

ESTTA Tracking number: **ESTTA714904**

Filing date: **12/16/2015**

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	OpenTV, Inc.
Granted to Date of previous extension	12/16/2015
Address	275 Sacramento Street San Francisco, CA 94111 UNITED STATES

Attorney information	Alexander J.A. Garcia Perkins Coie LLP 1201 THIRD AVENUE, SUITE 4900 SEATTLE, WA 98101 UNITED STATES pctrademarks@perkinscoie.com, ajagarcia@perkinscoie.com, than-son@perkinscoie.com
----------------------	---

Applicant Information

Application No	86391585	Publication date	08/18/2015
Opposition Filing Date	12/16/2015	Opposition Period Ends	12/16/2015
Applicant	America Directo Corp. 8100 SW 81st Dr Ste 275 Miami, FL 33143 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Television antennas
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2703881	Application Date	09/12/2001
Registration Date	04/08/2003	Foreign Priority Date	NONE
Word Mark	OPENTV		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1995/03/00 First Use In Commerce: 1995/03/00 Digital interactive products, namely, operating systems software for interactive television broadcasting; computer software development tools; computer software for the digital broadcast transmission of interactive data, audio and video; computer hardware and software for image and graphics processing [;] [television receivers and direct broadcast satellite receivers]

Attachments	76311574#TMSN.png(bytes) NOO.pdf(180316 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Alexander Garcia/
Name	Alexander J.A. Garcia
Date	12/16/2015

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

OPENTV, INC.,

Opposer,

v.

AMERICA DIRECTO CORP.,

Applicant.

Opposition No.:

Mark: OPEN TV

App. Ser. No.: 86/391,585

NOTICE OF OPPOSITION

OpenTV, Inc. (“Opposer”) believes that it will be damaged by registration of the mark OPEN TV (“Applicant’s OPEN TV Mark”), Application Serial No. 86/391,585 (“Application”), filed on September 11, 2014 and hereby opposes the Application. As grounds for this opposition, Opposer alleges as follows:

I. PARTIES

1. OpenTV, Inc. is a Delaware corporation, having a principal place of business in San Francisco, California.
2. Upon information and belief, America Directo Corp. (“Applicant”) is a Florida corporation, having a place of business in Miami, Florida.

II. OPPOSER’S MARKS

3. Opposer is one of the world’s leading providers of solutions and services for the creation and delivery of digital and interactive content (“Opposer’s Goods and Services”).
4. Opposer owns the following U.S. trademark registration, covering Opposer’s Goods (“Opposer’s Registration”):

Trademark	App. Date & Ser. No.	Reg. Date & Reg. No.	Goods/Services
OPENTV	September 12, 2001 76/311,574	April 8, 2003 2,703,881	Class 9 - Digital interactive products, namely, operating systems software for interactive television broadcasting; computer software development tools; computer software for the digital broadcast transmission of interactive data, audio and video; computer hardware and software for image and graphics processing

5. The trademark noted above in Opposer’s Registration shall be referred to as the “OPENTV Mark.”

6. Opposer’s Registration is valid and subsisting and constitutes *prima facie* evidence of the validity of the OPENTV Mark and of Opposer’s ownership of and exclusive right to use the trademark in connection with the goods covered in the registration.

7. Opposer’s Registration has incontestable status pursuant to 15 U.S.C. §§ 1065, 1115(b) and constitutes conclusive evidence of the validity of the registration and of Opposer’s exclusive right to use Opposer’s OPENTV Mark in connection with the goods set forth in the registration.

8. Opposer’s OPENTV Mark has achieved widespread and substantial recognition in association with Opposer’s Goods and Services as a result of Opposer’s continuous use of Opposer’s OPENTV Mark in connection with Opposer’s Goods and Services and as a result of the significant commercial success of Opposer’s Goods and Services.

9. At no time has Opposer granted permission, written or otherwise, to Applicant to use or register any form of Opposer’s OPENTV Mark.

III. APPLICANT, APPLICANT’S OPEN TV MARK, AND THE APPLICATION

10. The Application covers the mark OPEN TV.

11. The Application includes the following goods in Class 9: “Television antennas” (“Applicant’s Goods”).

12. Applicant filed the Application on September 11, 2014, based on Applicant's intent to use Applicant's OPEN TV Mark in connection with Applicant's Goods under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

IV. PRIORITY

13. There is no issue as to priority.

14. Opposer's first and continuous use of its OPENTV Mark in connection with Opposer's Goods and Services, as well as the filing dates for Opposer's Registration, predate the Application's filing date of September 11, 2014, and on information and belief, any other date of priority upon which Applicant may rely in this Opposition.

V. CLAIMS

A. LIKELIHOOD OF CONFUSION

15. Applicant's OPEN TV Mark is identical to Opposer's OPENTV Mark, merely deleting the space between the "OPEN" and "TV" elements wholly comprising Opposer's OPENTV Mark.

16. Applicant's Goods overlap with or are highly related to Opposer's Goods and Services.

17. The Application does not restrict the channels of trade for Applicant's Goods and Applicant's Goods will be presumed to travel within the same channels of trade as Opposer's Goods and Services.

18. Applicant's OPEN TV Mark so resembles Opposer's OPENTV Mark as to be likely, when applied to Applicant's Goods, to cause confusion, to cause mistake, and to deceive the public with consequent injury to Opposer, the trade, and the public.

19. Opposer will be damaged if the Application is allowed to proceed to registration because consumers and prospective consumers are likely to be confused, misled, or deceived into believing that Applicant or Applicant's Goods offered under Applicant's OPEN TV Mark are connected with, sponsored by, or approved by Opposer.

20. Any defect, objection or fault with Applicant's Goods marketed or sold under Applicant's OPEN TV Mark will reflect upon and seriously injure the valuable reputation and goodwill that Opposer has established for Opposer's OPENTV Mark.

21. Registration of Applicant's OPEN TV Mark will also damage Opposer because such registration would grant a statutory, exclusive right to Applicant in violation of the prior and superior rights of Opposer, and would unduly narrow the scope of protection afforded to Opposer's OPENTV Mark, in contravention of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

22. As Opposer's rights in the OPENTV Mark are senior to Applicant's rights in Applicant's OPEN TV Mark, the Application should be refused.

VI. REQUEST FOR RELIEF

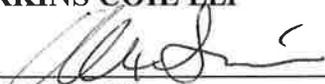
WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 86/391,585 and respectfully requests that the opposition be sustained and that registration to Applicant be refused. The filing fee in the amount of \$300 is being transmitted electronically with this submission.

DATED: December 16, 2015

CERTIFICATE OF SERVICE
I hereby certify under penalty of perjury that this NOTICE OF OPPOSITION was served via first class mail with postage prepaid, to:
MATTHEW H. SWYERS THE TRADEMARK COMPANY 344 MAPLE AVE. W. SUITE 151 VIENNA, VIRGINIA 22180
Signature: 
Print Name: <u>Alexander Garcia</u>

Respectfully submitted,

PERKINS COIE LLP

By: 
GRACE HAN STANTON
ALEXANDER J.A. GARCIA
1201 3RD AVE STE 4900
SEATTLE, WASHINGTON 98101-3099

**ATTORNEYS FOR OPPOSER
OPENTV, INC.**