

ESTTA Tracking number: **ESTTA734059**

Filing date: **03/16/2016**

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	Bergsma Visuals, LLC, dba Gravit Digital
Granted to Date of previous extension	03/16/2016
Address	2000 Franklin #102 Bellingham, WA 98225 UNITED STATES
Party who filed Extension of time to oppose	Gravit Digital
Relationship to party who filed Extension of time to oppose	Bergsma Visuals, LLC is the legal name of the opposer, which registered the trade name / fictitious business name "Gravit Digital" (as well as "Gravit") on January 5, 2011 with the Washington Secretary of State. Since that time, Bergsma Visuals, LLC has been entitled to use "Gravit Digital" in place of its legal name under Washington State law. Opposer primarily uses "Gravit Digital" to identify itself, but is now using its legal name in this proceeding for completeness.

Attorney information	O. Shane Balloun Balloun Law Professional Corporation 355 Harris Avenue Suite 201 Bellingham, WA 98225 UNITED STATES o.shane@ballounlaw.com Phone:3603187778
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### Applicant Information

Application No	86541715	Publication date	11/17/2015
Opposition Filing Date	03/16/2016	Opposition Period Ends	03/16/2016
Applicant	Rituwall Inc. 2816 Clay St San Francisco, CA 94115 UNITED STATES		

### Goods/Services Affected by Opposition

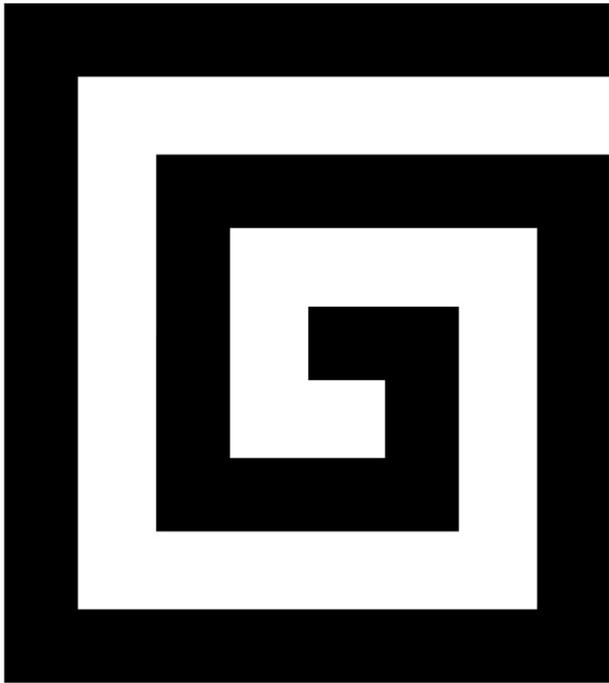
Class 042. First Use: 2014/10/08 First Use In Commerce: 2014/10/08 Opposed goods and services in the class: Computer website design; Design of homepages and websites; Design, creation, hosting, maintenance of websites for others; Designing websites for others; Hosting websites on the Internet
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### Grounds for Opposition

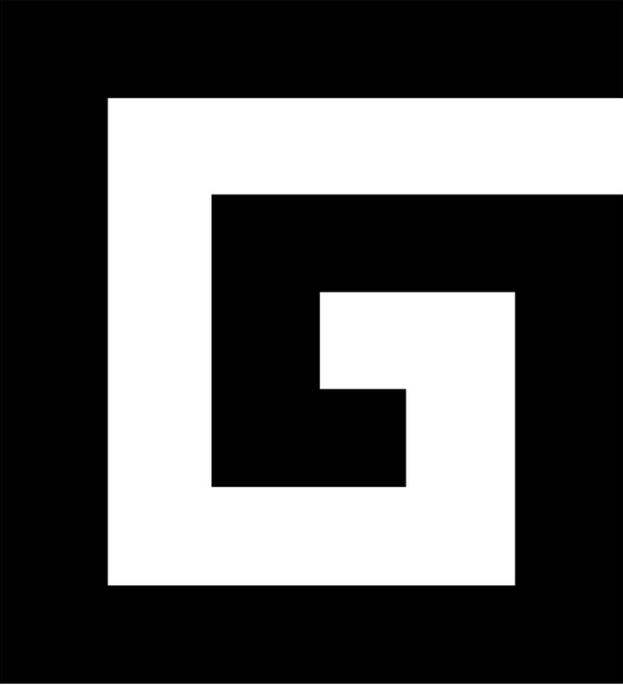
Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	See images of marks uploaded as Exhibit A in attachment pleading, comprising: spiraling concentric square Gs with a dark background, such that the lighter concentric G has either one or two spiral turnings.		
Goods/Services	website design, creation, hosting, and management; digital marketing; digital content creation and publication; digital audiovisual content creation and publication; digital storytelling through websites		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	website design, creation, hosting, and management; digital marketing; digital content creation and publication; digital audiovisual content creation and publication; digital storytelling through websites		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	website design, creation, hosting, and management; digital marketing; digital content creation and publication; digital audiovisual content creation and publication; digital storytelling through websites

