

ESTTA Tracking number: **ESTTA270509**

Filing date: **03/06/2009**

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	Hertz System, Inc.
Granted to Date of previous extension	03/11/2009
Address	225 Brae Boulevard Park Ridge, NJ 07656 UNITED STATES

Attorney information	Martin J. Beran Ostrolenk, Faber, Gerb & Soffen, LLP 1180 Avenue of the Americas 7th Floor New York, NY 10036-8403 UNITED STATES mberan@ostrolenk.com, receipts@ostrolenk.com Phone:212-382-0700
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Applicant Information

Application No	77505561	Publication date	11/11/2008
Opposition Filing Date	03/06/2009	Opposition Period Ends	03/11/2009
Applicant	Examsoft Worldwide, Inc. Suite 120 350 Jim Moran Blvd. Deerfield Beach, FL 33442 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. All goods and services in the class are opposed, namely: Computer services, namely, data recovery services
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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.	2340337	Application Date	10/30/1998
Registration Date	04/11/2000	Foreign Priority Date	NONE
Word Mark	NEVERLOST		

Design Mark	NEVERLOST		
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 1995/06/18 First Use In Commerce: 1995/06/18 vehicle rental services containing an on-board navigation system as a feature thereof		

U.S. Registration No.	3148203	Application Date	08/23/2005
Registration Date	09/26/2006	Foreign Priority Date	NONE

Word Mark	NEVERLOST		
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Design Mark	NEVERLOST		
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Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1995/06/00 First Use In Commerce: 1995/06/00 Electronic driver navigation units Class 039. First use: First Use: 1995/06/00 First Use In Commerce: 1995/06/00 Vehicle rental services and driver directional guidance services		

U.S. Registration No.	1996150	Application Date	11/22/1994
Registration Date	08/20/1996	Foreign Priority Date	NONE


Word Mark	HERTZ NEVERLOST		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 039. First use: First Use: 1995/06/18 First Use In Commerce: 1995/06/18 vehicle rental services		
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U.S. Registration No.	2037578	Application Date	11/22/1994
Registration Date	02/11/1997	Foreign Priority	NONE

		Date	
Word Mark	HERTZ NEVER LOST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 1995/06/18 First Use In Commerce: 1995/06/18 vehicle rental services		

Attachments	75579857#TMSN.gif (1 page)(bytes) 78698353#TMSN.jpeg (1 page)(bytes) 74602122#TMSN.gif (1 page)(bytes) 7.4045-135 Notice of Opposition 77.505,561.PDF (4 pages)(120529 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	/MJB/
Name	Martin J. Beran
Date	03/06/2009

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

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HERTZ SYSTEM, INC.	:	
	:	
Opposer,	:	Opposition No.
	:	
-vs-	:	
	:	Serial No.: 77/505,561
EXAMSOFT WORLDWIDE, INC.	:	
	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

In the matter of pending application Serial No. 77/505,561 filed June 23, 2008 by Examsoft Worldwide, Inc. for the mark NEVER LOST for computer services, namely, data recovery services, Hertz System, Inc. believes that it will be damaged by the registration of the above mark and hereby gives notice of its intention to oppose the above application for registration, its grounds for opposition being as follows:

- 1) Opposer is a corporation duly organized and existing under the laws of the State of Delaware, located and doing business at 225 Brae Boulevard, Park Ridge, New Jersey 07656.
- 2) Since June 18, 1995 opposer has been using the mark NEVER LOST in connection with vehicle rental services containing an on-board navigation system as a feature thereof in commerce throughout the United States.
- 3) By virtue of extensive use and promotion of opposer's services, the mark NEVER LOST has acquired substantial secondary meaning, distinctiveness and good will in connection with opposer's services as indicating vehicle rental services containing an on-board navigation systems as a feature thereof having their origin exclusively with opposer.

- 4) Opposer is the owner of U.S. Registration No. 2,340,337 NEVERLOST, Registration No. 3,148,203 NEVERLOST, Registration No. 1,996,150 HERTZ NEVERLOST and Registration No. 2,037,578 HERTZ NEVERLOST and Design.
- 5) Applicant seeks registration for the mark NEVER LOST for computer services, namely, data recovery services. These services are closely related to opposer's services which include an on-board navigation system which operates by means of computers. As such, a likelihood of confusion will exist between applicant's services and opposer's services containing related goods if the marks of the respective parties are confusingly similar.
- 6) NEVER LOST is confusingly similar to NEVERLOST and HERTZ NEVERLOST.
- 7) The use and registration of NEVER LOST to applicant for computer services, namely, data recovery services, will create confusion, mistake and deception of the trade and purchasing public as to the origin of applicant's services by virtue of the identity of the marks and the close relationship in the services of the respective parties.
- 8) The use and registration of NEVER LOST for computer services, namely, data recovery services to applicant will confuse and deceive the public into believing that applicant's services originate with or are otherwise authorized, licensed or sponsored by opposer.
- 9) By reason of all the foregoing, opposer will be gravely damaged by the registration of NEVER LOST to applicant.

WHEREFORE, opposer respectfully requests that the Notice of Opposition be sustained and that the registration of NEVER LOST to applicant be refused.

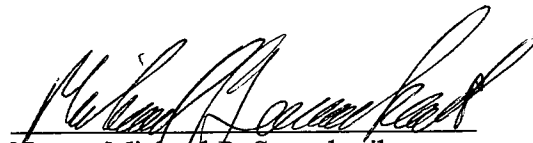
POWER OF ATTORNEY

Please recognize Martin J. Beran and Ostrolenk, Faber, Gerb & Soffen, LLP as attorneys to prosecute this opposition proceeding. The undersigned hereby appoints customer no. 2352, OSTROLENK, FABER, GERB & SOFFEN, LLP and the members of the firm: Samuel H. Weiner, Robert C. Faber, Max Moskowitz, James A. Finder, William O. Gray, III, Louis C. Dujmich, Charles P. LaPolla, Douglas A. Miro, and Kourosh Salehi, and Of Counsel for Opposer Martin J. Beran, all members of the Bar of the State of New York, with offices at 1180 Avenue of the Americas, New York, New York 10036-8403, (212) 382-0700, its attorneys to prosecute this opposition proceeding with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith. Said attorneys are hereby designated its agent upon whom notices or process may be served in proceedings affecting the above-entitled mark. Please address all correspondence to:

Martin J. Beran, Esq.
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Customer No. 2352

HERTZ SYSTEM, INC.

By:



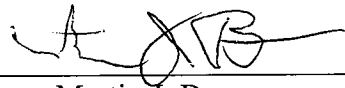
Name: Michael P. Senackerib

Title: Vice President

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Applicant on this 6th day of March, 2009, by First-Class mail, postage prepaid, addressed as follows:

Examsoft Worldwide, Inc.
350 Jim Moran Blvd. Suite 120
Deerfield Beach, Florida 33442-1721



Martin J. Beran