

ESTTA Tracking number: **ESTTA15782**

Filing date: **09/27/2004**

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

<b>Proceeding</b>	91160134
<b>Party</b>	Defendant Cirrus Capital S.A. Cirrus Capital S.A. 63/65 rue de Merl LUX Luxembourg, L-2164
<b>Correspondence Address</b>	CIRRUS CAPITAL S.A. 63/65 RUE DE MERL LUXEMBOURG LUXEMBOURG, L -2164
<b>Submission</b>	reply to allegation of non-response to interrogatories
<b>Filer's Name</b>	Christopher Lucas
<b>Filer's e-mail</b>	c.lucas@cirrus-capital.com
<b>Signature</b>	/CLucas/
<b>Date</b>	09/27/2004
<b>Attachments</b>	CirrusCapitalSerial7820979interrogatories.PDF ( 2 pages )



**The United States Trademark and Patent Office  
Trademark Trial and Appeal Board**

**Cirrus Capital SA  
Luxembourg**

September 26th 2004

**Re Serial # 78/209 795 File 91160134**

Further to the communication by the opposer claiming that interrogatory questions were not answered I wish to remind him of the following:

The initial approach from Mastercard was through Gevers, a law firm in Belgium.

- Ms Chen, the Mastercard representative there was given clear information stating that this was a simple matter, that we had a copyright on the logo and that the particular matter of investment companies with the name Cirrus (especially in the UK is clear). Cirrus Investments (UK) Ltd. has existed for 28 years in the UK. They are aware of Cirrus Capital and deemed not to oppose – in fact we have been in conversation with them. If any organisation had a valid basis to oppose, it would be this one.
- Answer to questions about the form and purpose of Cirrus Capital were fully answered verbally – with both the US and the Belgian legal representatives for MasterCard.
- They further requested all brochures and publicity material: They were informed that none had been produced (as would be expected given that we are a new company operating in non-retail financial sector) and therefore none were available.

In an attempt to cloud the real issue here, we believe the US attorneys representing MasterCard decided to continue with a opposition that is unjustified. They attempt to back this up by producing a list of largely superfluous exhibits and irrelevant yet onerous questions in an attempt to forcefully procure information about our company and business strategies – that largely do not exist.

However for completeness we list responses to the items in the interrogatory notices mentioned by The Opposer in his recent communication with the TTAB.

1. Cirrus is the classic latin term for a particular kind of cloud formation. We believe that our process has association with the higher order of cloud formations in nature due to our extensive use of chaos theory, originally developed to model such natural phenomenon. Since we run a sophisticated investment product suitable only for high net worth individuals it seemed appropriate to use such a classic name as it would provide a clear link between the models of the natural world and those of the various financial markets.
2. The opposer has been clearly notified that Cirrus Capital is a hedge fund, based offshore. The product and service is self explanatory as hedge funds have been brought into public awareness, notably by US Attorney General Spitzer in recent years.
3. The design, copyright and selection of the logo, as granted copyright by the USPTO is the sole basis for the mark. The mark is identical. I am responsible for initiating the copyright (information clearly available from the USPTO site on the internet) in its entirety.
4. With reference to interrogatory number 5: The Opposer made a telephone call and was given a simple, concise explanation of the original notification to Ms Chen. Despite this, he felt it necessary to compile a superfluous item such as this. The simple fact is that for a hedge fund there are no purchasers or consumers. There are partners in the investment fund. Any subscriber to the fund is in fact a partner in the fund and holds shares within it. This is very different to the idea of consumers purchasing a product. It makes the further items relating to product or service inappropriate. The Opposer would be better asking about the definitions of partnership and researching the structure of hedge funds so that he may formulate relevant questions.



5. For the record, the growth of hedge-funds is highly restricted, it usually involves the introduction of new partners through word of mouth, performance databases, private bankers or other funds. Geographical issues are usually ill-defined. This is not a commodity, service or technology business in the same way that MasterCard / Cirrus Systems businesses are. It is a mistake to think of hedgefund in traditional marketing terms.
6. I would request that the TATB dismiss the remaining interrogatories based on the clear answers given above and in previous correspondence.
7. Remind the opposer that the only relevant public information is clearly available on the internet and that no amount of legal compulsion from him can create new or additional facts or further details out of thin air (in so much as Cirrus relates to a cloud).
8. Cirrus is also used as part of the trademark for a number of highly visible companies worldwide, some in the technology area, more closely related to Cirrus Systems LLC core business.
9. Further remind the opposer that hedge fund partnerships are not available to the public unless a public offering is made. A public offering has a legal definition and form specific to different geographies – however Cirrus Capital has not been involved in any public offering and there are no public offering documents in the pipeline.
10. Should we decide to enter the retail banking technology or ATM systems supply business we shall no doubt embark on a different marketing strategy. However, for obvious reasons this remains a remote possibility.
11. Mastercard has reacted in a pre-emptive manner to our application. If in the future Mastercard can prove that Cirrus Capital contravenes some aspect of the trademark act and actually violates their mark they would have grounds. Their interrogatories are designed to construct some proof of violation where none has occurred. In our opinion none is likely to occur.
12. We object to continued pursuit of this matter by the opposer and ask for the TATB to support our completed copyright of the logo, which is identical to the Trademark application graphic – the logical conclusion of the Trademark application and above all, to question the reasonableness of MasterCard / Cirrus Systems LLC in blowing this matter out of all proportion.
13. We attach a pleading for summary judgement of this matter separately which in many respects re-hashes issues that were commented on in the US District Court of Southern New York's judgement against MasterCard in MasterCard vs Nader (2004).

Christopher Lucas, Director  
For and on behalf of Cirrus Capital SA