Attachments	gravit-mark-reverse-G.jpg gravit-mark-single-G copy.jpg 2016-03-16 Notice of Opposition.pdf(500370 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	/O. Shane Balloun/
Name	O. Shane Balloun
Date	03/16/2016

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

<p><i>In re</i>: Application Serial n° 86/541,715</p> <p>Bergsma Visuals, LLC <i>dba</i> <b>Gravit Digital</b></p> <p style="text-align:right">OPPOSER,</p> <p>v.</p> <p>Rituwall Inc.,</p> <p style="text-align:right">APPLICANT.</p>	<p>NOTICE OF OPPOSITION</p> <p>Design Mark Literal Elements: GG</p> <p>Opposition No. _____</p>
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NOTICE OF OPPOSITION

1. Bergsma Visuals, LLC, is a Washington limited liability company doing business under the registered fictitious business names **Gravit Digital** and **Gravit** (“Opposer”). Opposer believes it will be damaged by the registration of the design trademark with the literal elements ‘GG’, described by Rituwall Inc. (“Applicant”) as “two stylized capital letter ‘G’s, one inside of the other contained in a darkened square design,” as shown in Application Serial n° 86/541,715 (“Application”). As grounds for its opposition, Opposer alleges the following:

2. Opposer is a full service web development and digital marketing agency specializing in design, creation, hosting, and management of websites tailored to its customers, primarily doing business at and through <http://gravitdigital.com>. Opposer has provided these services to its customers throughout the United States since January 3, 2011 under the names *Gravit Digital* and *Gravit*.

3. Since at least as early as February 2, 2011, and well prior to the filing date of Applicant’s Application, Opposer has established well-known and well regarded services that have been widely advertised—particularly online—with instantiations of marks on a design comprising spiraling concentric square capital G’s on a dark background or such that the larger enclosing G creates a dark background, calling to the beginning letter of Opposer’s fictitious business names *Gravit Digital* and *Gravit*. In the earliest instantiation of the mark (February 2, 2011), the lighter-colored concentric G has one full spiral turning; in the next evolution of the mark (since at least October 20, 2012), the lighter colored

concentric G has two full spiral turnings (the “Gravit G’s” or “Gravit G Marks”). *See* Exhibit A.

4. Opposer retains common law rights in the Gravit G Marks because since its initial use of the Gravit G in February 2011, Opposer has sold services throughout the United States and has expended substantial sums of money, time, and effort in advertising, promoting, and popularizing said mark extensively throughout the United States. As a result of Opposer’s use and advertising of said marks, the marks are well known in the United States and are recognized as identifying the high-quality services of Opposer. Therefore Opposer has reason to consider said marks and the goodwill associated with the marks as Opposer’s valuable assets.

5. Applicant has used the mark set forth in its application in a service known as The Grid, in which Applicant purveys artificial intelligence-based web design services. Similarly to Opposer’s use of the Gravit G Marks calling to Opposer’s business names beginning with the letter G, Applicant appears to use the stylized mark under application because its service name begins with G.

### **Count I**

#### **Opposer Has Priority as a Senior User; Likelihood of Confusion**

#### **15 U.S.C. § 1052(d)**

6. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.

7. The Trademark Manual of Examining Procedure § 1207.03 states that “as a basis for refusal, §2(d) [15 U.S.C. § 1052(d)] refers not only to registered marks but also to “a mark or trade name previously used in the United States by another and not abandoned.” Therefore, the fact that Opposer has not previous sought federal registration of its Gravit G Marks with the USPTO cannot inure to the detriment of Opposer and is not a sufficient basis to inure to the benefit of Applicant.

8. Opposer began using the Gravit G’s in commerce as source identifiers for its goods as early as February 2, 2011 and October 20, 2012, whereas Applicant’s Application sets forth the initial use of its mark two to four-and-a-half years later on October 8, 2014. To the extent that there is a likelihood of confusion between Opposer’s Gravit G Marks and Applicant’s mark (*see* Exhibit A), Opposer is the senior user and therefore has priority over Applicant.

9. Likelihood of confusion pursuant to § 2(d) is determined pursuant to the factors set forth in the seminal case *In re E. I. du Pont de Nemours & Co.*, 476 F.2d

1357, 177 USPQ 563 (C.C.P.A. 1973). The eleven *du Pont* factors, as analyzed below, demonstrate there is a likelihood of confusion between Opposer's Gravit G Marks and Applicant's mark:

(1) *Similarity of Marks*. The Applicant's mark and the Opposer's mark are substantially similar in that they both comprise concentric spiral square G's on a darkened background. Applicant describes its mark as "two stylized capital letter 'G's, one inside of the other," which is a fair description of the Gravit G's. In fact, Applicant's mark is categorized under the design search codes 26.09.21 (squares that are completely or partially shaded), 26.17.04 (vertical bands, bars, or lines), 26.17.05 (horizontal bands, bars, or lines), 26.17.25 (other lines, bands, or bars), and 27.03.01 (geometric figures forming letters, numerals or punctuation). Indeed the Gravit G's comprise squares that are partially shaded, shading resulting from geometric figures forming the letter G. And because the design of the Gravit G's is square, the features of the Gravit G Marks are orthogonal horizontal and vertical bands, bars, or lines.

