

ESTTA Tracking number: **ESTTA772901**

Filing date: **09/26/2016**

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	Pulse Network LLC
Granted to Date of previous extension	09/25/2016
Address	1301 McKinney Suite 2500 Houston, TX 77010 UNITED STATES
Party who filed Extension of time to oppose	Discover Financial Services
Relationship to party who filed Extension of time to oppose	Pulse Network LLC ("Pulse") is a subsidiary of DFS Services LLC (#DFS#), and DFS is a subsidiary of Discover Financial Services ("Discover"). Thus, Pulse is a #related entity# of Discover, and can properly pursue an opposition to the Ap- plications. TBMP 206.02; F. Jacobson & Sons, Inc. v. Excelled Sheepskin & Leather Coat Co., 140 U.S.P.Q. 281, 282 (Comm#r 1963).
Attorney informa- tion	Deborah K. Squiers/Timothy J. Buckley Cowan, Liebowitz & Latman, P.C. 114 West 47th St. New York, NY 10036 UNITED STATES tjb@cll.com, dks@cll.com, fxm@cll.com, trademark@cll.com

Applicant Information

Application No	86800465	Publication date	03/29/2016
Opposition Filing Date	09/26/2016	Opposition Peri- od Ends	09/25/2016
Applicant	DataPulse LLC 150 N. Michigan Ave Suite 2800 Chicago, IL 60601 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Business management and consultation inthe field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; mar- keting consulting services, namely, tracking marketing activities of others; consumer strategy busi- ness consulting
Class 045. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fraud and identity theft protection services; consultation in the field of datatheft and identity theft; financial identity monitoring services for fraud

protection purposes; monitoring of credit reports, the Internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring

Applicant Information

Application No	86800472	Publication date	03/29/2016
Opposition Filing Date	09/26/2016	Opposition Period Ends	
Applicant	DataPulse LLC 150 N. Michigan Ave Suite 2800 Chicago, IL 60601 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting

Class 045. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Fraud and identity theft protection services; consultation in the field of datatheft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the Internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring

Applicant Information

Application No	86800461	Publication date	03/29/2016
Opposition Filing Date	09/26/2016	Opposition Period Ends	
Applicant	DataPulse LLC 150 N. Michigan Ave Suite 2800 Chicago, IL 60601 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting

Class 045. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Fraud and identity theft protection services; consultation in the field of datatheft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the Internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring

Applicant Information

Application No	86800456	Publication date	03/29/2016
Opposition Filing Date	09/26/2016	Opposition Period Ends	
Applicant	DataPulse LLC 150 N. Michigan Ave Suite 2800 Chicago, IL 60601 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting
Class 045. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fraud and identity theft protection services; consultation in the field of data theft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the Internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring

Grounds for Opposition

Other	Please see attached pleading.
Related Proceedings	Opposition No. 91227995
Attachments	Consolidated NOO ELECTIONPULSE DataPulse LLC.pdf(116628 bytes)

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	/Timothy J. Buckley/
Name	Timothy J. Buckley
Date	09/26/2016

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

In re Application Serial Nos. 86800465, 86800472, 86800461 and 86800456

Filed: Oct. 27, 2015

For Marks: ELECTION PULSE and Design, ELECTIONPULSE, ELECTIONPULSE SHARE OF WEB and ELECTIONPULSE SHARE OF WEB (SHOW)

Published in the Official Gazette: Mar. 29, 2016

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PULSE NETWORK LLC	:	Opposition No.
	:	
Opposer,	:	
	:	<u>CONSOLIDATED NOTICE OF</u>
v.	:	<u>OPPOSITION</u>
	:	
DATAPULSE LLC,	:	
	:	
Applicant.	:	
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Opposer, Pulse Network LLC (“Pulse”), a Delaware limited liability corporation, with an address at 1301 McKinney, Suite 2500, Houston, Texas 77010, believes that it will be damaged by registration of the marks ELECTION PULSE and Design, ELECTIONPULSE, ELECTIONPULSE SHARE OF WEB and ELECTIONPULSE SHARE OF WEB (SHOW), (“Applicant’s Marks”) for services in Classes 35 and 45, as shown in Application Serial Nos. 86800465, 86800472, 86800461 and 86800456 (the “Applications”) filed by DataPulse LLC (“Applicant”), and hereby opposes the same.

As grounds for its consolidated opposition, it is alleged that:

1. The Applications were published for opposition on March 29, 2016, and Discover Financial Services (“Discover”), requested and was granted first extensions of time to oppose the Applications up to and including July 27, 2016.

