

ESTTA Tracking number: **ESTTA728525**

Filing date: **02/22/2016**

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	Curiosity Project, LLC
Granted to Date of previous extension	02/21/2016
Address	8484 Georgia Avenue Suite 700 Silver Spring, MD 20910 UNITED STATES

Attorney information	Linda T. Makings Arent Fox LLP 1717 K Street, NW Washington, DC 20006-5344 UNITED STATES tmducket@arentfox.com, linda.makings@arentfox.com, nasha.farah@arentfox.com Phone:202-857-6000
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Applicant Information

Application No	86399629	Publication date	08/25/2015
Opposition Filing Date	02/22/2016	Opposition Period Ends	02/21/2016
Applicant	Magnitude.io, Inc. Suite 408 San Francisco, CA 94105 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2014/02/26 First Use In Commerce: 2014/02/26 All goods and services in the class are opposed, namely: Business matching services, namely, the pairing of technology companies and corporate sponsors to increase technology-based educational programs in the classroom
Class 041. First Use: 2014/02/26 First Use In Commerce: 2014/02/26 All goods and services in the class are opposed, namely: Educational services, namely, developing and providing project-based educational programs and courses in the fields of science, technology, engineering, the arts, and mathematics

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4049944	Application Date	02/12/2010
Registration Date	11/01/2011	Foreign Priority Date	NONE
Word Mark	CURIOSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2011/08/07 First Use In Commerce: 2011/08/07 Academic enrichment programs in the fields of science, history and humanities; educational services, namely, developing and conducting workshops, presentations, and retreats in science, history and humanities; providing a website featuring information and educational materials in the fields of in science, history, and humanities		

U.S. Registration No.	4045893	Application Date	07/30/2009
Registration Date	10/25/2011	Foreign Priority Date	NONE
Word Mark	CURIOSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2011/08/07 First Use In Commerce: 2011/08/07 Entertainment services in the nature of a non-fiction television series geared towards adults that explores science, civilization, and self-improvement		

U.S. Registration No.	4196934	Application Date	06/27/2011
Registration Date	08/28/2012	Foreign Priority Date	NONE

Word Mark	WHERE CURIOSITY COMES TO PLAY
Design Mark	<p style="text-align: center;">WHERE CURIOSITY COMES TO PLAY</p>
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Academic enrichment programs in the fields of science, history, humanities, thearts, and fine art; educational services, namely, developing and conducting workshops, presentations, and retreats in science, history, humanities, the arts, and fine art; providing a website featuring information and educational materials, namely, online publications in the nature of newsletters, weblogs, educational-texts, course materials and information in the fields of science, history, humanit-ies, the arts and fine art

U.S. Registration No.	4158237	Application Date	03/02/2010
Registration Date	06/12/2012	Foreign Priority Date	NONE
Word Mark	CURIOSITY: THE QUESTIONS OF LIFE		
Design Mark	<p style="text-align: center;">CURIOSITY: THE QUESTIONS OF LIFE</p>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2011/08/07 First Use In Commerce: 2011/08/07 Entertainment services in the nature of a non-fiction television series geared towards adults that explores science, civilization and self-improvement		

Attachments	<p>77934594#TMSN.png(bytes) 77793219#TMSN.png(bytes) 85357409#TMSN.png(bytes) 77948107#TMSN.png(bytes) Notice of Opposition - POWERED BY CURIOSITY.pdf(71431 bytes)</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	/Linda T. Makings/
Name	Linda T. Makings
Date	02/22/2016

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

In re Application No. Ser. No. 86/399629)	
POWERED BY CURIOSITY)	
)	
CURIOSITY PROJECT, LLC)	
)	
Opposer,)	
)	
v.)	Opp. No. _____
)	
MAGNITUDE.IO, INC.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Curiosity Project, LLC (“Opposer”), a limited liability company duly organized and existing under the laws of the state of Delaware, having a place of business at 8484 Georgia Avenue, Suite 700, Silver Spring, Maryland 20910, believes that it will be damaged by the registration of the mark shown in Application Serial No. 86/399629, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

General Allegations

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title, and interest in and to a family of famous, federally-registered marks for CURIOSITY. Opposer uses its CURIOSITY marks in connection with a broad range of educational and entertainment services.

2. Opposer's rights in the CURIOSITY marks have been recognized by the United States Patent and Trademark Office ("USPTO"), which has issued the following federal registrations to Opposer for its CURIOSITY marks:

- CURIOSITY, Reg. No. 4049944 for academic enrichment programs in the fields of science, history and humanities; educational services, namely, developing and conducting workshops, presentations, and retreats in science, history and humanities; providing a website featuring information and educational materials in the fields of in science, history, and humanities in Cl. 41
- CURIOSITY, Reg. No. 4045893 for entertainment services in the nature of a non-fiction television series geared towards adults that explores science, civilization, and self-improvement in Cl. 41
- WHERE CURIOSITY COMES TO PLAY, Reg. No. 4196934 for academic enrichment programs in the fields of science, history, humanities, the arts, and fine art; educational services, namely, developing and conducting workshops, presentations, and retreats in science, history, humanities, the arts, and fine art; providing a website featuring information and educational materials, namely, online publications in the nature of newsletters, weblogs, educational texts, course materials and information in the fields of science, history, humanities, the arts and fine art in Cl. 41
- CURIOSITY: THE QUESTIONS OF LIFE, Reg. No. 4158237 for entertainment services in the nature of a non-fiction television series geared towards adults that explores science, civilization and self-improvement in Cl. 41

3. Opposer's registrations are valid and subsisting. These registrations provide *prima facie* evidence of Opposer's ownership of the CURIOSITY marks, of the validity of the marks, and of Opposer's exclusive right to use the marks in commerce.

