

ESTTA Tracking number: **ESTTA145786**

Filing date: **06/13/2007**

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	SNOCAP, INC.
Granted to Date of previous extension	06/13/2007
Address	201 Third Street, 2nd Floor San Francisco, CA 94103 UNITED STATES

Attorney information	Martin R. Greenstein TechMark a Law Corporation 4820 Harwood Road, 2nd Floor San Jose, CA 95124-5273 UNITED STATES MRG@TechMark.com, MPV@TechMark.com Phone:408-266-4700
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Applicant Information

Application No	78853849	Publication date	02/13/2007
Opposition Filing Date	06/13/2007	Opposition Period Ends	06/13/2007
Applicant	Meagher, Todd 2101 Legacy Court Keller, TX 76248 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Advertising and information distribution services, namely, providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	MyStore-78853849-NoticeOppo.pdf (4 pages)(16661 bytes)
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Signature	/Martin R Greenstein/
Name	Martin R. Greenstein
Date	06/13/2007

CERTIFICATE OF ELECTRONIC FILING AND
STANDBY AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

I hereby certify that this opposition is being filed with the TTAB via ESTTA on the date set forth below, and the the \$300 per class statutory filing fee paid. Please charge any deficiency or any additional fees in connection with this Opposition to TechMark's PTO Deposit Account No. 20-0330.

Date: June 13, 2007

/Martin R Greenstein/
Martin R. Greenstein

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

IN THE MATTER OF Appln. Ser. No. 78/853,849 for the trademark mystore (stylized) in Class 35, filed April 4, 2006, and published in the Official Gazette of February 13, 2007

SNOCAP, Inc.)	
Opposer,)	Opposition No.
v.)	
)	
Todd MEAGHER)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

SNOCAP, Inc., a Delaware corporation, with its principal place of business at 201 Third Street, 2nd Floor, San Francisco, CA 94103, (hereafter "Opposer" or "SNOCAP") believes it is or will be damaged by registration on the Principal Register of the mark mystore (stylized) as shown Appln. Ser. No. 78/853,849 and hereby opposes the same.

As grounds of opposition it is alleged that:

1. Opposer SNOCAP is now and has for many years been engaged in the development, marketing, advertising, distribution and sale of downloadable music and digital entertainment. As part of Opposer's activities, Opposer SNOCAP provides facilities, website space, web pages and software and related e-commerce services and facilities, all of which allow individual, groups and bands to create, maintain and sell downloadable music and other digital entertainment files from personalized online shopping sites or stores known descriptively as "my stores" or "mystores". Each such party can set up and conduct business using his or her personalized online store, which the user then identifies as "my store" or mystore, together with his or her name and/or the name of the band or group (if desired).

2. Opposer SNOCAP's website FAQ (Frequently Asked Questions) page has specific instructions explaining to the user how to "Set Up My Store", and because the use of "My Store" and MyStore is so common in the online industry, Opposer is careful to specify that the user is creating an individualized SNOCAP store personal to that user, or a SNOCAP My Store (or a SNOCAP MyStore).

3. Todd Meagher, Applicant herein, filed Appln. No. 78/853,849 on April 4, 2006, claiming a bona fide intent to use the alleged trademark mystore (stylized) in commerce on the services set forth in said application.

4. As more fully explained herein, the alleged mark mystore (stylized) is merely descriptive of the services for which registration is sought and is therefore not registrable.

5. In the alternative, as more fully explained herein, the alleged mark mystore (stylized) is a generic term identifying personal online stores, and is therefore not registerable. .

6. The alleged mark mystore (stylized) is merely descriptive of a personal, online website or "store" at which products or services can be obtained or other business conducted.

7. The use of the alleged mark mystore (stylized) in this way is no different than uses identifying other personal online sites, domains or features, such as "my email", "my website", "my homepage", "my blog" etc - all such uses being nothing more than the personal, descriptive adjective "my" modifying a generic or totally descriptive, common online term.

8. One company promoting "mystore" online personal web stores (yourStores, LLC at <http://www.mystore.com>) uses the descriptive slogans and tag lines:

"It's YOUR store at MyStore.com", and

"Open your own mystore FREE in minutes",

and the personalized online "mystores" include VIP Stores, Band Stores and other types of personal stores. Other descriptive phrases and uses in the text of their website include:

"Tell Us About Your Store"

“Name your store something like ...” and other similar phrases.

Further emphasizing the personal nature of the individual stores, the terms and conditions on these sites say:

The All stores are independently managed by store owners. Store items and content are the responsibility of individual store operators.

In addition, the words “My” and “Store” are typically used in different colors, offset from each other, and creating the separate and distinct image of “My Store”.

9. A representative sampling of some of the scores and scores of other common, descriptive uses of mystore and mystore.com by 3rd parties include the sites at:

<http://www.mystore.cc/>

<http://www.startmystore.com/>

<http://mystore.24hourfitness.com/>

<http://www.mystore-solutions.com/>

<http://www.shopping-carts.com.au/>

<http://www.rareplay.com/index.php?page=MyStore>

<http://jca.com/software/other/mystore.html>

<http://www.quiltershome.com/mystore.htm>

10. On information and belief, Applicant Todd Meagher has not made any actual commercial or bona fide trademark use of the alleged mark mystore (stylized) in commerce or otherwise prior to the April 4, 2006 filing date of Appln. No. 78/853,849 on the services set forth therein, or on or in connection with closely related goods or services.

11. On information and belief, Applicant, Todd Meagher, did not have at the time of filing a bona fide intent to use the alleged mark mystore (stylized) on or in connection with some or all of the goods and services set forth in Appln. No. 78/853,849.

12. On information and belief, Applicant, Todd Meagher, did not have at the time of filing a bona fide intent to use the known descriptive term/phrase “my store” or “mystore” in a trademark sense, and intended to use it, and has used it (if at all) only descriptively.

13. Registration of a descriptive or generic term will deprive Opposer and others similarly situated of the right to free and unfettered use of that term in their business, thereby damaging Opposer.

Wherefore, Opposer SNOCAP requests that registration of the mark sought to be registered herein, mystore (stylized), Appln. No. 78/853,849, be denied and that this opposition be sustained.

The sum of \$300 (per class) for the statutory fee for this Notice of Opposition has been paid at the time of filing. Any deficiency or shortfall, or any additional fees in connection with this opposition at any time should be charged to TechMark’s PTO Deposit Account No. 20-0330.

Please recognize Martin R. Greenstein, Neil D. Greenstein, and Lee D. Green, members in good standing of the Bar of the State of California, c/o TechMark, 4820 Harwood Road, 2nd Floor, San Jose, California 95124-5273, Tel: 408-266-4700, as Opposer's attorneys in connection with this opposition proceeding. All correspondence should be directed to Martin R. Greenstein.

SNOCAP, Inc.
By /Martin R Greenstein/
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Dated: June 13, 2007