

ESTTA Tracking number: **ESTTA728607**

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	Universal Air Travel Plan, Inc.
Granted to Date of previous extension	02/21/2016
Address	1301 Pennsylvania Avenue, N.W. Washington, DC 20004 UNITED STATES
Attorney information	Brian J. Winterfeldt Mayer Brown LLP 1999 K St NW Washington, DC 20006 UNITED STATES nydcbrandmanagementteam@mayerbrown.com

Applicant Information

Application No	86546647	Publication date	08/25/2015
Opposition Filing Date	02/22/2016	Opposition Period Ends	02/21/2016
Applicant	Bill2Pay, LLC Suite 600 Jacksonville, FL 32256 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bill payment services provided through a website; electronic and paper paymentsportal, namely, clearing and reconciling financial transactions for the paymentof goods and services by verifying paper and electronic check payors and payment amounts as well as electronic debit and credit card payors and payment amounts, via a global computer network; electronic payment, namely, electronic processing and subsequent transmission of bill payment data; providing electronic funds transfer, ACH, credit card, debit card, electronic check and electronic paymentsvia a global computer network

Grounds for Opposition

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

U.S. Registration No.	4756436	Application Date	03/26/2013
Registration Date	06/16/2015	Foreign Priority	NONE

		Date	
Word Mark	DATASTREAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2011/12/00 First Use In Commerce: 2011/12/00 Billing and invoicing services in connection with travel, transportation, and hospitality services</p> <p>Class 036. First use: First Use: 2011/12/00 First Use In Commerce: 2011/12/00 Financial and financially related services, namely, clearinghouse payment settlement services; electronic funds transfer services; and bill payment services provided through a website, all in connection with travel, transportation, and hospitality services</p>		

U.S. Application No.	86799028	Application Date	10/26/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DATASTREAM		
Design Mark			
Description of Mark	<p>The mark consists of the word "DATA" shown in the color black and the word "STREAM" shown in blue and green, with a blue and green swirl from the bottom of the letter "D", through the inside of the letter "A", under the top of the letter "T" and above the letter "A" in the word "DATA".</p>		
Goods/Services	<p>Class 035. First use: First Use: 2012/01/28 First Use In Commerce: 2012/01/28 Billing and invoicing services in connection with travel, transportation, and hospitality services</p> <p>Class 036. First use: First Use: 2012/01/28 First Use In Commerce: 2012/01/28 Financial and financially related services, namely, clearinghouse payment settlement services; electronic funds transfer services; and bill payment services provided through a website, all in connection with travel, transportation, and hospitality services</p>		

Attachments	85886173#TMSN.png(bytes) 86799028#TMSN.png(bytes) UATP - Notice of Opposition - STREAM (Stylized) Application - Bill2Pay LLC (719741127_1).pdf(80841 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 First Class Mail on this date.

Signature	/Brian J. Winterfeldt/
Name	Brian J. Winterfeldt
Date	02/22/2016

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

United Air Travel Plan, Inc.	:
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Opposer,	:
	:
v.	:
	:
Bill2Pay, LLC	:
	:
Applicant.	:

NOTICE OF OPPOSITION

Application Serial No: 86/546,647
Filed: February 26, 2015



Mark:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer Universal Air Travel Plan, Inc., a Delaware corporation having a principal place of business at 1301 Pennsylvania Avenue, N.W., Washington D.C. 20004 (hereinafter referred to as “UATP” or “Opposer”) believes that it will be damaged by the registration of Application Serial No. 86/546,647, filed on February 26, 2015 by Bill2Pay, LLC, located at Suite 600 9428 Baymeadows Road Jacksonville FLORIDA 32256 (hereinafter referred to as “Applicant”), for the stylized mark depicted above (hereinafter referred to as the “STREAM (Stylized)” mark or

the “Application-in-Opposition”) in connection with goods and services in International Class 36.

UATP hereby opposes the foregoing application. As grounds for opposition, Opposer, by and through its undersigned counsel, alleges that:

1. UATP is the low cost payment network privately owned by the world’s airlines, providing a modern payment system with connectivity to over 260 airline merchants covering 95% of all scheduled worldwide available seat kilometers, and serving as the preferred form of payment for corporate travel in both large international corporations and small local companies worldwide. UATP surpassed USD \$14 billion in sales worldwide in 2014.
2. UATP was founded in 1936 to provide low-cost credit card and merchant services to the early commercial air travel industry.
3. UATP now provides a host of additional services related to its core travel payment services, such as corporate information tools that provide, among other things, detailed data, data review, and data tracking capabilities.
4. UATP’s DATASTREAM mark has been used continuously by Opposer since at least as early as December 2011. Opposer is the owner of a number of trademarks, service marks, and registrations or applications therefor containing “DATASTREAM” (hereinafter referred to as the “DATASTREAM Marks”), including:

