

ESTTA Tracking number: **ESTTA75708**

Filing date: **04/11/2006**

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	New York Mercantile Exchange, Inc.
Granted to Date of previous extension	04/12/2006
Address	World Financial Center One North End Ave New York,, NY 10282-1101 UNITED STATES

Attorney information	David C. Gryce and Adam D. Resnick Arent Fox PLLC 1050 Connecticut Avenue, NW Washington, DC 20036-5339 UNITED STATES resnick.adam@arentfox.com
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Applicant Information

Application No	78574496	Publication date	12/13/2005
Opposition Filing Date	04/11/2006	Opposition Period Ends	04/12/2006
Applicant	Chicago Climate Exchange, Inc. 190 S. LaSalle Street 8th Floor Chicago, IL 60603 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and seVICES in the class are opposed, namely: Commodity exchange services, namely, dioxide and other greenhouse gas emissions exchange services that facilitate the trading or sale of carbon dioxide and other greenhouse gas emissions allowances and offsets between business and other market participants
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Attachments	notofopp.pdf (18 pages)
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Signature	/Adam D. Resnick/
Name	David C. Gryce and Adam D. Resnick
Date	04/11/2006

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

In re Application Ser. No. 78/574,496 for the mark NEW YORK CLIMATE EXCHANGE, filed on February 24, 2005, and published on December 13, 2005.

NEW YORK MERCANTILE EXCHANGE, INC.,))	
)	
Opposer,)	
)	
v.)	Opp. No. _____
)	
CHICAGO CLIMATE EXCHANGE, INC.,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer New York Mercantile Exchange, Inc., a corporation duly organized and existing under the laws of the state of Delaware, having its principal place of business at One North End Avenue, World Financial Center, New York, New York 10282 (“Opposer”), believes that it will be damaged by the registration of the mark shown in Application Serial No. 78/574,496, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title and interest in and to a family of marks, including but not limited to, NEW YORK MERCANTILE EXCHANGE, Reg. No. 1,775,460; NEW YORK MERCANTILE EXCHANGE, Reg. No. 1,847,455; NEW YORK MERCANTILE EXCHANGE ACCESS, Reg. No. 1,832,417; NEW YORK MERCANTILE EXCHANGE, Reg. No. 2,713,052; NEW YORK MERCANTILE EXCHANGE CLEARPORT, Reg. No. 2,943,346; NYMEX NEW YORK MERCANTILE EXCHANGE & Design, Ser. No. 78/816,739; NYMEX

NEW YORK MERCANTILE EXCHANGE & Design, Ser. No. 78/816,763; and NEW YORK MERCANTILE EXCHANGE – EUROPE, Ser. No. 78/552,613 (the “New York Mercantile Exchange Marks”), which are used in connection with the operation of an exchange market for trading, clearing, and confirming transactions, in the field of commodity futures, options contracts, other derivatives, and related services (the “New York Mercantile Exchange Services”).

2. Opposer’s rights in the New York Mercantile Exchange Marks have been recognized by the United States Patent and Trademark Office, which issued to Opposer U.S. Registrations Nos. 1,775,460; 1,847,455; 1,832,417; 2,713,052; and 2,943,346.

3. Opposer’s registrations are valid, subsisting, and provide prima facie evidence, and, in the case of U.S. Registrations Nos. 1,775,460; 1,847,455; and 1,832,417, conclusive evidence, of Opposer’s exclusive right to use the marks in commerce. Copies of the registration information from the web site of the United States Patent and Trademark Office are attached hereto as Exhibit A.

4. Since long prior to the filing date of Applicant’s Application Serial No. 78/574,496, and since long prior to any use that Applicant may claim, Opposer has continuously used its New York Mercantile Exchange Marks in interstate commerce in connection with the advertising, promotion, and provision of the New York Mercantile Exchange Services. As a result, the New York Mercantile Exchange Marks have become well known and famous as a distinctive indicator of the origin of the New York Mercantile Exchange Services and as a symbol of Opposer’s valuable goodwill.

