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

Proceeding	91228601
Party	Plaintiff LinkedIn Corporation
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Date	06/27/2016
Attachments	LinkedIn -- Notice of Error in Record.pdf(81333 bytes) LinkedIn v Visceral NOP.pdf(475279 bytes)

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

In the matter of application Serial Nos. 86/768,908
For the Trademark CHECKEDIN
Published in the *Official Gazette*
on February 23, 2016

LINKEDIN CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91228601
v.)	
)	
VISCERAL TECHNOLOGIES, LLC,)	
)	
Applicant.)	
_____)	

NOTICE OF ERROR IN ELECTRONIC RECORD

Opposer LinkedIn Corporation (“LinkedIn”) hereby notifies the Board that two trademark registrations were entered incorrectly in the electronic form submitted by LinkedIn on June 22, 2016 in connection with the Notice of Opposition in this proceeding. Specifically, Registration Nos. 4023511 and 4023513, which are owned by LinkedIn and were identified correctly in the Notice of Opposition, were inadvertently entered as, respectively, Registration Nos. 4123511 and 4025513. A true and correct copy of the Notice of Opposition is submitted herewith. LinkedIn requests that the Board correct the electronic record to reflect Registration Nos. 4023511 and 4023513 in place of Registration Nos. 4123511 and 4025513.

Respectfully submitted,
COOLEY LLP
Janet L. Cullum

Date: June 27, 2016

By: /Janet L Cullum/
Janet L. Cullum
Attorneys for Opposer
1114 Avenue of the Americas
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2016, a true and correct copy of the foregoing **NOTICE OF ERROR IN ELECTRONIC RECORD** was served by mailing said copy via First Class Mail, postage prepaid to Applicant's attorney at the following address:

Robert W. Clarida
Reitler Kailas & Rosenblatt LLC
885 3rd Avenue, Fl. 20
New York, New York 10022-4834

Date: June 27, 2016

/Judd D. Lauter /
Judd D. Lauter

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)	
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_____)	

NOTICE OF OPPOSITION

Opposer LinkedIn Corporation (“LinkedIn”), a Delaware corporation having its principal place of business at 2029 Stierlin Court, Mountain View, California 94043, believes that it will be damaged by the issuance of a registration for the mark CHECKEDIN in Application Serial No. 86/768,908 filed September 25, 2015 (the “Application”) by Visceral Technologies, LLC, a limited liability company with an address of record at c/o Robert W. Clarida, 885 Third Avenue, 20th Floor, New York, New York 10022 (“Applicant”). LinkedIn hereby opposes Applicant’s Application pursuant to Section 13 of the United States Trademark Act, as amended, 15 U.S.C. §1063.

As grounds for opposition, LinkedIn alleges that:

1. LinkedIn operates the world's largest professional network on the internet with more than 400 million members in over 200 countries and territories. LinkedIn offers its networking services via its website at www.linkedin.com and via a mobile app which is available in the Apple AppStore and GooglePlay (*see* <https://mobile.linkedin.com/>). LinkedIn's members span a wide range of professions and companies from Fortune 500 enterprises to small businesses. LinkedIn's networking software and services facilitate the ability of individuals to identify and connect with other business professionals, to identify and pursue business and career opportunities, engage in business and community networking, and obtain and exchange information and resources across a broad spectrum of topics. LinkedIn users have the ability to form and join groups, each of which is centered on a particular subject. Groups offer members a more focused network within which to connect, exchange information, promote their businesses services, develop personal and professional relationships, identify business opportunities and share resources.

2. Since its launch in 2003, LinkedIn has continuously used the marks LINKEDIN, LINKEDIN & Design, and IN & Design (collectively the "LINKEDIN Marks") in interstate commerce in the United States in connection with its networking software and services.

3. LinkedIn is the owner of numerous U.S. registrations for the LINKEDIN Marks on the Principal Register including without limitation: U.S. Registration No. 3,971,642 issued on May 31, 2011 and Registration Nos. 4,023,511, 4,023,512, and 4,023,513 issued on September 6, respectively, and covering, *inter alia*, "...computer software for the collection, editing, organizing, modifying, bookmarking, transmission, storage and sharing of data and information in the fields of business and social networking, employment, careers and recruiting;

downloadable electronic publications in the nature of newsletters, research reports, articles and white papers on topics of professional interest, all in the fields of business and social networking, recruiting and employment, and personal and career development...” in Class 9; U.S. Registration No. 3,975,152 issued on June 7, 2011 and covering, “telecommunications services, namely, electronic transmission of data and digital messaging via mobile handheld devices and via wired and wireless communication devices; telecommunications services, namely, enabling users to electronically transmit messages, text, multimedia content, videos, photos, audio, animation and images via a global computer network; providing online communications links which transfer website users to other websites; providing online forums, chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest; providing access to computer, electronic and online databases; audio and video broadcasting services over the Internet, namely, posting, displaying, and electronically transmitting data, audio and video; providing access to computer databases in the fields of entertainment and education; providing access to computer databases in the field of social networking” in Class 38; U.S. Registration Nos. 3,967,561 and 3,979,174 issued on May 24, 2011 and June 14, 2011, respectively, and U.S. Registration Nos. 3,971,641 and 3,971,640 issued May 31, 2011 and covering, *inter alia*, “computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via the Internet; computer services, namely, creating an on-line community for registered users to organize groups, events, participate in discussions, share information and resources, and engage in social, business and community networking; providing temporary use of on-line non-downloadable software for allowing web site users to communicate information of general

