

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

In the Matter of Application Serial No.: 78/089,801
Filed on: October 23, 2001
For the Mark: POWERPAY
Published in the Official Gazette on: August 23, 2005

_____)	
MARSHFIELD UTILITIES)	
)	
	Opposer,)	
)	
	v.)	Opposition No. _____
)	
Jack Henry Software/CommLink, L.P.)	
)	
	Applicant.)	
_____)	

**VIA EXPRESS MAIL
(EXPRESS MAIL LABEL NO. EL 871772764 US)**

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

TRANSMITTAL OF NOTICE OF OPPOSITION

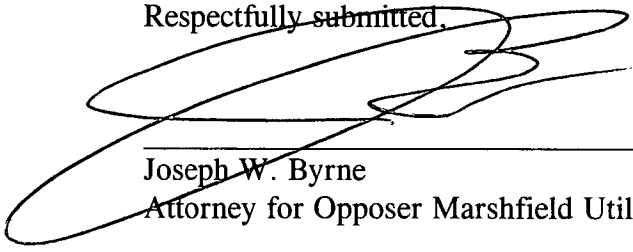
Sir:

Enclosed herewith is a *Notice of Opposition* in regards to the above-referenced trademark registration application. Also enclosed is a check in the amount of \$300.00 to cover the filing fee for the *Notice of Opposition* as required under 37 C.F.R. § 2.6(a)(17). The Commissioner is hereby authorized to charge any deficiency or credit any overpayment in any required fees to deposit account no. 02-2850. For this purpose, a duplicate of this transmittal letter is attached.



Please date-stamp the enclosed, stamped and self-addressed postcard receipt to acknowledge receipt of this transmittal letter, the accompanying *Notice of Opposition*, the check for fees, and any other items listed on the postcard receipt and then mail the postcard receipt back to me.

Respectfully submitted,



Joseph W. Byrne
Attorney for Opposer Marshfield Utilities

Dated: February 21, 2006

Boardman, Suhr, Curry & Field LLP
1 South Pinckney Street, Fourth Floor
P. O. Box 927
Madison, WI 53701-0927
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NOTICE OF OPPOSITION

Marshfield Utilities (formerly Marshfield Electric and Water Department), a Municipal Public Utility organized under the laws of the State of Wisconsin, with a place of business located at 2000 South Roddis Avenue, Marshfield, WI 54449 (hereinafter "Opposer") believes that it will be damaged by registration of the designation POWERPAY for "computer software marketed and sold exclusively to banks and other financial institutions that permits their

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customers to pay their bills over the Internet” in International Class 9 as shown in application Serial No. 78/089,801 which was filed on October 23, 2001 by Jack Henry Software/CommLink, L.P., a limited partnership organized under the laws of the State of Texas with a place of business at 663 W. Highway 60, Monett, MO 65708 (hereinafter “Applicant”) and hereby opposes same.

As grounds of opposition, it is alleged that:

1. Opposer is now and for many years past has been engaged in providing electric and water utility services to, *inter alia*, individuals and business customers.
2. Opposer is now and for many years past has been providing a bill payment service to its customers by which said customers can pay their utility bills by having the amount due automatically deducted from the customer’s checking or savings account.
3. Since long prior to October 23, 2001, the filing date of the application herein opposed, Opposer adopted, has used and is using in interstate commerce the service mark POWERPAY in connection with the foregoing bill payment services. Opposer has prior use in interstate commerce of the POWERPAY mark for the foregoing services and since the adoption and first use of the POWERPAY mark as aforesaid, Opposer has continuously used the POWERPAY mark in connection with advertising, promoting and providing its bill payment services in interstate commerce in the United States.
4. Opposer’s POWERPAY mark is now and ever since its first use as aforesaid has been applied to brochures, advertisements and promotional literature for the aforesaid services and has appeared on Opposer’s website. Opposer’s bill payment services are now and for many

years past have been widely promoted and provided under the POWERPAY mark in interstate commerce in the United States. The POWERPAY mark has come to be favorably known, and of great value to Opposer, and in the mind of the trade and public, identifies Opposer's services and distinguishes Opposer's services from the goods and services of others.

5. Opposer is the owner, in the United States Patent and Trademark Office, of U.S. Registration No. 2,463,086 for the mark POWERPAY for "automatic utility bill payment services" in International Class 36 which issued on June 26, 2001. Said registration is valid and subsisting, unrevoked and uncanceled, and in full force and effect. Opposer owns said registration and the service mark shown thereby and all the business and goodwill symbolized thereby and associated therewith in the United States.

6. By the application herein opposed, Applicant seeks to register the designation POWERPAY for "computer software marketed and sold exclusively to banks and other financial institutions that permits their customers to pay their bills over the Internet" in International Class 9.