5. Since long prior to the filing date of Application Serial No. 78/574,496, and since long prior to any first use date that Applicant may claim, the New York Mercantile Exchange

Marks have become particularly well known in the relevant trade through extensive advertising and promotion in commerce in connection with the provision of the New York Mercantile Exchange Services.

6. Opposer has made substantial expenditures in advertising and promoting the New York Mercantile Exchange Marks over a period of over 100 years and, thus, the New York Mercantile Exchange Marks have become well known and famous among purchasers as a distinctive indicator of the origin of the goods and services offered by Opposer.

7. Notwithstanding Opposer's prior established rights in and to the New York Mercantile Exchange Marks, Applicant filed an application with the United States Patent and Trademark Office to register the mark NEW YORK CLIMATE EXCHANGE (Ser. No. 78/574,496) for "commodity exchange services, namely, dioxide and other greenhouse gas emissions exchange services that facilitate the trading or sale of carbon dioxide and other greenhouse gas emissions allowances and offsets between business and other market participants," in International Class 36.

8. Upon information and belief, Applicant made no use of its alleged mark prior to the filing date of its application.

9. Upon information and belief, Applicant had constructive knowledge of, knew, or had reason to know of Opposer's prior rights in the New York Mercantile Exchange Marks when Applicant filed its application.

10. Opposer has not authorized any use or application for registration of NEW YORK CLIMATE EXCHANGE by Applicant.

Count I - Likelihood of Confusion - §2(d)

11. The mark which Applicant seeks to register is identical to or so closely resembles the New York Mercantile Exchange Marks that the use and registration thereof is likely to cause confusion, mistake and/or deception as to the source or origin of Applicant's services in violation of Section 2(d) of the Trademark Act, and will injure and damage Opposer and the goodwill and reputation symbolized by the New York Mercantile Exchange Marks.

12. The services of Opposer and Applicant are identical or so closely related that the public is likely to be confused, to be deceived, or to assume erroneously that Applicant's services are those offered by Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all to Opposer's irreparable damage.

13. Likelihood of confusion is enhanced because the New York Mercantile Exchange Marks are strong, famous, well-known, and entitled to a broad scope of protection.

14. Likelihood of confusion is enhanced by the fact that the New York Mercantile Exchange Services and Applicant's services will likely be offered and distributed through the same trade channels to the same classes of prospective purchasers.

15. Likelihood of confusion is enhanced by the fact that the parties will likely advertise their services in the same or similar types of media.

16. Likelihood of confusion in this case is enhanced by the fame of the New York Mercantile Exchange Marks and by the fact that consumers of the relevant services will associate Applicant's alleged mark with services provided, approved, or endorsed by Opposer.

17. Applicant is not affiliated or connected with Opposer and has not been endorsed or sponsored by Opposer, nor has Opposer approved any of the services offered or provided or intended to be provided by Applicant under its alleged mark.

Count II - Likelihood of Deception/False Suggestion of Connection - Section 2(a)

18. Applicant's alleged mark so closely resembles the New York Mercantile Exchange Marks that Applicant's alleged mark is likely to cause deception in violation of Section 2(a) of the Trademark Act in that the mark misdescribes the nature or origin of the services, purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' decisions to acquire Applicant's services.

19. Applicant's alleged mark so closely resembles the New York Mercantile Exchange Marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will assume that services offered under Applicant's alleged mark are connected with Opposer.

20. When Applicant's alleged mark is used in connection with the services of the type described in its application, said mark will cause purchasers to mistakenly assume that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's services by permitting Applicant's alleged mark to be used in connection with such services.