interest for purposes of social, business and community networking, marketing, recruitment and employment; providing a website featuring temporary use of non-downloadable software enabling users to search, locate and communicate with others via electronic communications networks to network, conduct surveys, track online reference to job opportunities and business topics; ...computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring social media including photos, audio and video content on general topics of social interest” in Class 42; U.S. Registration Nos. 3,971,644 and 4,007,079 issued on May 31, 2011 and August 2, 2011, respectively, and U.S. Registration Nos. 4,016,686 and 4,016,688 issued on August 23, 2011, and covering, *inter alia*, “social introduction and social networking services...” in Class 45; U.S. Registration Nos. 3,959,413, 3,959,419, and 3,959,420 issued on May 10, 2011, and U.S. Registration No. 3,963,244 issued on May 17, 2011, and covering, *inter alia*, “advertising and marketing services, namely, promoting goods and services for businesses; ...promoting the goods and services of others via a global computer network; advertising, marketing and promotional services related to all industries for the purpose of facilitating networking and socializing opportunities for business purposes; ...electronic commerce services, namely, providing information about products and services via telecommunication networks for advertising and sales purposes; providing networking opportunities for individuals seeking employment; on-line professional networking opportunities; providing online computer databases and online searchable databases in the fields of business and professional networking” in Class 35; U.S. Registration Nos. 3,074,241 and 3,074,242 issued on March 28, 2006 and U.S. Registration Nos. 3,704,030 and 3,704,031 issued

on November 3, 2009 and covering “[o]nline business networking services” in Class 35; and U.S. Registration No. 3,971,643 issued on May 31, 2011, and U.S. Registration Nos. 4,016,684, 4,016,685, and 4,016,687 issued on August 23, 2011 covering “entertainment and educational services, namely, conducting seminars, workshops, conferences and exhibitions featuring instructional presentations in the fields of personal development, career development, relationship building and social networking; entertainment and educational services, namely, conducting discussion groups in the fields of personal development, career development, relationship building and social networking; on-line journals, namely, blogs featuring information about personal development and career development; online electronic publishing services, namely, publication of text and graphic works of others featuring information regarding topics of professional interest” in Class 41.

4. LinkedIn also owns common law rights in the LINKEDIN Marks arising from its continual use of these marks in connection with its software and services offerings since 2003. LinkedIn is used by business professionals to share travel information, identify and connect with others located in a given destination, and to schedule and arrange meetings and events related to the travel.

5. LinkedIn has expended considerable effort and expense in promoting the LINKEDIN Marks and the software and services offered in connection with these marks, both in the United States and internationally, and the Marks embody the substantial and valuable reputation and goodwill that LinkedIn has earned in the marketplace for its high quality networking software and services.

6. In addition to its own advertising efforts, LinkedIn has been the subject of thousands of unsolicited stories in the media, highlighting LinkedIn's innovative and successful online networking software and services. LinkedIn has also received awards and recognitions for its innovative offerings.

7. As a result of LinkedIn's widespread use of the LINKEDIN Marks worldwide, extensive advertising and promotion and continuous and unsolicited media coverage, as well as the high degree of consumer recognition of the LINKEDIN Marks, the strong and loyal base of customers that LinkedIn enjoys for its software and services, and LinkedIn's trademark registrations, among other factors, the LINKEDIN Marks are famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c).

APPLICANT AND ITS PENDING APPLICATION

8. Applicant seeks to register the mark CHECKEDIN ("Applicant's Mark") in connection with "mobile phone application to connect travelers" in Class 9.

9. The Application was published in the *Official Gazette* of the PTO on February 23, 2016. LinkedIn filed a Request for Extension of Time to Oppose on March 24, 2016, which was granted, extending the time to oppose to June 22, 2016. This Opposition is timely filed.

10. Applicant's Mark is substantially similar to the LINKEDIN Marks in sight, sound, and overall commercial impression. Applicant's Mark features the term "CHECKED," which is in the past tense, with the formative "IN," thus closely imitating the overall commercial impression of the LINKEDIN Marks.

11. In addition, Applicant's Mark is used in connection with goods which are highly similar to and overlapping with the goods and services offered by LinkedIn, namely facilitating the ability of persons, including travelers, to connect with one another.

12. Due to the similarities in commercial impression with the LINKEDIN Marks and the direct overlap in offerings, Applicant's Mark is likely to create consumer confusion.

