

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

BEST SOFTWARE, INC.,)
)
Opposer,)
)
v.) Opposition No.
)
BEST GMBH,)
)
Applicant.)

01-15-2003
U.S. Patent & TMO/IC/TM Mail Rcpt Dt. #01

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NOTICE OF OPPOSITION

In the matter of application to register a trademark under the Trademark Act of 1946, Serial Nos. 76/276,743, for the mark BEST PHOTOXPOSURE (Stylized), filed June 26, 2001, in the name of BEST GmbH, published for opposition in the Trademark Official Gazette of September 17, 2002, Vol. 1262, No. 3, at page TM 191, the Opposer, Best Software, Inc., believes it will be damaged by registration of said alleged trademark and hereby opposes same. The grounds for opposition are as follows:

1. The Opposer, BEST SOFTWARE, INC. [hereinafter "Best"], is a corporation duly organized and existing under the laws of the state of Virginia and having a place of business at 2325 Dulles Corner Boulevard, Suite 800, Herndon, Virginia 20171. Opposer produces, provides and markets computer software, and business management solutions, and related products and services.

2. Since prior to the filing date of the application opposed herein, Opposer Best has, and is now, engaged in the creation, advertisement, marketing, licensing and distribution of its goods and services, in commerce under and in connection with the trade name and trademark **BEST**, including the mark(s) and name(s) **BEST!**, **BEST PROGRAMS**, **BESTSOFTWARE.COM** and/or

BEST SOFTWARE (hereafter, collectively, Opposer's **BEST** mark(s)). Opposer Best continuously has used said Opposer's **BEST** mark(s) and name(s), in commerce in connection with its products and services advertised, offered, marketed, distributed, licensed and sold by Best, and to identify and designate same, and to distinguish those goods, services, and Opposer Best's business, from those of others.

3. Opposer Best is the owner of, and will rely on herein, the following U.S. trademark and service mark registrations:

REGISTRATION NO.	ISSUE DATE
2,582,484	June 18, 2002
2,229,346	March 2, 1999
1,911,151	August 15, 1995
1,374,606	December 10, 1985

4. Opposer Best also is the owner of U.S. trademark applications serial nos. 76/342,816 (notice of allowance: December 10, 2002); 75/457,125 (notice of allowance: April 20, 2002); 75/457,126 (notice of allowance: March 19, 2002); and 76/179,218 (published: October 29, 2002). Opposer Best will rely herein on the registrations which issue on these applications.

5. Since Opposer's initial use of Opposer's **BEST** mark(s) and name(s), Best has used, and advertised, produced and offered for licensing and sale its goods and services under and in connection with its **BEST** mark(s), to the public, through various channels of trade, and in commerce, with the result that Opposer's customers and the public in general have come to know

and recognize said name(s) and mark(s) of Opposer and associate same with Opposer and/or the goods and services advertised, marketed, distributed, and sold by Opposer Best.

6. On June 26, 2001, Applicant filed an application to register the mark **BEST** PHOTOXPOSURE (Stylized). Said application was accorded serial no. 76/276,743, and was published for opposition in the Official Gazette of September 17, 2002, at pages TM 191, identifying the goods and services as follows:

computer software, for use in the fields of desktop publishing, digital photography, electronic publishing, plotting, graphical manipulation and typesetting, for processing and editing digital photographs and controlling and managing color output to computer printers and printer interfaces, in Class 9;

computer program manuals for use with digital photography management and printing software used in the fields of desktop publishing, digital photography, electronic publishing, plotting, graphical manipulation and typesetting; catalogs featuring computer software; brochures and leaflets with information regarding digital photography management and printing software used in the fields of desktop publishing, digital photography, electronic publishing, plotting, graphical manipulation and typesetting, in Class 16; and;

computer programming for others; technical support services, namely, troubleshooting of computer software problems; providing on-line support services for computer software users, namely, consulting services, troubleshooting services and help desk services; providing an on-line database accessible over a global computer network in the field of software used for desktop publishing, digital photography, electronic publishing, plotting, graphical manipulation and typesetting, in Class 42.

7. The mark sought to be registered by Applicant is a colorable imitation of, and confusingly similar to, Opposer's prior and aforesaid **BEST** mark(s) and name(s).

8. On information and belief, the goods and services identified in the application opposed herein are the same, and/or are similar and/or related, to the goods and services in

connection with which Best uses Opposer's **BEST** mark(s) and name(s), and are and/or will be sold through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Best's products, goods and services are marketed and/or sold.

9. The registration and/or use of the mark set forth in the opposed application, is likely to cause confusion, mistake, and/or to deceive as to origin, sponsorship, and/or association of Applicant's goods and services sold under the marks sought to be registered by Applicant vis-a-vis Opposer and/or Opposer's **BEST** mark(s) and name(s), and/or to mislead purchasers of Applicant's and/or Opposer's goods and services, and/or the public in general, into believing that Applicant's goods and services are sold by, emanate from, and/or in some way, directly or indirectly, are associated with Best, and/or Opposer's **BEST** mark(s) and name(s) and/or Opposer's products, goods, services or business, or vice versa, to the damage and detriment of Best.

10. If Applicant is granted registration on the application opposed herein, and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Applicant will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946, to the detriment and harm of Opposer.

WHEREFORE, this Opposer, BEST SOFTWARE, INC., believes and alleges that it will be damaged by registration of Serial No. 76/276,743, for the mark BEST PHOTOXPOSURE (Stylized), as aforesaid, and prays that:

- A. judgment in the present opposition be entered in favor of Opposer;
- B. the present opposition be sustained; and
- C. registration of application serial no. 76/276,743 be rejected and refused.

Respectfully submitted,

BEST SOFTWARE, INC.

By:



Marsha G. Gentner
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Date: January 15, 2003



Law Offices
Jacobson Holman
 Professional Limited Liability Company
 400 Seventh Street, N.W.
 Washington, D.C. 20004-2218

THAP

(202) 638-6666
 (202) 393-5350/51/52 (fax)
 www.jhip.com
 Firm e-mail: jhp@jhip.com

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January 15, 2003

Assistant Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, Virginia 22202-3513



01-15-2003

U.S. Patent & TMO/TM Mail RcptDt. #01

RE: New Opposition
 BEST PHOTOXPOSURE (Stylized) - Serial No. 76/276,743
 Our Ref: 7171/I-4770

Sir:

We enclose the following for filing in the Patent and Trademark Office:

- Notice of Opposition (in duplicate)
- Notice of Appeal

Also enclosed is our check for the required filing fee in the amount of \$900. Should this check become detached, or the amount be insufficient, please charge our Deposit Account, No. 06-1358.

Respectfully submitted,

Marsha G. Gentner

MGG/tlb
 Enclosures