7. The opposed application is an intent-to-use based application filed on October 23, 2001 which date is well after Opposer first commenced use of its POWERPAY mark and after Opposer received registration of its POWERPAY mark.

8. On information and belief, Applicant has made no actual use of the designation POWERPAY in interstate commerce or otherwise prior to the October 23, 2001 filing

date, in connection with Applicant's goods recited in the application herein opposed, or in connection with any other goods or services.

9. Applicant's designation POWERPAY in application Serial No. 78/089,801 is identical in sight, sound, connotation and commercial impression to Opposer's POWERPAY mark.

10. The goods for which Applicant seeks registration in application Serial No. 78/089,801 are similar and related to the services in connection with which Opposer uses and has registered its POWERPAY mark.

11. On information and belief, the channels of trade for use of the goods for which Applicant seeks registration in application Serial No. 78/089,801 are similar to the channels of trade for use of the services in connection with which Opposer uses and has registered its POWERPAY mark.

12. On information and belief, the conditions under which the goods for which Applicant seeks registration in application Serial No. 78/089,801 are used, and the customers who use those goods, are similar to the conditions under which the services in connection with which Opposer uses and has registered its POWERPAY mark are used, and the customers who use those services.

13. In view of, *inter alia*, the similarity in sight, sound, connotation and commercial impression between Applicant's proposed service mark and Opposer's mark, the similarity and relatedness between the respective goods and services of Applicant and Opposer,

the similarity of the channels of trade for use of the respective goods and services of Applicant and Opposer, and the similarity in the conditions under which the goods and services of Applicant and Opposer are used, and the similarity between the customers who use those goods and services, Applicant's proposed service mark in application Serial No. 78/089,801 so resembles Opposer's previously used and registered POWERPAY mark as to be likely, when used in connection with Applicant's proposed goods, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.

14. In addition, Applicant's designation POWERPAY in application Serial No. 78/089,801 so resembles Opposer's previously used and registered POWERPAY mark as to be likely, when used in connection with Applicant's goods recited in application Serial No. 78/089,801, to lead to the belief that Applicant's goods are sponsored by, affiliated with, approved by, or otherwise emanate from Opposer, with consequent injury to Opposer and the public. Any faults or defects which might be found with Applicant's goods would reflect adversely upon and seriously injure the valuable reputation and goodwill of Opposer.

15. Opposer will also be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's trademark and would give to Applicant color of exclusive statutory rights to such designation in violation and derogation of the prior and superior rights of Opposer.

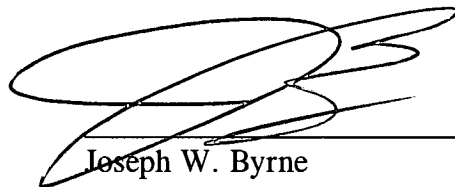
WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's mark, and therefore requests that registration of Applicant's mark be denied and that this opposition be sustained.

A duplicate Notice of Opposition is being filed herewith, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is hereby authorized to charge any deficiency in any required fees to Deposit Account No. 02-2850.

Please recognize as attorneys for Opposer Joseph W. Byrne and Richard L. Bolton, members in good standing of the Bar of the State of Wisconsin and the firm of Boardman, Suhr, Curry & Field LLP, One South Pinckney Street, Fourth Floor, P. O. Box 927, Madison, WI 53701-0927. Please address all communications to Joseph W. Byrne, Esq. of said firm and address.

Dated this 21st day of February, 2006.

Respectfully submitted,
MARSHFIELD UTILITIES



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MARSHFIELD UTILITIES

Opposer,

v.

JACK HENRY SOFTWARE/COMMLINK, L.P.

Applicant.

Opposition No. _____

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**CERTIFICATE OF MAILING BY EXPRESS MAIL (37 C.F.R. § 2.198)
EXPRESS MAIL LABEL NO. EL 871772764 US**

I hereby certify that the attached papers, consisting of:

- (1) Return Receipt Postcard;
- (2) Transmittal of Notice of Opposition (in duplicate), 2 pages;
- (3) Notice of Opposition (in duplicate), 6 pages; and
- (4) Check No. 71585 in the amount of \$300.00

relating to the above-referenced opposition proceeding are being deposited with the United States Postal Service with sufficient postage as Express Mail Post Office to Addressee Service in an envelope addressed to US Patent & Trademark Office, Trademark Trial and Appeal Board, P. O. Box 1451, Alexandria, VA, 22313-1451 on February 21, 2006.

Date: February 21, 2006


Joseph W. Byrne
Attorney for Opposer Marshfield Utilities

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