21. Applicant's alleged mark is deceptive in that it falsely suggests a connection with, or approval by, Opposer.

22. Use and registration of Applicant's alleged mark will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

Count III - Dilution - §43(c)

23. For many years, many of Opposer's New York Mercantile Exchange Marks, including, but not limited to NEW YORK MERCANTILE EXCHANGE, Reg. No. 1,775,460; NEW YORK MERCANTILE EXCHANGE, Reg. No. 1,847,455; and NEW YORK MERCANTILE EXCHANGE, Reg. No. 2,713,052, have been widely used and extensively advertised in the United States and internationally, and therefore, these New York Mercantile Exchange Marks have become well known and famous as a distinctive symbol of Opposer's goodwill.

24. Opposer's famous New York Mercantile Exchange Marks became well known and famous before Applicant made any use of or applied for registration of the alleged NEW YORK CLIMATE EXCHANGE mark.

25. Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's famous New York Mercantile Exchange Marks.

26. Use and registration of Applicant's alleged mark will lessen the capacity of Opposer's famous New York Mercantile Exchange Marks to identify and distinguish Opposer's services.

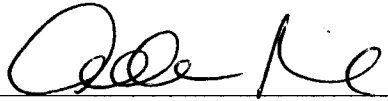
27. Use and registration of Applicant's alleged mark will tarnish the goodwill symbolized by Opposer's famous New York Mercantile Exchange Marks.

28. Use and registration of Applicant's alleged mark will cause dilution by blurring, thus diluting or weakening the unique and distinctive significance of Opposer's famous New York Mercantile Exchange Marks to identify and distinguish one source.

29. By reason of all of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

NEW YORK MERCANTILE EXCHANGE, INC.

By  _____

David C. Gryce
Adam D. Resnick
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6000

Date: 4/11/06

Attorneys for Opposer

EXHIBIT A



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Typed Drawing

Word Mark	NEW YORK MERCANTILE EXCHANGE
Goods and Services	IC 036. US 101 102. G & S: operation of an exchange market for trading in commodity futures and options contracts. FIRST USE: 18820605. FIRST USE IN COMMERCE: 18820605
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	74219609
Filing Date	November 7, 1991
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	March 16, 1993
Registration Number	1775460
Registration Date	June 8, 1993
Owner	(REGISTRANT) NEW YORK MERCANTILE EXCHANGE CORPORATION NEW YORK Four World Trade Center New York NEW YORK 10048 (LAST LISTED OWNER) NEW YORK MERCANTILE EXCHANGE, INC. CORPORATION BY MERGER DELAWARE ONE NORTH END AVE WORLD FINANCIAL CENTER NEW YORK NEW YORK 10282
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	DAVID C GRyce
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXCHANGE" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL-2(F)-IN PART
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030713.
Renewal	1ST RENEWAL 20030713

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Distinctiveness
Limitation Statement as to "NEW YORK MERCANTILE"

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Typed Drawing

Word Mark NEW YORK MERCANTILE EXCHANGE
Goods and Services IC 036. US 100 101 102. G & S: commodity futures and options contract trading for others; namely, order entry and trade matching system for trading of futures and options on futures by means of computer. FIRST USE: 18820605. FIRST USE IN COMMERCE: 18820605
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74217665
Filing Date November 1, 1991
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition June 8, 1993
Registration Number 1847455
Registration Date July 26, 1994
Owner (REGISTRANT) NEW YORK MERCANTILE EXCHANGE CORPORATION NEW YORK ONE NORTH END AVENUE WORLD FINANCIAL CENTER New York NEW YORK 10282
 (LAST LISTED OWNER) NEW YORK MERCANTILE EXCHANGE, INC. CORPORATION DELAWARE ONE NORTH END AVENUE NEW YORK NEW YORK 10282
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record David C. Gryce
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXCHANGE" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)-IN PART
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040608.
Renewal 1ST RENEWAL 20040608

Live/Dead Indicator LIVE

Distinctiveness
Limitation Statement as to "NEW YORK MERCANTILE"

