

ESTTA Tracking number: **ESTTA741661**

Filing date: **04/22/2016**

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	CKL Holdings N.V		
Entity	Naamloze vennootschap	Citizenship	Belgium
Address	Kaasrui 12 Antwerp, 2000 BELGIUM		

Domestic Representative	Jonathan Morton 246 West Broadway 4th Floor NEW YORK, NY 10013 UNITED STATES jonathan@ckl.com Phone:2124685491
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### Applicant Information

Application No	86883212	Publication date	03/22/2016
Opposition Filing Date	04/22/2016	Opposition Period Ends	04/21/2016
Applicant	Hyperloop Technologies, Inc. 2161 Sacramento Street Los Angeles, CA 90021 UNITED STATES		

### Goods/Services Affected by Opposition

Class 039. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Transportation services, namely, high-speed transportation of passengers and goods in tubes; Consulting and advisory services in the field of transportation; Providing a website featuring information in the field of transportation; Providing information in the field of transportation
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### 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. Application No.	87008680	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		

Goods/Services	
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Attachments	statementofclaim1.pdf(121119 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	/s/Jonathan G. Morton/
Name	Jonathan Morton
Date	04/22/2016

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

CKL Holdings N.V.

Opposer,

v.

Hyperloop Technologies, Inc.

Applicant

Trademark Application

Mark: Looper

Serial No. 86883212

Filed: Jan. 22, 2016

Published: Mar. 22, 2016

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Madam:

CKL Holdings N.V., a Belgian corporation located and engaged in business at Kaasrui 12, 2000 Antwerp, Belgium (“Opposer”), believes that it will be damaged by Hyperloop Technologies, Inc.’s (“Applicant”) registration of the “Looper” mark shown in U.S. Application Number: 86883212, which was filed on January 22, 2016 and published for opposition in the Official Gazette of March 22, 2016 in the International Class 39 and hereby opposes the same.

The Ground for Opposition is as follows

1. On January 22nd, 2015 the Applicant filed a trademark application with the United States Patent and Trademark Office to register the trademark Looper (“The Applicant’s Filing Date”). The Application was assigned US Serial Number 86883212 (“The Applicant’s

Application”). The Applicant’s Application was in class 39 and listed the following goods and services: *“Transportation services, namely high speed transportation of passengers and goods in tubes; consulting and advisory services in the field of transportation; providing a website featuring information in the field of transportation; providing information in the field of transportation”*.

2. The Applicant’s Mark was published for opposition in the Official Gazette on March 22nd 2016.
3. On January 13th 2016 the Opposer filed the trademark “Loopler” in the Lithuanian Trademark office which was assigned the application number 20160101. The mark was filed in international class 39 for the following goods and services: *“transport information; travel arrangement ; travel reservations ; sightseeing tour transport services; transporting tourists ; transport of booking”*(“the Opposer’s Goods and Services”).
4. On April 21st 2016 the Opposer filed a timely application with the United States Patent Office based on its foreign trademark filing in Lithuania under section 44D of the Lanham Act (15 U.S.C 1126), and the application was assigned serial number 87008680. As such, the opposer claims an effective filing date of January 13th, 2016 and retains priority over the Applicant’s trademark filing.

## Substantive grounds

5. The Opposer submits this opposition on the belief that there is a high likelihood that the average and lay consumer would confuse the goods and or services associated with the opposers mark as originating from the applicant's trademark.
  
6. The likelihood of confusion stems from the virtually identical spelling, sound and commercial appearance conveyed between the Opposer and Applicant's trademarks. The only differentiation between trademarks is the absence of the letter "L" in the applicant's mark. This minor differentiation would not be readily apparent or visible to the average consumer; the difference would only be noticeable through a detailed examination which the average consumer is not realistically expected to conduct. See *Oleg Cassini v. Cassini Tailors and Ghassan Abdul Karim*, 18 U.S.P. Q.2D (BNA) 1285 (1990) [finding that the appropriate test for determining whether marks are confusingly similar "is whether the average consumer is likely to confuse or associate the defendant or his services with the plaintiff in the isolated context of the marketplace, assuming the consumer has only a general recollection of the plaintiff's mark."]; also see *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). [In determining the likelihood of confusion, the first DuPont factor to determine was the similarity and dissimilarity between the marks in their entirety as to appearance, sound, and commercial impression.

7. There is an overlap in the Opposer and Applicant's filings in international class 39 which adds significantly to the likelihood that the average consumer would be confused as to the origin of the goods and services associated with the marks. While there is no direct overlap between the goods, the Applicant's services are similar and thus within the natural expansion of the goods listed in the Opposer's filing. *See Amcor, Inc. v. Amcor Indus.*, 210 U.S.P.Q. (BNA) 70: [Where both parties are using the identical mark the relationship between the goods do not need to be as great or as close as in situations where the marks are not identical]. *See Also In re Shell Co Shell Oil Co.*, 992 F.2d 1204, 1207, 26 U.S.P.Q.2d 1687, 1689 (Fed. Cir. 1993) [The degree of similarity required in the goods is directly proportional to the degree of dissimilarity between the marks].

WHEREFORE, Opposer, CKL Holdings N.V. believes and avers that it will be damaged by said registration in International Class 39 and respectfully requests that this Opposition be sustained and registration of the mark and design shown in Application Serial Number 86883212 be refused.

DATED: April 22nd, 2016

By: /s/ Jonathan G. Morton/  
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## CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of April, 2016, a copy of the foregoing NOTICE OF OPPOSITION was served upon the correspondent of record for Applicant via international mail, postage prepaid, and addressed as follows:

Hyperloop Technologies, Inc.  
2161 Sacramento Street  
Los Angeles, CALIFORNIA UNITED STATES  
90021

and

Jeffrey H. Handelsman  
Greenblum & Bernstein, P.L.C  
1950 Roland Clarke Place  
Reston, Virginia United States 20191-1411

By: /s/ Jonathan G. Morton/  
Jonathan G. Morton, Esq.  
Attorney for Opposer