MARK	REGISTRATION/APPLICATION NO.
DATASTREAM	4,756,436
	86/990,028

5. As a result of significant advertising, promotion, and the growth of UATP's business, consumers have come to identify UATP as the exclusive source of goods and services sold under the DATASTREAM Marks, and the DATASTREAM Marks represent an asset of enormous goodwill and great value to Opposer.
6. Well prior to Applicant's filing of the Application-in-Opposition on February 26, 2015, UATP used, and continues to use, its DATASTREAM Marks in connection with a wide range of billing and invoicing, travel, transportation, hospitality, financial and financially related, payment settlement, electronic funds transfer, and bill payment services and other related and complementary services related to the travel, transportation, and hospitality industries.
7. As a result of Opposer's long, extensive and widespread use, advertising, promotion, and registration of the DATASTREAM Marks, consumers have become accustomed to associating marks containing "STREAM" in connection with billing and invoicing, travel, transportation, hospitality, financial and financially related, payment settlement, electronic funds transfer, and bill payment services and other related and complementary services related to the travel, transportation, and hospitality industries, with Opposer.
8. On information and belief, on February 26, 2015, Applicant filed Application Serial No. 86/546,647 to register the mark STREAM (Stylized) for the following goods and services:

International Class 36: Bill payment services provided through a website; electronic and paper payments portal, namely, clearing and reconciling financial transactions for the payment of goods and services by verifying paper and electronic check payors and payment amounts as well as electronic debit and credit card payors and payment amounts, via a global computer network; electronic payment, namely, electronic processing and subsequent transmission of bill payment data; providing electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments via a global computer network.

9. The Application-in-Opposition asserts a claim for registration on the basis of an intent to use the STREAM (Stylized) mark in commerce in the United States.
10. Registration of Applicant's alleged mark, which is the subject of the Application-in-Opposition, should be barred, as currently proposed, by the provisions of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), because the mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged services of the Application-in-Opposition, to cause confusion, mistake or deception.
11. Opposer has priority over Applicant because UATP's use and registration date of its registered DATASTREAM Mark precedes the filing date of the Application-in-Opposition for the alleged STREAM (Stylized) mark, and the use date of its applied-for DATASTREAM Mark precedes the filing date of the Application-in-Opposition. In both cases, given the intent-to-use basis of the alleged STREAM (Stylized) mark, Opposer's DATASTREAM Marks predate any actual use of the alleged STREAM (Stylized) mark.
12. Applicant's applied-for STREAM (Stylized) mark and any actual or intended use of the mark in commerce are confusingly similar to Opposer's DATASTREAM Marks and their actual use in commerce.
13. On information and belief, the goods and services which are allegedly intended to be offered by Applicant in connection with its STREAM (Stylized) mark are substantially similar or related in nature to the goods and services offered by Opposer in connection with its DATASTREAM Marks. Furthermore, Applicant's goods and services are likely to be offered through the same channels of trade to the same types of consumers or users

as Opposer's goods and services are offered and rendered in connection with the DATASTREAM Marks.

14. Applicant's alleged mark, which is the subject of the Application-in-Opposition, so resembles Opposer's previously used and registered or applied-for DATASTREAM Marks as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake or to deceive and/or constitute a false representation that Applicant's services are approved or endorsed by UATP or that Applicant's services are connected or affiliated with UATP, thereby deceiving the public, causing confusion or mistake as to Opposer within the meaning of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.
15. A likelihood of confusion, mistake or deception would also arise from concurrent use and registration of the STREAM (Stylized) mark in connection with the applied-for goods and services as currently stated, with Opposer's use and registration of its DATASTREAM Marks in that consumers are likely to believe that Applicant and its services are in some way sponsored, endorsed or licensed by Opposer, when in fact they are not. Accordingly, registration of Applicant's mark, which is the subject of the Application-in-Opposition, should be barred, as currently proposed, by the provisions of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).
16. Opposer will be damaged by the registration of the STREAM (Stylized) mark because such registration would support and assist Applicant's confusing, misleading, and/or deceptive use of Applicant's alleged mark, which is the subject of the Application-in-Opposition, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

17. In view of the foregoing, issuance of a registration to Applicant for the STREAM (Stylized) mark, which is the subject of Application Serial No. 86/546,647, would be damaging to Opposer's common law marks and federal registrations and applications therefor within the meaning of Section 13 of the Trademark Act of 1946, 15. U.S.C. § 1063.

WHEREFOR, Opposer respectfully requests that this opposition be sustained in its entirety, that registration be denied to Applicant in connection with Application Serial No. 86/546,647 and that the Trademark Trial and Appeal Board grant all further relief in favor of Opposer as is necessary and just in these circumstances.

The U.S. Patent and Trademark Office and the Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposer's attorney, Mayer Brown LLP: Deposit Account No. 130019.

Dated: February 22, 2016

Respectfully submitted,
By: 

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Attorneys for Opposer

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United Air Travel Plan, Inc.	:
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Opposer,	:
	:
v.	:
	:
Bill2Pay, LLC	:
	:
Applicant.	:

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document entitled NOTICE OF OPPOSITION was served on Applicant’s representative by electronic mail at winickilaw@att.net and by first-class mail, postage prepaid on:

Debbie K Winicki
Winicki Law Firm Pa
4745 Sutton Park Ct Ste 401
Jacksonville, FLORIDA UNITED STATES 32224-0255

on this date of February 22, 2016.



Brian J. Winterfeldt