2. With consent of Applicant, Discover requested and was granted second extensions of time to oppose the Applications up to and including September 25, 2016 (because September 25, 2016 was a Sunday, the final deadline to oppose was September 26, 2016).

3. Pulse is a subsidiary of DFS Services LLC (“DFS”), and DFS is a subsidiary of Discover. Thus, Pulse is a “related entity” of Discover, and can properly pursue an opposition to the Applications. TBMP 206.02; *F. Jacobson & Sons, Inc. v. Excelled Sheepskin & Leather Coat Co.*, 140 U.S.P.Q. 281, 282 (Comm’r 1963).

4. Since prior to October 27, 2015, the filing date of the Applications, Pulse, its affiliated and related entities and/or predecessors (collectively referred to hereinafter as “Opposer”) have used the mark PULSE, alone or with other word, letter and/or design elements (“Opposer’s Marks”), in connection with the offering and sale of a wide variety of goods and the offering and performance of a wide variety of services, including, but not limited to ATM/debit networks, debit products, credit products, electronic fund transfer services, fraud protection services and related goods and services.

5. Opposer owns U.S. federal registrations and applications Registration Nos. 1,497,051, 1,491,498, 1,352,069, 1,225,326, 2,360,441, 2,371,315, 2,371,316, 2,375,405, 2,389,825, 2,440,346, 2,452,635, 2,452,637, 2,452,638, 2,461,084, 2,519,197, 2,543,621, 2,914,917, 2,903,745, 3,026,187, 3,114,621, 3,136,207, 3,198,270, 3,042,247, 3,145,502, 3,243,735, 3,661,267, 4,289,554, 4,511,638, and 4,646,720 and U.S. Application Ser. No. 86704118.

6. Since prior to October 27, 2015, the filing date of the Applications, Opposer has promoted and advertised the sale and distribution of such services and goods bearing or offered

in connection with Opposer’s Marks, and has rendered such services and offered such goods in commerce.

7. As a result of the sales and promotion of such services and goods bearing or offered in connection with Opposer’s Marks, Opposer has built up highly valuable goodwill in Opposer’s Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

8. On October 27, 2015, Applicant filed the Applications for Applicant’s Marks as follows:

<p>ELECTION PULSE and Design</p>  <p>SN: 86800465</p>	<p>(Int'l Class: 35) Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting</p> <p>(Int'l Class: 45) Fraud and identity theft protection services; consultation in the field of data theft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring</p>
<p>ELECTIONPULSE</p> <p>SN: 86800472</p>	<p>(Int'l Class: 35) Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting</p> <p>(Int'l Class: 45) Fraud and identity theft protection services; consultation in the field of data theft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal</p>

	patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring
ELECTIONPULSE SHARE OF WEB SN: 86800461	(Int'l Class: 35) Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting (Int'l Class: 45) Fraud and identity theft protection services; consultation in the field of data theft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring
ELECTIONPULSE SHARE OF WEB (SHOW) SN: 86800456	(Int'l Class: 35) Business management and consultation in the field of business intelligence; information and data compiling and analyzing relating to business management; providing business intelligence services; providing market intelligence services; marketing consulting services, namely, tracking marketing activities of others; consumer strategy business consulting (Int'l Class: 45) Fraud and identity theft protection services; consultation in the field of data theft and identity theft; financial identity monitoring services for fraud protection purposes; monitoring of credit reports, the internet, and public records to facilitate the detection and prevention of identity theft and fraud; computerized security services, namely, electronically monitoring, detecting and reporting on suspicious and abnormal patterns of point of sale activity indicating theft, fraud, or other criminal activity; trademark monitoring

9. The services covered by the Applications are identical and/or closely related to the services rendered and goods offered in connection with Opposer's Marks.

10. Applicant's Marks so resemble Opposer's Marks as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with

Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of certificates of registration for Applicant's Marks.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Marks and requests that the opposition be sustained and said registrations be denied.

Please recognize as attorney for Opposer in this proceeding Deborah K. Squiers (member of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 114 West 47th Street, New York, New York 10036.

Dated: New York, New York
September 26, 2016

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: Deborah K. Squiers/
Deborah K. Squiers
Timothy J. Buckley
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(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 26, 2016, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to

Applicant's Attorney of Record:

ALEXANDER GARCIA
PERKINS COIE LLP
1201 THIRD AVENUE, SUITE 4900
SEATTLE, WASHINGTON UNITED STATES 98101

/DEBORAH K SQUIERS/
DEBORAH K SQUIERS