

ESTTA Tracking number: **ESTTA197366**

Filing date: **03/10/2008**

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	Cirrus System, LLC
Granted to Date of previous extension	03/09/2008
Address	2000 Purchase Street Purchase, NY 10577-2509 UNITED STATES
Attorney information	Robert M. Wasnofski, Jr., Esq. Dorsey & Whitney LLP 250 Park Avenue, 15th Floor New York, NY 10177 UNITED STATES ny.trademark@dorsey.com, wasnofski.robert@dorsey.com, mitrione.gianfranco@dorsey.com Phone:(212) 415-9200

Applicant Information

Application No	77056906	Publication date	09/11/2007
Opposition Filing Date	03/10/2008	Opposition Period Ends	03/09/2008
Applicant	Cyrus Capital Partners, L.P. 399 Park Avenue New York, NY 10022 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2005/01/01 First Use In Commerce: 2005/01/01 All goods and services in the class are opposed, namely: Funds investment

Applicant Information

Application No	78918559	Publication date	10/23/2007
Opposition Filing Date	03/10/2008	Opposition Period Ends	
Applicant	Cyrus Capital Partners, L.P. 399 Park Avenue New York, NY 10022 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2005/01/01 First Use In Commerce: 2005/01/01 All goods and services in the class are opposed, namely: Funds investment

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1259615	Application Date	03/03/1982
Registration Date	11/29/1983	Foreign Priority Date	NONE
Word Mark	CIRRUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1982/02/12 First Use In Commerce: 1982/02/12 Banking Services-Namely, Providing Automatic Teller Services		

U.S. Registration No.	1298026	Application Date	11/29/1982
Registration Date	09/25/1984	Foreign Priority Date	NONE
Word Mark	CIRRUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1982/08/04 First Use In Commerce: 1982/08/04 Banking Services-Namely, Providing Automatic Teller Services		

Attachments	73404146#TMSN.gif (1 page)(bytes) 77056906 and 78918559 Notice of Opposition.pdf (8 pages)(196507 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rmw/
Name	Robert M. Wasnofski, Jr., Esq.
Date	03/10/2008

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

IN THE MATTER OF APPLICATIONS

Mark: CYRUS Applicant: Cyrus Capital Partners, L.P. Serial No.: 77/056,906 Filed: December 5, 2006 Published in the <u>Official Gazette</u> : September 11, 2007	Mark: CYRUS CAPITAL Applicant: Cyrus Capital Partners, L.P. Serial No.: 78/918,559 Filed: June 28, 2006 Published in the <u>Official Gazette</u> : October 23, 2007
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CIRRUS SYSTEM, LLC, :

Opposer, :

v. :

Cyrus Capital Partners, L.P., :

Applicant. :

_____ X

Opposition No. ____,__

NOTICE OF OPPOSITION

Cirrus System, LLC, a Delaware limited liability company, located and doing business at 2000 Purchase Street, New York 10577-2509 (hereinafter referred to as “Opposer”), believes that it will be damaged by the registration of application Serial Nos. 77/056,906 and 78/918,559 filed on December 5, 2006 and June 28, 2006, respectively, by Cyrus Capital Partners, L.P. (hereinafter referred to as “Applicant”) for the mark CYRUS (“Alleged Mark”) covering “funds investment” in International Class 36 and, having previously been granted extensions of time to oppose each, hereby opposes same.

The specific grounds for this opposition are as follows:

1. Opposer, an indirect, wholly-owned subsidiary of MasterCard International Incorporated (“MasterCard”), operates within the banking and financial services industry and provides, inter alia, banking services, debit card services, cash disbursement, automatic teller machine (“ATM”) services and electronic funds transfer services. Opposer and its corporate affiliates have been in the banking and financial services industry for over twenty (20) years and have become well and favorably known not only among members of that community, but among the public at large.

2. The CIRRUS trademark is used by Opposer, its parent corporation MasterCard, and other licensed financial institutions in connection with the world’s leading ATM and debit card program. Opposer has used the CIRRUS mark in connection with banking and ATM services since at least as early as February 1982. Use of the mark CIRRUS has been continuous since the dates of first use and said mark has not been abandoned. The mark CIRRUS appears on more than one hundred and fifty million debit cards in the United States (nearly five hundred million worldwide), which are accepted at nearly four hundred thousand ATM’s in the United States (over one million worldwide). Millions of transactions have been conducted in the United States and worldwide annually using a debit card bearing the mark CIRRUS. Over the years, significant sums have been spent in marketing and promoting the mark CIRRUS.

3. In addition to its common law rights in and to the mark CIRRUS, Opposer is the owner of United States Service Mark Registration No. 1,259,615 for CIRRUS and Registration No. 1,298,026 for CIRRUS & Design, both covering “banking services-namely, providing automatic teller services” in Class 36. These registrations are valid and subsisting, uncanceled and unrevoked, and incontestable pursuant to 15 U.S.C. § 1065. Copies of the Certificates of Registration for each are attached hereto as Exhibit A. Though the Certificates of

Registration identify the owner thereof as Cirrus System, Inc., through a valid transfer of ownership, the registrations are now owned by Opposer.

4. Opposer's mark CIRRUS has been used and become famous throughout the United States in connection with Opposer's financial services and related products and services since long prior to the filing date of the opposed applications and, upon information and belief, any use of the Alleged Marks by Applicant. As a result of extensive usage, consumers have come to associate the mark CIRRUS with Opposer.