4. Opposer is also the owner of a number of pending applications for the CURIOSITY family of marks.

5. Opposer adopted and first used the mark CURIOSITY at least as early as January 2011 and adopted and first used the CURIOSITY marks in interstate commerce as least as August 7, 2011.

6. The CURIOSITY marks have been in continuous use in interstate commerce since August 7, 2011, which is long prior to the filing date of Applicant's application and prior to any use alleged by Applicant of the mark it seeks to register.

7. Opposer's CURIOSITY marks have been extensively used, advertised, and promoted in interstate commerce in connection with educational and entertainment services, since prior to the filing date of Applicant's application and prior to any use Applicant may claim for the mark it seeks to register.

8. As a result of such extensive use, advertising, and promotion, Opposer's CURIOSITY marks have become well-known as distinctive indicators of the origin of Opposer's services, and the marks have become extremely valuable symbols of Opposer's goodwill.

9. Notwithstanding Opposer's prior established rights in the CURIOSITY marks, Applicant filed an application with the USPTO on September 19, 2014 for the mark POWERED BY CURIOSITY (Ser. No. 86/399629) for "business matching services, namely, the pairing of technology companies and corporate sponsors to increase technology-based educational programs in the classroom" in class 35 and "educational services, namely, developing and providing project-based educational programs and courses in the fields of science, technology, engineering, the arts, and mathematics" in class 41.

Count I – Likelihood of Confusion – §2(d)

10. Opposer incorporates Paragraphs 1-9 of this Notice of Opposition as if fully set forth herein.

11. Upon information and belief, Applicant knew or had reason to know of Opposer's prior rights in the CURIOSITY marks when Applicant filed its application to register POWERED BY CURIOSITY.

12. The POWERED BY CURIOSITY mark that Applicant seeks to register so closely resembles the CURIOSITY marks, that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's services, and will injure and damage Opposer and the goodwill and reputation symbolized by the CURIOSITY marks.

13. Applicant's POWERED BY CURIOSITY mark is substantially similar to Opposer's CURIOSITY marks in appearance, sound and connotation.

14. The services identified in the POWERED BY CURIOSITY application are identical or otherwise closely related to Opposer's CURIOSITY services.

15. The services with which Applicant is to use the POWERED BY CURIOSITY mark are sold, marketed to and/or rendered to the same class of purchasers of Opposer's services.

16. The services with which Applicant is to use the POWERED BY CURIOSITY mark are sold, marketed to and/or rendered through the same channels of trade as Opposer's services.

17. Opposer has been using its CURIOSITY marks in connection with educational services long before Applicant filed its application for POWERED BY CURIOSITY.

18. Likelihood of confusion is enhanced by the fact that Opposer's CURIOSITY marks are well-known and famous and by the fact that consumers associate this mark with services sold, approved, or endorsed by Opposer.

19. The public is likely to be confused, to be deceived, and to assume erroneously that Applicant's services are those of Opposer, or that Applicant is in some way connected or affiliated with, or approved or sponsored by, Opposer, all to Opposer's irreparable damage.

Count II – Deception/False Suggestion of Connection – §2(a)

20. Opposer incorporates Paragraphs 1-19 of this Notice of Opposition as if fully set forth herein.

21. Applicant's POWERED BY CURIOSITY mark so closely resembles the CURIOSITY marks that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the services, purchasers and prospective purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' and prospective purchasers' decisions whether to purchase Applicant's services.

22. Applicant's POWERED BY CURIOSITY mark so closely resembles Opposer's CURIOSITY marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act because Applicant's mark points uniquely to Opposer, and purchasers and prospective purchasers will assume that services offered under Applicant's mark are affiliated or connected with Opposer.

23. Applicant's POWERED BY CURIOSITY mark is deceptive in that it falsely suggests a connection with or approval by Opposer.

WHEREFORE, Opposer prays that the Board sustain this opposition and deny registration of the mark identified in Applicant's application.

CURIOSITY PROJECT, LLC

Dated: February 22, 2016

By: 

Linda T. Makings
Arent Fox LLP
1717 K Street NW, N.W.
Washington, D.C. 20006-5344
(202) 857-6000

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **NOTICE OF OPPOSITION** (re: Serial No. **86/399629**) has been served on Applicant's counsel at the following address of record, by first-class mail, postage prepaid, this 22nd day of February 2016:

Kathryn Starshak, Esq.
K&L Gates LLP
P.O. Box 1135
Chicago, IL 60690-1135

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is cursive and appears to read "Kathryn Starshak".