

ESTTA Tracking number: **ESTTA75146**

Filing date: **04/07/2006**

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**

Name	MarketingLab, Incorporated
Granted to Date of previous extension	04/26/2006
Address	2908 Hennepin Avenue Minneapolis, MN 55408 UNITED STATES

Attorney information	Christopher K. Larus FULBRIGHT & JAWORSKI L.L.P. 2100 IDS Center, 80 South Eighth Street Minneapolis, MN 55402-2112 UNITED STATES aotrademark@fulbright.com, pgallagher@fulbright.com Phone:(612) 321-2800
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**Applicant Information**

Application No	78492147	Publication date	12/27/2005
Opposition Filing Date	04/07/2006	Opposition Period Ends	04/26/2006
Applicant	MarketEcho, LLC 51 Locust Street New Canaan, CT 06840 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. All goods and services in the class are opposed, namely: Consulting services in the field of marketing, namely, researching and predicting changes in business and consumer marketing, providing marketing information, research and recommendations; marketing development, namely, researching and implementing new marketing theories and practices for others
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Attachments	Opp.pdf ( 3 pages )
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Signature	/Christopher K. Larus/
Name	Christopher K. Larus
Date	04/07/2006

TRADEMARK

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

In the matter of Application Serial No.: 78/492,147  
By MarketEcho, LLC for the Mark: MARKETING LAB  
Filed: September 30, 2004  
Published: December 27, 2005

MARKETINGLAB, INCORPORATED,

Opposer,

v.

MARKETECHO, LLC,

Applicant.

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

Opposer MarketingLab, Incorporated (“Opposer”), a corporation organized and existing under the laws of the State of Minnesota, having its principal place of business at 2908 Hennepin Avenue South, Minneapolis, Minnesota 55408, believes that it will be damaged by registration of the mark shown in Application Serial No. 78/492,147 in Class 35 and hereby opposes the same under the provisions of Section 13 of the Lanham Act, 15 U.S.C. § 1063.

As grounds of Opposition, Opposer asserts that:

1. Since at least November 2000, Opposer has continuously used the mark MARKETINGLAB in interstate commerce throughout the United States as its corporate name and primary service mark in connection with its offering for sale and providing services in and relating to the field of marketing and promotional activities.

2. As a result of its continuous use in interstate commerce of the MARKETINGLAB mark in connection with Opposer’s services, Opposer has acquired exclusive common law rights

to the MARKETINGLAB mark throughout the United States for use in connection with such services.

3. Opposer has expended considerable effort and expense in extensively advertising and promoting the MARKETINGLAB mark and the services offered under that mark.

4. Opposer has expended considerable effort and expense in promoting the MARKETINGLAB mark and the services offered under such mark with the result that the purchasing public has come to know, rely upon and recognize the services of Opposer by such mark. Opposer has established valuable goodwill in the MARKETINGLAB mark.

5. The MARKETINGLAB mark is inherently distinctive and serves to identify and indicate the source of Opposer's services.

6. Applicant MarketEcho, LLC ("Applicant") seeks to register the identical mark MARKETINGLAB in class 35 for "[c]onsulting services in the field of marketing, namely, researching and predicting changes in business and consumer marketing, providing marketing information, research and recommendations; marketing development, namely, researching and implementing new marketing theories and practices for others" ("Applicant's services").

7. Applicant's application was filed on September 30, 2004, under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(a).

8. Opposer established its nationwide common law rights to the MARKETINGLAB mark years before Applicant filed its application.

9. Applicant's mark so resembles Opposer's MARKETINGLAB mark as to be likely, when used in connection with Applicant's services, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Applicant's services offered under the MARKETINGLAB mark are sponsored, endorsed, or

approved by Opposer, or are in some way affiliated, connected or associated with Opposer. Registration of Applicant's mark should therefore be refused under 15 U.S.C. § 1052(d).

10. Registration of Applicant's mark would be a source of damage to Opposer because purchasers are likely to attribute the source, sponsorship, or affiliation of Applicant's services to Opposer.

11. Registration of Applicant's mark would be a further source of damage to Opposer because it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer's long prior use of the MARKETINGLAB mark.

12. Registration of Applicant's mark would also be a source of damage to Opposer because Applicant's mark may falsely suggest a connection with Opposer. Registration of Applicant's mark should therefore be refused under 15 U.S.C. § 1052(a).

WHEREFORE, Opposer MarketingLab, Incorporated prays that Application Serial No. 78/492,147 be rejected and that registration of the mark therein be refused.

Dated: April 7, 2006

Respectfully submitted,

/s/ Christopher K. Larus

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COUNSEL FOR OPPOSER  
MARKETINGLAB, INCORPORATED