13. Upon information and belief, Applicant selected Applicant's Mark with knowledge of the LINKEDIN Marks.

14. LinkedIn is not affiliated or connected with Applicant or its goods, nor has LinkedIn endorsed or sponsored Applicant or its goods.

15. There is no issue as to priority of use. LinkedIn began using its LINKEDIN Marks, and enjoys priority as a result of the filing dates of its trademark registrations, well prior to the filing date of the application for Applicant's Mark and Applicant's claimed first use date in connection with a mobile phone application.

**FIRST GROUND FOR OPPOSITION
LIKELIHOOD OF CONFUSION**

16. LinkedIn incorporates by reference paragraphs 1 through 15, inclusive, as if fully set forth here.

17. Applicant's Mark is highly similar to the LINKEDIN Marks in appearance, sound, and commercial impression because it features the term "CHECKED" with the formative "IN." Applicant's Mark thereby creates a commercial impression similar to the overall commercial impression of the LINKEDIN Marks.

18. The goods offered by each party are closely related. According to the identification of goods in the subject application, Applicant intends to use the mark in connection

with “mobile phone application to connect travelers.” As set forth above, these goods are related to and overlapping with LinkedIn’s goods and services.

19. LinkedIn is not affiliated or connected with Applicant or its goods, nor has LinkedIn endorsed or sponsored Applicant or its goods.

20. Registration of Applicant’s Mark will injure LinkedIn by causing the public to be confused or mistaken into believing that the goods provided by Applicant are endorsed or sponsored by LinkedIn. LinkedIn has no control over the nature and quality of the goods offered by Applicant under Applicant’s Mark, and LinkedIn’s reputation and goodwill will be damaged and the value of the LINKEDIN Marks jeopardized, all to LinkedIn’s detriment.

21. Accordingly, registration of Applicant’s Mark herein opposed will damage LinkedIn because Applicant’s Mark is likely, when used on or in connection with the goods described in the opposed application, to cause confusion, or to cause mistake or to deceive. Thus, Applicant’s Mark is unregistrable under Sections 2(d) and 3 of the United States Trademark Act, as amended, 15 U.S.C. §§1052 and 1053, and should be refused registration.

**SECOND GROUND FOR OPPOSITION
DILUTION OF A FAMOUS MARK**

22. LinkedIn incorporates by reference paragraphs 1 through 21, inclusive, as if fully set forth here.

23. The LINKEDIN Marks are highly distinctive of LinkedIn’s software and services.

24. LinkedIn has used the LINKEDIN Marks since at least 2003 for its networking software and services, as alleged.

25. LinkedIn has extensively advertised and promoted the LINKEDIN Marks. LinkedIn and the LINKEDIN Marks have also enjoyed extensive media attention.

26. As a result of the considerable publicity afforded the LINKEDIN Marks, and the strong and loyal base of customers that LinkedIn enjoys for its software and services, the LINKEDIN Marks have a high degree of consumer recognition.

27. LinkedIn is the owner of U.S. registrations for the LINKEDIN Marks.

28. Apart from unauthorized infringing uses of such marks, LinkedIn is not aware of any material use of any highly similar mark by others.

29. Accordingly, when the public encounters the term LINKEDIN, it immediately associates the term with LinkedIn, and thus the LINKEDIN Marks are famous.

30. The LINKEDIN Marks became famous before Applicant filed its application for Applicant's Mark on September 25, 2015.

31. Applicant's Mark is similar to the LINKEDIN Marks, and it is likely to cause dilution of the famous LINKEDIN Marks, including dilution by blurring, all to LinkedIn's damage.

32. Registration of the Applicant's Mark herein opposed is likely to dilute LinkedIn's famous LINKEDIN Marks by creating an association between the marks that impairs the distinctiveness of the LINKEDIN Marks. Thus, Applicant's Mark is unregistrable pursuant to Sections 2(a)(d), 3, 13, and 43(c) of the United States Trademark Act.

33. Wherefore, LinkedIn prays that this Opposition be sustained, and that Application Serial No. 86/768,908 be refused.

Please recognize the following as attorneys for LinkedIn in this proceeding: Janet L. Cullum, Anne H. Peck, Peter J. Willsey, and Judd D. Lauter (members of the Bar of the States of

New York, California, or Virginia), and the firm of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036-7798.

Please address all communications to Janet L. Cullum at the address below.

In accordance with 37 C.F.R. §§ 2.101 and 2.6(a)(17), the fees for one International Class for the opposed application are submitted herewith.

Respectfully submitted,
COOLEY LLP
Janet L. Cullum

Date: June 22, 2016

By: /Janet L Cullum/
Janet L. Cullum
Attorneys for Opposer
1114 Avenue of the Americas
New York, New York 10036-7798
(212) 479-6500

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2016, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served by mailing said copy via First Class Mail, postage prepaid to Applicant's attorney at the following address:

Robert W. Clarida
Reitler Kailas & Rosenblatt LLC
885 3rd Avenue, Fl. 20
New York, New York 10022-4834

Date: June 22, 2016


Elizabeth Ortiz