

TTAB

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: December 16, 2003

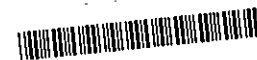
Opposition No 91158802
Serial No. 76502574

BIZZLINE
6830 WALLING LN
DALLAS, TX 75231-7204

Z-Tel Technologies, Inc.

v.

BIZzLine



02-17-2004
U.S. Patent & TMO/tm Mail Rcpt Dt. #79

Janice Housey
Roberts, Mlotkowski & Hobbes, P.C.
8270 Greensboro Drive, Suite 850
McLean, VA 22102

Pauline Stewart, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,

2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: **January 05, 2004**

Discovery period to close: **July 03, 2004**

30-day testimony period for party
in position of plaintiff to close: **October 01, 2004**

30-day testimony period for party
in position of defendant to close: **November 30, 2004**

15-day rebuttal testimony period
for plaintiff to close: **January 14, 2005**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may

be decided adversely to any party which fails to participate.


If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

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

-----X
Z-Tel Technologies, Inc. :
 :
 Opposer, :
 :
 v. :
 :
 BIZzLine Corporation, :
 :
 Applicant. :
-----X


11-26-2003
U.S. Patent & TMOfr/TM Mail RcptDt. #39

Opposition No. _____

Ser. No. 76/502574

NOTICE OF OPPOSITION

Opposer, Z-Tel Technologies, Inc, a corporation of Delaware, having an address of 601 South Harbour Island Blvd., Suite 220 Tampa, Florida 33602, believes that it will be damaged by the registration of BIZZLINE and Design, (Ser. No. 76/502574) for "telecommunication services, namely, long and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions." This application was published for opposition on November 11, 2003 and the owner of record is Applicant, BIZzLine Corporation, a corporation of Georgia, with an address of 6830 Walling Lane, Dallas, TX 75231. Opposer hereby requests that Ser. No. 76/502574 be refused registration for the reasons set forth herein.

Opposer alleges as follows:

Opposer has adopted and, at all times pertinent hereto, has used and/or has intended to use the following marks:

1. Z-LINE, Reg. No. 2,652,132, for telecommunication services, namely, providing local and long distance telephone services; providing electronic voice, voice mail, facsimile and data transmission, and electronic mail; providing telephonic routing services, namely activating call

forwarding from telephone to telephone; providing communication connections for the transmission of voice, electronic mail and data by linking users via facsimiles and telephones and a global computer network; providing electronic data interchange services. Opposer has used the mark Z-LINE in interstate commerce since July 1, 1998. Upon information and belief, this date predates any use of the BIZZLINE and Design mark by Applicant.

2. Z-LINEBUSINESS, Reg. No. 2,655,094, for telecommunication services, namely, providing local and long distance telephone services; providing electronic voice, voice mail, facsimile and data transmission, and electronic mail; providing telephonic routing services, namely activating call forwarding from telephone to telephone; providing communication connections for the transmission of voice, electronic mail and data by linking users via facsimiles and telephones and a global computer network; providing electronic data interchange services. Opposer has used the mark Z-LINEBUSINESS in interstate commerce since October 1, 2001. Upon information and belief, this date predates any use of the BIZZLINE and Design mark by Applicant.

3. Z-LINE ANYWHERE, Reg. No. 2,654,744, for telecommunication services, namely, providing local and long distance telephone services; providing voice, voice mail, facsimile and data transmission, and electronic mail; providing telephonic routing services, namely activating call forwarding from telephone to telephone; providing communication connections for the transmission of voice, electronic mail and data by linking users via facsimiles and telephones and

a global computer network; providing electronic data interchange services. Opposer has used the mark Z-LINE ANYWHERE in interstate commerce since January 2000. Upon information and belief, this date predates any use of the BIZZLINE and Design mark by Applicant.

4. Z-LINE HOME EDITION, Reg. No. 2,539,190, for telecommunication services, namely, providing local and long distance telephone services; providing electronic voice, voice mail, facsimile and data transmission, and electronic mail; providing telephonic routing services, namely activating call forwarding from telephone to telephone; providing communication connections for the transmission of voice, electronic mail and data by linking users via facsimiles and telephones and a global computer network; providing electronic data interchange services; Opposer has used the mark Z-LINE HOME EDITION in interstate commerce since June 1999. Upon information and belief, this date predates any use of the BIZZLINE and Design mark by Applicant.

Each of these registrations was issued by the U.S. Patent and Trademark Office and is in full force and effect. These registrations constitute prima facie evidence of Z-Tel's exclusive rights to use these marks.

These registrations are prima facie evidence of Opposer's ownership of the service marks shown in the registrations and are prima facie evidence of Opposer's exclusive right to use the service marks shown in these registrations in commerce in connection with the goods/services listed in these registrations.

