

ESTTA Tracking number: **ESTTA46516**

Filing date: **09/28/2005**

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

<b>Name</b>	Sprint Communications Company L.P.
<b>Granted to Date of previous extension</b>	09/28/2005
<b>Address</b>	6200 Sprint Parkway Overland Park, KS 66251 UNITED STATES

<b>Correspondence information</b>	Travis P. Boozer Attorney 6391 Sprint ParkwayKSOPHT0101-Z2100 Overland Park, KS 66251 UNITED STATES uspto-tm@sprint.com Phone:703-433-3179
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#### Applicant Information

<b>Application No</b>	78443400	<b>Publication date</b>	05/31/2005
<b>Opposition Filing Date</b>	09/28/2005	<b>Opposition Period Ends</b>	09/28/2005
<b>Applicant</b>	CINGULAR WIRELESS II, LLC 7277 164TH AVENUE NE REDMOND, WA 98052		

UNITED STATES
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**Goods/Services Affected by Opposition**

Class 038. First Use: 20040414 First Use In Commerce: 20040414

All goods and services in the class are opposed, namely: Telecommunications services, namely wireless transmission, uploading and downloading of voice, data, images, audio, video, signals, information, games, ring tones, and messages; wireless telephone communications services; wireless digital and analog voice messaging services; wireless text and numeric digital messaging services; electronic mail services; paging services; facsimile transmission services; Internet service provider and online service provider services, namely, providing multiple user access to a global computer information network, the Internet, wide area networks, local area networks, and private computer information networks; telecommunications services, namely, providing telecommunications connections and the electronic transmission of messages, data, orders, billing, payment and account information, that allow users to perform electronic business transactions via wireless telephones, handheld computers, and mobile data receivers and through a global computer information network, the Internet, wide area networks, local area networks and private computer information networks; wireless roaming services; telecommunications consultation; telematic sending of information

<b>Attachments</b>	78443400.pdf ( 6 pages )
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<b>Signature</b>	/Travis P. Boozer/
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<b>Name</b>	Travis P. Boozer
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<b>Date</b>	09/28/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPRINT COMMUNICATIONS	)	
COMPANY L.P.,	)	
	)	
Opposer,	)	In the Matter of Application
	)	Serial No. 78/443400
v.	)	Mark: Stylized Bars Design
	)	
CINGULAR WIRELESS II, LLC,	)	Opposition No. _____
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

COMES NOW Opposer, Sprint Communications Company L.P., a Delaware limited partnership, whose sole general partner is US Telecom, Inc., a Kansas corporation, located at 6200 Sprint Parkway, Overland Park, Kansas, and files this Notice of Opposition pursuant to 15 U.S.C. 1063, 37 C.F.R. 2.101 and 2.104(a) and TBMP Section 215. Opposer states that it will be damaged by registration of Applicant's stylized Bars Design, as shown in Serial No. 78/443,400 for "Telecommunications services, namely wireless transmission, uploading and downloading of voice, data, images, audio, video, signals, information, games, ring tones, and messages; wireless telephone communications services; wireless digital and analog voice messaging services; wireless text and numeric digital messaging services; electronic mail services; paging services; facsimile transmission services; Internet service provider and online service provider services, namely, providing multiple user access to a global computer information network, the Internet, wide area networks, local area networks, and private

computer information networks; telecommunications services, namely, providing telecommunications connections and the electronic transmission of messages, data, orders, billing, payment and account information, that allow users to perform electronic business transactions via wireless telephones, handheld computers, and mobile data receivers and through a global computer information network, the Internet, wide area networks, local area networks and private computer information networks; wireless roaming services; telecommunications consultation; telematic sending of information” and opposes same pursuant to 15 U.S.C. 1063 and 37 C.F.R. 2.101 and 2.104(a) This Notice of Opposition is submitted electronically, the filing fee being paid by credit card. A courtesy copy has been sent to the attorney of record for Applicant.