5. By the applications opposed herein, Applicant seeks to register the Alleged Marks for "funds investment" in International Class 36.

6. Applicant's Alleged Marks so resemble Opposer's previously used and registered mark, CIRRUS, as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, or to deceive, with consequent injury to Opposer and the public.

7. Specifically, and without limitation, the marketing and sale of Applicant's aforementioned services under the Alleged Marks is likely to cause consumers to believe that Applicant's services are those of Opposer, that Applicant's services are associated with the products and services of Opposer, and/or that Applicant is somehow related to or sponsored by Opposer. Accordingly, Applicant's Alleged Marks are not entitled to registration pursuant to 15 U.S.C. §1052(d).

8. Further, registration of Applicant's Alleged Marks is likely to cause dilution by blurring or dilution by tarnishment of the Opposer's famous and distinctive mark, CIRRUS, in violation of 15 U.S.C. §§ 1125(c) and 1052(f).

9. Opposer will be damaged by the registrations sought by Applicant within the meaning of 15 U.S.C. §1063 because such registrations would support and assist Applicant in

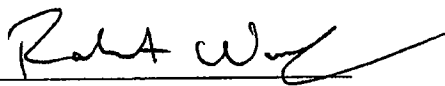
the confusing, misleading and dilutive use of Applicant's Alleged Marks and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained and that the registrations sought by Applicant be denied.

Respectfully submitted,
DORSEY & WHITNEY LLP

Dated: March 10, 2008

By:


Robert M. Wasnofski, Jr.
Gianfranco G. Mitrione
250 Park Avenue
New York, NY 10177
(212) 415-9200

Attorneys for Opposer

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

IN THE MATTER OF APPLICATIONS

Mark:	CYRUS	Mark:	CYRUS CAPITAL
Applicant:	Cyrus Capital Partners, L.P.	Applicant:	Cyrus Capital Partners, L.P.
Serial No.:	77/056,906	Serial No.:	78/918,559
Filed:	December 5, 2006	Filed:	June 28, 2006
Published in the Official Gazette :	September 11, 2007	Published in the Official Gazette :	October 23, 2007

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CIRRUS SYSTEM, LLC, :

Opposer, :

v. :

CYRUS CAPITAL PARTNERS, L.P., :

Applicant. :

_____ X

Opposition No. ____,__

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition is being served upon the "Attorney of Record" for Applicant by mailing a true copy thereof by first class mail, postage prepaid, addressed to:

David O. Johanson, Esq.
Bingham McCutchen LLP
150 Federal Street
Boston MA 02110

on March 10, 2008.



Gianfranco G. Mittrione

EXHIBIT A

Int. Cl.: 36

Prior U.S. Cl.: 102

United States Patent and Trademark Office

Amended

Reg. No. 1,259,615

Registered Nov. 29, 1983

OG Date Jan. 14, 2003

SERVICE MARK
PRINCIPAL REGISTER

CIRRUS

CIRRUS SYSTEM, INC. (TEXAS CORPORATION)
2000 PURCHASE STREET
PURCHASE, NY 105772509, ASSIGNEE OF
CIRRUS SYSTEM, INC. (TEXAS CORPORATION) PURCHASE, NY

FOR: BANKING SERVICES—
NAMELY, PROVIDING AUTOMATIC
TELLER SERVICES, IN CLASS 36 (U.S.
CL. 102).
FIRST USE 2-12-1982; IN COMMERCE
2-12-1982.
SER. NO. 73-352,494, FILED 3-3-1982.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Jan. 14, 2003.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Int. Cl.: 36

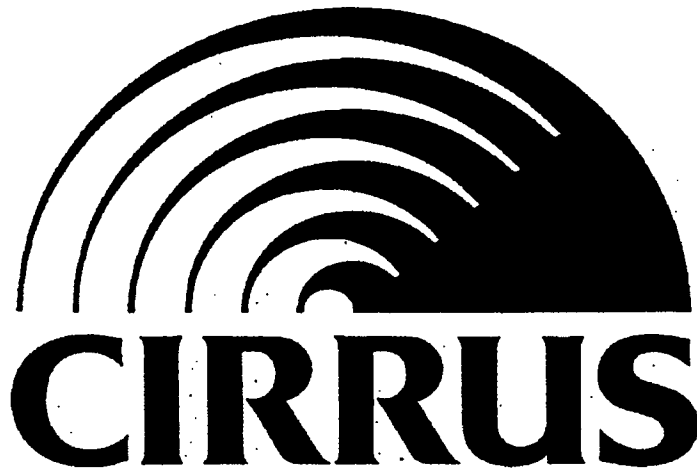
Prior U.S. Cl.: 102

United States Patent and Trademark Office

Reg. No. 1,298,026

Registered Sep. 25, 1984

SERVICE MARK
Principal Register



Cirrus System, Inc. (Texas corporation)
1900 Spring Rd.
Oak Brook, Ill. 60521

For: **BANKING SERVICES—NAMELY, PROVIDING AUTOMATIC TELLER SERVICES, in CLASS 36 (U.S. Cl. 102).**

First use Aug. 4, 1982; in commerce Aug. 4, 1982.
Owner of U.S. Reg. No. 1,259,615.

Ser. No. 404,146, filed Nov. 29, 1982.

DOMINICK J. SALEMI, Examiner