

ESTTA Tracking number: **ESTTA210726**

Filing date: **05/12/2008**

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	Home Box Office, Inc.
Granted to Date of previous extension	05/11/2008
Address	1100 Avenue of the Americas New York, NY 10036 UNITED STATES

Attorney information	Douglas N. Masters LOEB & LOEB LLP 321 N. Clark St., Suite 2300 Chicago, IL 60610 UNITED STATES chicagopto@loeb.com, dmasters@loeb.com, sceresnie@loeb.com, aocasio@loeb.com Phone:312-464-3100
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Applicant Information

Application No	77029527	Publication date	11/13/2007
Opposition Filing Date	05/12/2008	Opposition Period Ends	05/11/2008
Applicant	Velocity International, Inc. 24th Floor Dominion Tower 625 Liberty Avenue Pittsburgh, PA 15222 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2006/08/01 First Use In Commerce: 2006/08/01 All goods and services in the class are opposed, namely: Entertainment services, namely, providing a digital theater environment in private clubs, restaurants, hotel banquet facilities and convention center banquet facilities; Audio and Visual Musical Performances; Entertainment namely, production of Audio and Visual Musical, Dramatic and Comedy Performances; Entertainment namely, production of Audio and Visual Musical, Dramatic and Comedy Related Performances
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Applicant Information

Application No	77029525	Publication date	11/13/2007
Opposition Filing Date	05/12/2008	Opposition Period Ends	
Applicant	Velocity International, Inc. 24th Floor Dominion Tower 625 Liberty Avenue Pittsburgh, PA 15222 UNITED STATES		

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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1018960	Application Date	10/10/1973
Registration Date	08/26/1975	Foreign Priority Date	NONE
Word Mark	HOME BOX OFFICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1972/11/08 First Use In Commerce: 1972/11/08 SUPPLYING AND DISTRIBUTING PROGRAMS TO CABLE TELEVISION AND/OR MASTER ANTENNA SYSTEMS		

U.S. Registration No.	1307806	Application Date	11/14/1983
Registration Date	12/04/1984	Foreign Priority Date	NONE
Word Mark	HOME BOX OFFICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1982/03/22 First Use In Commerce: 1982/03/22 Cinematographic Films, Videotapes and Video Cassettes		

U.S. Registration No.	1748977	Application Date	05/18/1992
Registration Date	01/26/1993	Foreign Priority Date	NONE
Word Mark	HOME BOX OFFICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1972/11/08 First Use In Commerce: 1972/11/08 premium or pay television services		

Attachments	VIRTUAL BOX OFFICE Consolidated Not of Opposition.pdf (5 pages)(39180
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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	/Sharon A. Ceresnie/
Name	Sharon A. Ceresnie
Date	05/12/2008

As grounds for this opposition, Opposer alleges:

1. Opposer operates well-known and widely distributed premium television channels, and produces and distributes critically acclaimed original television series and films.

2. Since long prior to the August 1, 2006 date of first use claimed in Applicant's Application Serial Nos. 77/029,527 and 77/029,525, Opposer has extensively marketed, distributed and sold its premium cable television services, original programming, as well as ancillary goods and services, under the mark HOME BOX OFFICE (the "HOME BOX OFFICE Mark").

3. Opposer owns registrations and applications for the HOME BOX OFFICE Mark for entertainment services including premium or pay television and related services, with the United States Patent and Trademark Office ("PTO"). Opposer's registrations include:

<u>TRADEMARK</u>	<u>GOODS/SERVICES</u>	<u>REG. NO.</u>
HOME BOX OFFICE	Premium or pay television services	1,748,977
HOME BOX OFFICE	Cinematographic Films; Videotapes and Video Cassettes	1,307,806
HOME BOX OFFICE	Supplying and distributing programs to cable television and/or master antenna systems	1,018,960

The registrations are valid, subsisting, and owned by Opposer. These registrations are also incontestable pursuant to 15 U.S.C. §§1064 and 1115(b).

4. Opposer has generated substantial revenue from its HOME BOX OFFICE services, with millions of subscribers in the United States.

5. Opposer has spent substantial amounts of money on advertising and promoting its HOME BOX OFFICE Mark throughout the United States.

6. By virtue of the popularity of Opposer's services offered or sold in connection with the HOME BOX OFFICE Mark, and its advertising and promotion of the HOME BOX OFFICE Mark, Opposer has built up and now owns an extremely valuable goodwill which is symbolized by its HOME BOX OFFICE Mark.

7. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of the marks VIRTUAL BOX OFFICE or VIRTUAL BOX OFFICE & Design in commerce in the United States prior to the August 1, 2006, date of first use identified in Application Serial Nos. 77/029,527 and 77/029,525.

8. Applicant's use of the marks VIRTUAL BOX OFFICE and VIRTUAL BOX OFFICE & Design for "Entertainment services, namely providing a digital theater environment in private clubs, restaurants, hotel banquet facilities and convention center banquet facilities; Audio and Visual Musical Performances; Entertainment namely, production of Audio and Visual Musical, Dramatic and Comedy Performances; Entertainment namely, production of Audio and Visual Musical, Dramatic and Comedy Related Performances" International Class 41 ("Applicant's Services") is without Opposer's consent or permission.

9. Applicant's use of VIRTUAL BOX OFFICE and VIRTUAL BOX OFFICE & Design for Applicant's Services is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant's Services are Opposer's services or the services of a person or company that is sponsored, authorized or licensed by, or in some other way legitimately connected with, Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial Nos. 77/029,527 and 77/029,525 be denied registration.

Because the subject matter of the oppositions to Application Serial Nos. 77/029,527 and 77/029,525 is the same, and to avoid inconsistent results, Opposer asks that the oppositions to Application Serial Nos. 77/029,527 and 77/029,525 be consolidated in this one action.

Please debit our Deposit Account No. 502876 for the \$600 filing fee and for any additional necessary fees.

Please address all correspondence to Douglas N. Masters, Esq., Loeb & Loeb LLP, 321 N. Clark Street, Suite 2300, Chicago, Illinois 60610.

Date: May 12, 2008

LOEB & LOEB LLP

By: /s/ Sharon A. Ceresnie
Douglas N. Masters
Sharon A. Ceresnie
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Chicago, Illinois 60610
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*Attorneys for Opposer
Home Box Office, Inc.*

CERTIFICATE OF SERVICE

I, Sharon A. Ceresnie, hereby certify that a copy of this CONSOLIDATED NOTICE
OF OPPOSITION has been served upon:

BLYNN L. SHIDELER
THE BLK LAW GROUP
3500 BROOKTREE RD STE 200
WEXFORD, PA 15090-9277

first class mail, postage prepaid, on this 12th day of May, 2008.

/s/ Sharon A. Ceresnie