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Typed Drawing

Word Mark NEW YORK MERCANTILE EXCHANGE ACCESS
Goods and Services IC 036. US 100 101 102. G & S: commodity futures and options contract trading for others; namely, order entry and trade matching system for trading of futures and options on futures by means of computer. FIRST USE: 19930600. FIRST USE IN COMMERCE: 19930600
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74273361
Filing Date May 8, 1992
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 23, 1993
Registration Number 1832417
Registration Date April 19, 1994
Owner (REGISTRANT) New York Mercantile Exchange CORPORATION NEW YORK ONE NORTH END AVENUE, WORLD FINANCIAL CENTER New York NEW YORK 10282
 (LAST LISTED OWNER) New York Mercantile Exchange, Inc. CORPORATION DELAWARE World Financial Center One North End Avenue New York NEW YORK 102821101
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record DAVID C. GRyce
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXCHANGE" and "ACCESS" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)-IN PART
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20041121.
Renewal 1ST RENEWAL 20041121

Live/Dead Indicator LIVE

Distinctiveness

Limitation Statement as to "NEW YORK MERCANTILE"

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Typed Drawing

Word Mark **NEW YORK MERCANTILE EXCHANGE**

Goods and Services IC 036. US 100 101 102. G & S: Providing information on settlement prices, trading prices, bid and ask prices, price ranges, volume data, and other market data on commodity futures contracts and options on commodity futures contracts. FIRST USE: 18820605. FIRST USE IN COMMERCE: 18820605

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 76370901

Filing Date February 13, 2002

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition February 11, 2003

Registration Number 2713052

Registration Date May 6, 2003

Owner (REGISTRANT) New York Mercantile Exchange, Inc. CORPORATION DELAWARE One North End Avenue World Financial Center New York NEW YORK 102821101

Attorney of Record Michael K. Bosworth

Prior Registrations 1775460;1832417;1847455

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXCHANGE" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead
Indicator LIVE

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Typed Drawing

Word Mark	NEW YORK MERCANTILE EXCHANGE CLEARPORT
Goods and Services	IC 009. US 021 023 026 036 038. G & S: COMPUTER SOFTWARE FOR USE IN TRADING, CLEARING, CONFIRMATION, AND OTHER RELATED SERVICES FOR EXCHANGE MARKET TRANSACTIONS IN THE FIELD OF COMMODITY FUTURES AND OTHER DERIVATIVES CONTRACTS. FIRST USE: 20030114. FIRST USE IN COMMERCE: 20030116
	IC 036. US 100 101 102. G & S: PROVIDING ELECTRONIC ONLINE EXCHANGE MARKETS FOR TRADING, CLEARING, CONFIRMING TRANSACTIONS, AND OTHER RELATED SERVICES IN THE FIELD OF COMMODITY FUTURES AND OTHER DERIVATIVES CONTRACTS. FIRST USE: 20030114 FIRST USE IN COMMERCE: 20030116
	IC 042. US 100 101. G & S: PROVIDING TEMPORARY ON-LINE USE OF NON-DOWNLOADABLE SOFTWARE FOR TRADING, CLEARING, CONFIRMATION, AND OTHER RELATED SERVICES FOR EXCHANGE MARKET TRANSACTIONS IN THE FIELD OF COMMODITY FUTURES AND OTHER DERIVATIVES CONTRACTS. FIRST USE: 20030114. FIRST USE IN COMMERCE: 20030116
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76505424
Filing Date	April 9, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	February 1, 2005
Registration Number	2943346

Registration Date April 26, 2005
Owner (REGISTRANT) New York Mercantile Exchange, Inc. CORPORATION DELAWARE One North End Avenue, World Financial Center New York NEW YORK 102821101
Attorney of Record David C. Gryce
Prior Registrations 1775460;1832417;1847455;2713052;AND OTHERS
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Register PRINCIPAL-2(F)-IN PART
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Distinctiveness Limitation Statement as to "NEW YORK MERCANTILE"

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