There is some difference between the marks. The Applicant's mark shows one spiraling G comprising a thin line with the concentric G comprising a thicker band, whereas Opposer's Gravit G's display both lines forming the concentric spiraling G's with the same width. However, the Applicant's mark is topologically equivalent to the Gravit G's and the marks visually similar by inspection.

(2) *Similarity of Goods or Services*. Applicant notes in its Application that the use of its mark is supposed to be a source identifier for "computer website design; design of homepages and websites; design, creation, hosting, maintenance of websites for others; designing websites for others; hosting websites on the Internet." As stated above, Opposer a full service web development and digital marketing agency specializing in design, creation, hosting, and management of websites tailored to its customers. Opposer's services and Applicant's services are nearly synonymous in their outcome for their customers and are therefore highly similar.

To wit, Opposer's services properly fit within International Class 042, which is the specific filing basis asserted by Applicant.

(3) *Similarity of Trade Channels*. Applicant has specified no limitations to specific channels in the Application, and it may be reasonably assumed that Applicant seeks rights in all channels of distribution. Opposer distributes its services through traditional and commonly used channels of distribution for website development and digital marketing, *viz.* the internet at <https://gravitdigital.com>. Applicant appears to primarily distribute its services through the internet as well, at <https://thegrid.io>.

(4) *Customer sophistication.* Purchasers of Opposer’s services occupy a broad range of business expertise and sophistication, ranging from the relatively unsophisticated to those with greater sophistication. Applicant is marketing itself to customers who wish to take advantage of “artificial intelligence” (AI) to “automatically shape” content uploaded by its users to automatically design websites for them. By all accounts, its customers also range from the unsophisticated who want to acquire web designs for their websites and who do not understand but are enamored with the notion of AI—to sophisticated customers who have a better understanding of AI and are hoping that Applicant’s technology will provide an efficient method of design.

(5) *Mark Fame.* Opposer had exclusively used the Gravit G Marks in commerce for two to four-and-a-half years with considerable success. Within the website design industry, Opposer’s services are substantially universally known in connection with the Gravit G Marks, *viz.* concentric spiraling square Gs against a dark background, similar to the “two stylized capital letter ‘G’'s, one inside of the other contained in a darkened square design.”

(6) *Number of Similar Marks on Similar Goods.* There are no users other than Opposer and Applicant on the subject marks as used to identify the subject services within their natural zone of expansion.

(7) *Actual Confusion.* Although it is well settled that the test under § 2(d) is *likelihood* of confusion not actual confusion, actual confusion is probative of whether there a likelihood of confusion will exist in the future. Since Applicant has begun using its mark since October 8, 2014, multiple customers of Opposer, including long-time clients and completely new prospective clients, displayed actual confusion by asking Opposer whether “it was involved with The Grid,” or whether Gravit Digital had built The Grid, or by assuming that The Grid was the work of Gravit Digital in conversation until Opposer’s principals corrected the misunderstanding.

(8) *Length of Time of use.* Opposer had exclusively used its marks in commerce for two to four-and-a-half years before Applicant used the subject design mark.

(9) *Variety of Goods on Which the Mark is Used.* The subject mark is used only in connection with design, creation, hosting, and management of websites by Applicant. Similarly, Opposer uses the Gravit G Marks in connection with design, creation, hosting, and management of websites—as well as digital marketing, and digital audiovisual content creation. Although Opposer’s use of its marks is somewhat more expansive than Applicant’s use of the subject mark, all uses are primarily tied to services in connection with website design and management.

(10) *Market Interface between Parties.* Opposer and Applicant currently have no market interface or anticipated business relationship.

(11) *Extent of Exclusive Rights on Goods or Services.* As the senior rights holder in the subject mark, the Gravit G Marks, and any substantially or confusingly similar marks, Opposer is entitled to the exclusive right to use the subject mark in connection with the services described in the Application.

10. Under a properly applied *du Pont* analysis, the overlap of marks and services between the existing senior rights of Opposer and the rights sought by Applicant make the likelihood of consumer confusion a substantial certainty.

11. By reason of the foregoing, Opposer believes it would be greatly damaged by the registration of Applicant's 'GG' design mark.

WHEREFORE, Opposer respectfully requests the USPTO deny the subject Application, Serial n° 86/541,715.

Dated: **March 16, 2016**

Respectfully submitted,

Balloun Law Professional Corporation



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Attorney for the OPPOSER

**EXHIBIT A**

**Marks used by Opposer, Bergsma Visuals, LLC (dba Gravit Digital, dba Gravit)**  
and latest possible dates of first use:



**February 2, 2011, still in use**

**GRAVIT**



**March 16, 2012**

**GRAVIT  
DIGITAL**



**March 14, 2013, still in use**



**October 20, 2012, still in use**



**December 17, 2014, still in use**



**September 4, 2013, still in use**

**Applicant's mark**, which is the subject of Application Serial n° 86/541,715 (date of first use: October 8, 2014):

