform publishers have the option of carrying advertising, including Google display ads and Amazon advertising, via multiple special tools created by BUZZR, such as on the BUZZR platform website located at [energysipp.com](http://energysipp.com).

22. Opponent has and will invested heavily in an upgrade to its consumer platform and is resuming offering free websites as a marketing tactic and in order to create a larger social media publishing platforms akin to Tumblr and the newly emerging Wordpress.com. In order to monetize this product, Plaintiff will need to rely heavily on sponsorships and advertising carried on the free websites on the BUZZR-branded platform. Plaintiff will eventually need to raise up to tens of million of dollars in additional capital, comparable to close competitors, the social media publishing platforms Tumblr (which raised \$125.3 million prior to being sold to Yahoo!) and Automattic (i.e. Wordpress), which has raised \$317.3 million to date), to pay for this expansion

23. Social media publishing platforms such as BUZZR, Tumblr, Wordpress.com and Twitter do not produce their own content, but still earn revenue from running advertising adjacent to, preceding, following or on top of the content produced by its publishers. Traditional media companies, such as Freemantle, and social media publishing companies, such as BUZZR, compete against each other for the same advertising dollars to reach the same or similar target audiences.

24. Allowing Freemantle to register the mark BUZZR will result in their continued operation of a multi-platform media company under the mark, across television, social networks, social publishing, websites and mobile apps, closely mimicking Opponent's existing business model for developing its social media publishing platform into a major destination for publishers to post a wide range of image, video and textual content, including about entertainment, with social sharing facilitated.

25. Through its use of the mark BUZZR, Freemantle will create confusion among relevant consumers, content providers, advertisers and investors.

26. Freemantle intends to continue to use BUZZR name in promoting its services and will expend millions in advertising to do so. Given its massive resources, presence and marketing budget, Defendant's operation of a multi-platform media network, exploiting the BUZZR name, will quickly overwhelm the recognition that Opponent has achieved in the relevant markets through years of operation, will obliterate the value of the BUZZR

Mark for it, and will prevent Opponent from successfully making further use of the BUZZR Marks for its future plans.

27. Opponent's work to emerge as a prominent social media publishing platform, as BUZZR, put it on a collision course with Freemantle's use of BUZZR to compete for the same visitors and advertising dollars and offering overlapping and potentially even identical content. Opponent has already shown by its behavior that traditional media companies will create huge amounts of free content for competitive social media publishing platforms such as Tumblr, YouTube, Twitter, Instagram and Facebook. Freemantle's use of the mark prevents Opponent from enjoying the free use of BUZZR to pursue its robust social media publishing plans, as it will cause overwhelming consumer and advertiser confusion between the marks.

28. Like most consumer and small business-oriented digital businesses, Plaintiff relies heavily on "word of mouth" promotion and the use of popular search engines such as Google to drive traffic to its website. When searching the phrase "BUZZR" on Google, the website Buzzr.com returned as the number one result, at the top of the page, from 2009 – 2014. Opponent receives a substantial portion of its audience through referrals from Internet search engines. Since Freemantle's announcement and related marketing activity, the same search for "BUZZR" on Google has shown Opponent's website "Buzzr" (at Buzzr.com) as low as the seventh search result, with results related to Freemantle's use of BUZZR occupying the first six spots. Buzzr.com has lost a substantial number of referrals and thus a substantial portion of its audience as a result.

29. As a further example, Opponent has received 70 instances of actual confused communication to date, consisting of two (2) telephone messages, three (3) e-mails to Buzzr.com, five (5) completed web forms on Opponent's website Buzzr.com; fifty seven (57) contacts via Twitter (by publicly requesting the attention of Opponent via its Twitter account @buzzr.com), inquiring or commenting about programming related to Freemantle's use of the BUZZR mark or seeking employment from Freemantle; and, further, three (3) contacts with Opponent via LinkedIn seeking professional relationships or employment. Furthermore, an unknown but potentially significant number of examples of actual confusion were averted by Opponent by their actions, upon information and belief, to cause YouTube to drop Plaintiff's "BuzzrWebsites" channel in order to steer traffic toward their own BUZZR YouTube channel. Significant actual confusion on YouTube should be based on Freemantle's actions and so as not to award Freemantle for their malicious behavior.

a) In addition, the Freemantle has widely adopted and heavily promoted (featured prominently on the production sets of Freemantle's Internet game shows) the Twitter convention "#" in front of the mark "buzzr." Use of the # on Twitter is not a method of communication between people but rather an indexing convention for promoting specific subjects on Twitter. For example, #buzzr might be followed by a user who wished to receive updates about the Plaintiff's business. #buzzr has been used by Plaintiff and Plaintiff's Twitter followers since at least 2010.

b) The #buzzr designation has been "tweeted" more than 400 times to date in relation to Freemantle's use of BUZZR. This has substantially damaged Opponent's ability to continue to effectively use #buzzr to promote its business and marks because

any person following #buzzr will be overwhelmed with “tweets” about Freemantle’s game shows.

30. Broadcast, print and online media coverage of Freemantle’s use of BUZZR has been overwhelming. A Google search for “Buzzr game show” returns 26,300 results. These include a feature story in U.S.A. Today, as well as coverage in Entertainment Weekly, Variety (multiple stories), Adweek, Deadline.com, the Vancouver Sun, TheWrap.com, the Hollywood Reporter , as well as hundreds of other smaller blogs and websites. This is evidence of the overwhelming marketing prowess of Freemantle. The potential for consumer confusion will compound exponentially as Fremantle continues to usurp the BUZZR mark.

31. Opponent’s valuable domain name, <http://buzzr.com>, may lose significant or all of its value as if Defendant is allowed to register the BUZZR mark. It may lose value for two reasons: 1) since it lost its place as the number one search result on Google for the phrase “Buzzr”, and has been pushed as low as number seven as a result of Freemantle’s promotion of its use of the mark, it will no longer be seen as desirable or viable for a new business that might want to buy the domain name and market itself as BUZZR and 2) since Freemantle has a long track record of creating “famous” brands such as “American Idol” and “America’s Got Talented”, a new company, other than Opponent, is likely to eventually be legally prohibited from using the name BUZZR in under any trademark category and is equally likely to be unattractive to a new business fearing confusion with Freemantle’s use of BUZZR, thereby potentially rendering the valuable domain name Buzzr.com worthless in a resale.

32. Allowing Freemantle to register the mark BUZZR will irreparably damage Opponent’s market reputation, and goodwill, and may discourage current and potential customers from dealing with Opponent, in violation of (15 U.S.C.§ 1114))

By: Edward Sussman 

[emsussman@gmail.com](mailto:emsussman@gmail.com)

Dated: August 12, 2015