Opposer's Z-LINE and related marks are of significant value to Opposer as an identification of source in connection with the promotion and offering of its services under the mark. Further, Opposer's service marks operate to distinguish Opposer's services from the goods and/or services of others.

Z-LINE and the related service marks, particularly Z-LINEBUSINESS, used by Opposer for its services, and the designation BIZZLINE and Design as filed by Applicant for its services, are very similar in wording, pronunciation, sound and spelling, and appearance. Applicant's mark BIZZLINE incorporates the Opposer's mark in its entirety and is an approximation of Z-LINEBUSINESS, in that BIZ is a common term for BUSINESS. Thus, it is clear that the subject mark so resembles Opposer's marks as to be likely to cause confusion, or to cause mistake, or to deceive.

On information and belief, the services of the type recited in Applicant's BIZZLINE and Design application are closely related to the services offered by Opposer. Further, Applicant's and Opposer's services are likely to be offered to the same classes of purchasers through the same channels of trade. Specifically, Opposer's and Applicant's services are sold to consumers in need of telecommunications services.

Purchasers and prospective purchasers familiar with Opposer's services identified by its Z-LINE marks, including the Z-LINEBUSINESS mark, are likely to be misled into believing, contrary to fact, that Applicant's services sold under the very similar mark emanate from or are in

Opposition to Ser. No. 76/502574

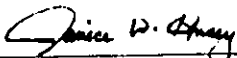
some way sponsored by Opposer, all to Opposer's irreparable damage through loss of its goodwill as symbolized by Opposer's trademark.

Opposer will be damaged by the registration of Ser. No. 76/502574 in light of Opposer's current and future intentions to use the designation, Z-LINE, Z-LINE BUSINESS and other Z-LINE marks in connection with a wide variety of telecommunication services. Moreover, such registration would inhibit Opposer in its free use of, and natural expansion of, its Z-LINE marks in identifying and promoting its services, which would work damage upon Opposer.

A check in the amount of \$300.00 to cover the official filing fee and a duplicate copy of this petition is attached hereto.

WHEREFORE OPPOSER PRAYS that this opposition be sustained and that U. S. Ser. No. 76/502574 for the mark BIZZLINE and Design be refused registration.

Date: November 25, 2003



Janice W. Housey
Michael J. Mlotkowski

Counsel for Opposer

Roberts, Mlotkowski & Hobbes, P.C.
8270 Greensboro Dr
Suite 850
McLean VA 22102
703-584-3277
703-852-7189

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of:

BIZzLine

Serial No.: 76502574

Mark: BIZZLINE and Design

Filed: March 31, 2003

Published: November 11, 2003

COVER SHEET

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202
BOX TTAB FEE

RECEIVED
2003 NOV 26 A 8:22
US PATENT &
TRADEMARK OFFICE

Madam:

Enclosed for filing in connection with the above-referenced application, please find the following:

- (1) Notice of Opposition (in triplicate);
- (2) Our check no. 1513 in the amount of \$300.00.

Respectfully submitted,

Janice W Housey

Janice W. Housey
Counsel for Applicant

Date: November 26, 2003

Roberts, Mlotkowski & Hobbes
8270 Greensboro Drive
Suite 850
McLean, VA 22102



11-26-2003

TTAB

**TTAB NOTICE CONCERNING CORRESPONDENCE ADDRESS
(TRADEMARK RULE 2.18)**

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is not considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.



02-17-2004

THE TRADEMARK TRIAL AND APPEAL BOARD WOULD LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- *answer telephone inquiries
- *explain pertinent legal provisions and related administrative practices as they apply to specific cases
- *provide status information on pending cases
- *provide access to the files of pending cases
- *resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero].

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

"Box TTAB Fee": for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal

and

"Box TTAB": for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the "BISX LINK".

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205 or Angela Pope, Supervisory Legal Assistant at (703) 308-9300, extension 144.

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 www.inta.org/adr/index.shtml e-mail: lstigliano@inta.org	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 www.cpradr.org e-mail: info@cpradr.org
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 st Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

- ❖ Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.
 - ❖ TTAB Notice of Oral Hearing sent to all parties.
- | | | |
|---|---|---|
| ❖ | Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129. | filed, due within one month. Brief in opposition due within 15 days. 37 CFR 2.129(c). |
| ❖ | <p style="text-align: center;"><u>DECISION; RECONSIDERATION; APPEAL</u></p> TTAB Deliberation. Writing of Opinion and Decision in due course. | ❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d). |
| ❖ | Request for rehearing, reconsideration or modification, if | |

NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet.

FOOTNOTES

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be damaged by registration of the mark and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$300 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-In-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$300 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

ADDRESSES AND TELEPHONE

All papers not requiring a fee should be mailed to:

Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTE: For papers with fee, use "Box TTAB Fee"

TTAB Office Location and Telephone Number

2900 Crystal Drive
South Tower, Suite 9B40
Arlington, Virginia 22202-3513

Telephone: (703) 308-9300

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