As grounds, Opposer states as follows:

1. The services that are the subject of Applicant’s trademark application are within the field of telecommunications.
2. Applicant and Opposer separately and through their affiliates are engaged in the sale of wireless telecommunications goods and services that require the use of wireless signals.
3. The design that is the subject of Applicant’s trademark application is not entitled to registration because its descriptive and/or generic. To use Applicant’s, Opposer’s or any other carrier’s wireless equipment and services, customers must have access to wireless signals with sufficient strength to transmit voice and data. The design is descriptive and/or generic because it is used in a manner that is meant to convey information to consumers regarding the availability and strength of Applicant’s wireless

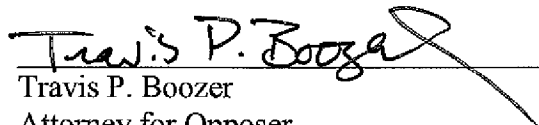
signals. Exhibit 1, which Applicant submitted with its application to register the trademark, clearly depicts this use by using the phrase “Double the coverage. Improved signal strength” next to the design. Moreover, “signals” is part of the recitation of Applicant’s goods and services that are the subject of this opposition.

4. Wireless handset manufacturers and services providers, including Opposer, have for several years used similar or nearly identical designs on telephone handset screens to indicate to users the availability and strength of wireless spectrum signals received by handsets. Opposer uses a similar design on all of its handsets. Attached as Exhibit 2 are photographs of different models of Opposer's handsets bearing a similar design. The first handset depicted in Exhibit 2 was available to consumers in 1996, soon after Opposer launched its wireless services. The second handset depicts of how the design appears on handsets that are currently available to Opposer's customers.
5. Applicant’s claimed trademark is not entitled to registration because it could be deceptively misdescriptive. Applicant’s design implies that Applicant provides greater access and greater wireless signal strength than its competitors, including Opposer. This is false. Wireless signal strength varies market to market. Accordingly, Cingular cannot claim that Cingular’s wireless signal strength is greater in every market than every other carrier. Therefore, Applicant’s design misrepresents documented facts concerning the goods and services that could materially induce a purchaser’s decision to buy Applicant’s product.

6. Applicant's claim that this icon serves as a trademark constitutes an implicit claim that Applicant has the exclusive right to use that icon in connection with telecommunications services. Federal registration of Applicant's design may preclude adoption of new marks or continued use of similar marks by others.
7. For the following reason, Opposer requests institution and immediate suspension of the opposition proceeding. Applicant's mark was published for opposition on May 31, 2005. Opposer requested and was granted an extension of time until September 28, 2005 to oppose registration. Thereafter, Applicant's trademark application was remanded to the jurisdiction of the examining attorney in response to a Letter of Protest filed by another potential opposer. On September 1, 2005 the Examining Attorney issued an Office Action refusing registration, but allowing Applicant six months to respond. Accordingly, the issue of registrability remains unresolved.

WHEREFORE, Opposer requests initiation and immediate suspension of the proceeding and, if reinstated, that Application Serial No. 78/443400 be refused and this notice of opposition be sustained in favor of Opposer.

Respectfully submitted,

  
Travis P. Boozer  
Attorney for Opposer  
6391 Sprint Parkway, KSOPHT0101-Z2100  
Overland Park, KS 66251  
Telephone: 703-433-3179  
E-mail: uspto-tm@sprint.com

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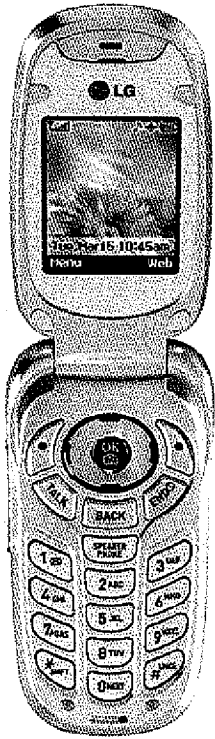
**AT&T Wireless**

Exhibit 1

Sony  
CM-D600



Sony CM D-600 launched 1996



LG PM-225 launched May, 2005

Exhibit 2