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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	M2 SOFTWARE, INC.
Granted to Date of previous extension	10/28/2007
Address	1247 LINCOLN BLVD.SUITE 456 SANTA MONICA, CA 90401 UNITED STATES

Correspondence information	M2 SOFTWARE, INC. 1247 LINCOLN BLVD.SUITE 456 SANTA MONICA, CA 90401 UNITED STATES m2@compuserve.com

Applicant Information

Application No	78775369	Publication date	05/01/2007
Opposition Filing Date	10/26/2007	Opposition Period Ends	10/28/2007
Applicant	Marcel Media, LLC 445 West Erie Street, Suite 211 Chicago, IL 60610 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2003/03/26 First Use In Commerce: 2003/03/26 All goods and services in the class are opposed, namely: Internet marketing services; Internet advertising strategy services, and Internet advertising consulting services; and search engine marketing services, namely, advising others regarding search engine optimization strategies and sponsored link campaigns
Class 042. First Use: 2003/03/26 First Use In Commerce: 2003/03/26 All goods and services in the class are opposed, namely: Consulting others regarding Internet website management and maintenance; website design and development services; website hosting services; and website management services, namely, managing sponsored link campaigns and managing search engine optimization campaigns

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Torres v. Cantine Torresella S.r.l.Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1931182	Application Date	08/30/1994
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	M2		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1991/10/23 First Use In Commerce: 1992/01/10 computer software featuring business management applications for the film and music industries; and interactive multimedia applications for entertainment, education and information, in the nature of artists' performances and biographical information from the film and music industries; and instructions and information for playing musical instruments		

Attachments	M2MARCEL - Notice of Opposition ascii.txt (2 pages)(3323 bytes)

Signature	/de/
Name	M2 SOFTWARE, INC.
Date	10/26/2007

1.) The "M2" mark is owned by M2 Software, Inc. ("M2 Software") for related goods and services as a trademark, service mark, trade name, and corporate name. M2 Software's mark is federally registered with the United States Patent and Trademark Office as Registration No. 1,931,182.

M2 Software's registration is valid and has not been abandoned, and has been deemed incontestable pursuant to 15 U.S.C. ? 1065. There is an inevitable likelihood of confusion as to the source, affiliation, or sponsorship of products and services the applicant seeks to market using a mark that consists of comprises M2 Software's "M2" trademark as its primary graphical symbol.

2.) M2 Software has invested a substantial amount of time, money, an d effort in the development, promotion, and federal registration of the "M2" trademark, service mark, trade name, and corporate name. The business of M2 Software could be irreversibly damaged by the federal registration of the Applicant's newcomer mark that consists of or comprises M2 Software's "M2" trademark.

3.) M2 Software uses its "M2" as a trademark, service mark, corporat e name, and trade name. M2 Software's use of its distinctive mark includes the use identified in Registration No. 1,931,182, including web development and design and consulting services in fields that directly compete with the new Applicant who seeks to use M2 Software's trademark as the new Applicant's primary graphical symbol.

4.) The contemplated registration of Applicant's use of M2 Software' s "M2" trademark as its primary graphical symbol would cause irreversible damage to M2 Software and would diminish the intended value of federal registration under the provisions of the Lanham Act.

5.) The contemplated registration for a mark consisting of or comprising M2 Software's "M2" trademark in an identical or closely-related field would be inconsistent with M2 Software's prior federal rights in its "M2" trademark and "M2" trade name established under common law, would be inconsistent with M2 Software's statutory grant of exclusivity of use of its registered and incontestable "M2" trademark, and would be destructive of M2 Software's substantial investment and goodwill built in its "M2" trademark and trade name over the past 16 years.

6.) The Applicant's use of its house mark "Marcel Media" in the applied-for mark alongside the "M2" trademark owned by M2 Software does not prevent confusion but exacerbates it in that the trade and market may come to believe that M2 Software's "M2" trademark and Marcel Media are somehow associated or otherwise connected.

7.) Federal registration is barred under Section 2(d) because the applied-for mark "consists of or comprises" an "M2" symbol that "so resembles" M2 Software's senior registered "M2" trademark and trade name as to be likely to cause confusion. 15 U.S.C. ? 1052(d).

8.) On information and belief, Applicant was aware of M2 Software's senior use and ownership of the "M2" trademark and trade name at the time of its application. Nonetheless, Applicant submitted under sworn declaration that "to the best of his/her knowledge and belief no other * * * corporation has the right to use the mark in commerce." See TMEP

? 804.02. Applicant’s application must be denied on the additional grounds of fraud.