

ESTTA Tracking number: **ESTTA714912**

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	Zenith Optimedia Group Limited		
Entity	LLC	Citizenship	United Kingdom
Address	299 West Houston Street New York, NY 10014 UNITED STATES		

Attorney information	Stephen F. Roth Lerner, David, Littenberg, Krumholz & Mentlik 600 South Avenue West Westfield, NJ 07090 UNITED STATES sroth@ldlkm.com, litigation@ldlkm.com Phone:908 654-5000		
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Applicant Information

Application No	86481892	Publication date	12/15/2015
Opposition Filing Date	12/16/2015	Opposition Period Ends	01/14/2016
Applicant	Moxie Software, Inc. Suite 302 Sunnyvale, CA 94086 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 042. First Use: 2014/06/25 First Use In Commerce: 2014/06/25 All goods and services in the class are opposed, namely: Customer support, technical support, and sales non-downloadable application software for businesses and organizations, namely, non-downloadable application software for providing knowledge and information resources to consumers on a website, mobile site, or mobile application; customer support, technical support, and sales non-downloadable application software that enables businesses and organizations to address consumer questions and inquiries through live chat, video chat,co-browse, email, or text on a website,mobile site, or mobile application; customer support, technical support, and sales non-downloadable application software for businesses and organizations that manages and routes email for the customer support, technical support, or sales agent via customer websites, mobile sites, or mobile applications; customer support, technical support, and sales non-downloadable application software that enables businesses and organizations to provide access to knowledgebases and self-service offerings on a website, mobile site, or mobile application; customer support, technical support, and sales non-downloadable application software that allows businesses and organizations to capture and analyze behavior and data of visitors to websites, mobile sites, or mobile applications to generate recommendations for displaying knowledge and information resources on a website, mobile site,or mobile application</p>

Grounds for Opposition

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

U.S. Registration No.	4564356	Application Date	02/14/2008
Registration Date	07/08/2014	Foreign Priority Date	10/19/2007
Word Mark	MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2003/11/18 First Use In Commerce: 2003/11/18 Advertising and marketing services; advertising and promotional services; brandconsultancy and brand creation services; brand evaluation services; brand positioning; brand evaluation services, namely, brand testing; marketing and brandingservices, namely, performing consumer insight and brand strategy of company logos; marketing and advertising media management services; media buying services, namely, purchasing time and space for the delivery of advertising messages through broadcast time, print space, indoor space, outdoor space or other media such as CDs and DVDs or website space/time; sponsorship consultancy services related to promoting the goods and services of others by arranging for sponsors to affiliate their goods with others; market research; compilation, processing and analysis of market research statistics; production of advertisements for radio, video, film, computers, Internet web sites, television and mobile devices; all the aforesaid services also provided on-line via computer websites or through wireless transmissions; compilation of direct mailing lists; compilation of mailing lists; direct mail advertising; marketing bymail; preparation of mailing lists; preparation of mailing lists for direct mail advertising services; direct marketing, database marketing, namely, compiling and systemization of information into consumer specific databases for marketing purposes; telemarketing; statistical analysis and reporting for business purposes; database management; business consulting services in the field of electronic commerce; advertising and marketing management agency services, namely, the creation, development and dissemination of advertising and promotional materials viadirect mail, newspaper, radio, television, mobile devices, a global computer network and other interactive media; research services and information services relating to advertising, marketing, brand management, media buying, and media management; design of publicity and advertising materials; creation, research, development and implementation of brand names, slogans, lettering and logos; mobile advertisements and direct mail advertisements; computer services, namely, design of internet advertising, namely, designing and implementing banner advertisements; providing websites that promote the goods and services of others; providing an interactive website in the field of marketing, advertising, advertising media, and politics; information, consultancy and advisory services, in the field of marketing and advertising</p> <p>Class 040. First use: First Use: 2003/11/18 First Use In Commerce: 2003/11/18</p>		

	<p>Printing services, namely, digital photo printing services, digital printing services of books and other documents</p> <p>Class 041. First use: First Use: 2003/11/18 First Use In Commerce: 2003/11/18 Sound and video recording production and post production services to the advertising, motion picture, video, broadcast, satellite, cable and television industries; video post-production, adding visual effects and graphics to video tape, audio tape, digital media and film; consultation services related to sound, video and ancillary production and post production in the field of music, video, and film; film and animation production services; providing an interactive website in the field of entertainment, photography, music, sports, and education</p> <p>Class 042. First use: First Use: 2003/11/18 First Use In Commerce: 2003/11/18 hosting online web facilities for others for organizing and conducting interactive discussions</p>
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Certificate of Service

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

Signature	/Stephen F. Roth/
Name	Stephen F. Roth
Date	12/16/2015

including services in connection with websites in Class 35, printing services in Class 40, production and post-production services including providing of an internet interactive website in Class 41, and hosting online web facilities for others for organizing and conducting interactive discussions in Class 42.

4. Applicants' mark MOXIE so resembles Opposer's mark MOXIE as to result in a likelihood of confusion.

5. Applicants' mark MOXIE is used for, or will be used for, related and confusingly similar services such that the marks are likely to be confused.

6. Opposer will suffer harm as a result of the confusion likely to arise from the registration of the Application and from Opposer's prior and ongoing use of the MOXIE mark.

7. This opposition is timely given that the original publication date of the Application is December 15, 2015.

WHEREFORE, Opposer prays that its opposition be sustained, and the Board refuse registration of Application Serial No. 86/481892.

Please charge the fee of \$300.00 for a Notice of Opposition to our Deposit Account No. 12-1095. The undersigned is authorized to make charges to said deposit account.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
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Dated: December 16, 2015

By s/ Stephen F. Roth
Stephen F. Roth

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within NOTICE OF OPPOSITION was served upon the following this 16th day of December, 2015, as follows:

VIA FIRST-CLASS MAIL

Moxie Software, Inc.
Suite 302
150 Mathilda Place
Sunnyvale, California 94086

s/ Stephen F. Roth
Stephen F. Roth