

ESTTA Tracking number: **ESTTA270154**

Filing date: **03/04/2009**

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	Yap Inc.
Granted to Date of previous extension	03/04/2009
Address	1930 Camden Avenue Suite 2040 Charlotte, NC 28203 UNITED STATES

Attorney information	Holly A. Coldiron Hutchison Law Group PLLC 5410 Trinity Road Suite 400 Raleigh, NC 27607 UNITED STATES hcoldiron@hutchlaw.com, fhatcher@hutchlaw.com Phone:9198299600
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Applicant Information

Application No	77489881	Publication date	11/04/2008
Opposition Filing Date	03/04/2009	Opposition Period Ends	03/04/2009
Applicant	MPOWER Mobile, Inc. 401 Congress Ave. , Ste. 2740 Austin, TX 78701 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: financial services, namely, banking services provided by mobile telephone connections, electronic debit and credit card services, electronic fund transfer, electronic fund transfer provided by mobile telephone services, financial services in the nature of remote check deposit services, bill payment services, currency exchange services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3396272	Application Date	04/04/2006
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Registration Date	03/11/2008	Foreign Priority Date	NONE
Word Mark	YAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2007/08/23 First Use In Commerce: 2007/08/23 Software to allow voice and visual enabled text, chat, instant and email messaging, calendaring and search queries on an internet ready device such as a mobile phone, notebook or desktop computer or home entertainment console		

Attachments	78854023#TMSN.jpeg (1 page)(bytes) DOCS-#243732-v4-YAP_revisedNotice_of_Opposition.pdf (6 pages)(52891 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 Overnight Courier on this date.

Signature	/hac/
Name	Holly A. Coldiron
Date	03/04/2009

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

In the Matter of Application Serial No. 77/489,881
Published in the Official Gazette on November 4, 2008

Yap Inc.
(a Delaware corporation),
Opposer,

v.

Opposition No. _____

MPower Mobile, Inc.
(a Delaware corporation),
Applicant.

NOTICE OF OPPOSITION

Yap Inc., a Delaware corporation with a principal place of business at 1930 Camden Road, Suite 2040, Charlotte, North Carolina 28203 (“Yap” or “Opposer”), believes that it will be damaged by and thus opposes registration of the mark YAP, which is the subject of Application Serial No. 77/489,881, for use in connection with “financial services, namely, banking services provided by mobile telephone connections, electronic debit and credit card services, electronic fund transfer, electronic fund transfer provided by mobile telephone services, financial services in the nature of remote check deposit services, bill payment services, currency exchange services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments” in International Class 36. As provided by 15 U.S.C. §§ 1052, 1063 and all other applicable authority, and predicated upon the following grounds, Opposer alleges as follows in opposition to registration of the above-referenced mark:

1. Applicant MPower Mobile, Inc. is a Delaware corporation with a principal place of business at 401 Congress Avenue, Suite 2740, Austin, Texas 78701 (“Applicant”).
2. On June 3, 2008, Applicant filed Application Serial No. 77/489,881 for the mark YAP (“Applicant’s YAP Mark”), based on an intention to use the mark in commerce in connection with the International Class 36 services identified above. Applicant’s YAP Mark was published for opposition in the November 4, 2008 edition of the Official Gazette. Yap filed two extensions of time in which to oppose registration of Applicant’s YAP Mark, totaling 90 days. Accordingly, the deadline to oppose is March 4, 2009.
3. Yap is the owner of U.S. Registration No. 3,396,272 - YAP (the “Registered YAP Mark”), a photocopy of which is attached hereto as Exhibit A. The Registered YAP Mark is valid and subsisting.
4. Yap has used its Registered YAP Mark since at least as early as August 23, 2007, on and in connection with a variety of goods and software for the purpose of and related to voice-enabled text, instant and email messaging on, *inter alia*, mobile phones.
5. In addition to its interests in and rights to its Registered YAP Mark, as described in the preceding paragraph, since at least as early as April 1, 2008 Yap has used and acquired further common law rights based on use of its YAP mark in connection with services provided to third parties; namely, the provision of voice-to-text translations for voice messaging services (collectively, with the Registered

YAP Mark, the “YAP Marks”), which messages may be delivered to end-users on their mobile phones bearing the YAP mark.

6. Yap owns and has continuously owned the domain names www.yapme.com and www.yapinc.com since March 7, 2006 and July 21, 2006, respectively, and has maintained its primary web site presence at these domain names. Yap also owns the following domain names: 3yap.com, 9yap.com, getyap.com, getyap.mobi, gotyap.com, nineyap.com, yap3.com, yap4ever.com, yap9.com, yap9.mobi, yapattack.com, yapbeta.com, yapcube.com, yapcubed.com, yapextreme.com, yaphood.com, yap-inc.com, yaplive.com, yapme.mobi, yapnine.com, yapnine.mobi, yapoff.com, yapplet.com, yapplets.com, yapplets.mobi, yapapplication.com, yapthree.com, yapasr.com, yapcmd.com, yapvm.com, and callyap.com.
7. Applicant’s YAP Mark is identical to the YAP Marks.
8. Applicant’s YAP Mark, as noted above, is intended to be used in connection with a variety of services provided by mobile telephone, which is likely to cause confusion with Yap’s use of the YAP Marks on and in connection with the provision of goods and services provided by and available to mobile phones and mobile phone connections.
9. Opposer’s customers and potential customers include general consumers who utilize mobile telephones and text messaging for a variety of business and social needs. Many of these customers are potential customers of Applicant.
10. Yap has not authorized Applicant to use or register Applicant’s YAP Mark, nor does Yap exercise any control over Applicant’s proposed use of Applicant’s YAP

Mark. Applicant's unauthorized proposed use of Applicant's YAP Mark is likely to cause confusion, mistake or deception as to the source, origin, affiliation, sponsorship or approval of the services Applicant intends to offer under Applicant's YAP Mark. In addition, such use is likely to cause confusion, mistake or deception as to the source, origin, affiliation, sponsorship or approval of Yap's goods and services.

11. Yap has invested considerable sums and efforts to promote its YAP Marks and its goods and services, and to build up a high level of recognition, distinctiveness and valuable goodwill in its YAP Marks. Registration of Applicant's YAP Mark will reduce the value of the goodwill associated with Opposer's YAP Marks.
12. If Applicant were granted registration of Applicant's YAP Mark, it would thereby obtain a *prima facie* exclusive right to use such mark in connection with the services recited in its application, contributing to the damage and injury that would be suffered by Yap.
13. For these reasons, Opposer expressly alleges and asserts that registration of Applicant's YAP Mark for the recited services would be inconsistent with the standards for registration set forth in 15 U.S.C. §§ 1052, 1063 and other applicable authority.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of Applicant's YAP Mark be refused.

In accordance with 37 C.F.R. § 2.6(a)(17), any additional required fees are hereby authorized to be drawn from Deposit Account No. 50-3218 of Hutchison Law Group PLLC.

YAP INC.

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 3,396,272

Registered Mar. 11, 2008

TRADEMARK
PRINCIPAL REGISTER

yap

YAP INC. (DELAWARE CORPORATION)
1410 WEST MOREHEAD STREET
SUITE 100
CHARLOTTE, NC 28208

FOR: SOFTWARE TO ALLOW VOICE AND VISUAL ENABLED TEXT, CHAT, INSTANT AND EMAIL MESSAGING, CALENDARING AND SEARCH QUERIES ON AN INTERNET READY DEVICE SUCH AS A MOBILE PHONE, NOTEBOOK OR DESKTOP COMPUTER OR HOME ENTERTAIN-

MENT CONSOLE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 8-23-2007; IN COMMERCE 8-23-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-854,023, FILED 4-4-2006.

SHARON MEIER, EXAMINING ATTORNEY