

ESTTA Tracking number: **ESTTA280520**

Filing date: **04/27/2009**

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	Turn Inc.		
Entity	Corporation	Citizenship	Delaware
Address	Suite 510 1400 Fashion Island Boulevard San Mateo, CA 94404 UNITED STATES		

Correspondence information	Connie L. Ellerbach, Kiran K. Belur Attorneys of Record Fenwick & West LLP 801 California Street Silicon Valley Center Mountain View, CA 94041 UNITED STATES trademarks@fenwick.com Phone:(650) 988-8500		
----------------------------	--	--	--

### Applicant Information

Application No	77465751	Publication date	03/31/2009
Opposition Filing Date	04/27/2009	Opposition Period Ends	04/30/2009
Applicant	UrTurn, LLC Suite 306 315 Second Street Ann Arbor, MI 48103 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 2008/04/00 First Use In Commerce: 2008/04/00 All goods and services in the class are opposed, namely: Incentive award programs that utilize on-line tracking software to promote the sale of products and services of others
---

### Grounds for Opposition

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

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3518537	Application Date	04/22/2005
Registration Date	10/14/2008	Foreign Priority Date	NONE
Word Mark	TURN		

Design Mark	<b>TURN</b>
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2006/11/11 First Use In Commerce: 2006/11/11            ADVERTISING SERVICES; DISSEMINATION OF ADVERTISING FOR OTHERS VIA THE INTERNET; ADVERTISING SERVICES, NAMELY, PROVIDING ADVERTISING SPACE ON INTERNET WEB SITES; ADVERTISING SERVICES, NAMELY, ALLOCATING, BROKERING, AND MANAGING THE USE OF ADVERTISING SPACE ON INTERNET WEB SITES; ADVERTISING SERVICES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS BY PREPARING AND CONTEXTUALLY PLACING TARGETED ADVERTISEMENTS ON LINKED WEB SITES ON A GLOBAL COMPUTER NETWORK; CUSTOMER RELATIONSHIP MANAGEMENT SERVICES</p> <p>Class 042. First use: First Use: 2006/11/11 First Use In Commerce: 2006/11/11            APPLICATION SERVICE PROVIDER (ASP) FEATURING SOFTWARE FOR USE IN MANAGING, IN PROVIDING INTERACTIVE COMMUNICATION SERVICES, AND IN PROVIDING PUBLISHING SERVICES IN THE FIELD OF ADVERTISING AND/OR PROMOTING THE GOODS AND SERVICES OF OTHERS</p>

Attachments	78980585#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition Re URTURN.pdf ( 2 pages )(21195 bytes )
-------------	--

### **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	/kbelur/
Name	Connie L. Ellerbach, Kiran K. Belur
Date	04/27/2009

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

In the matter of  
Trademark Application Serial No.: 77/465,751  
Filed: May 5, 2008  
Published: March 31, 2009  
Mark: URTURN

Turn Inc.,	)	
Opposer,	)	
	)	Opposition No. _____
vs.	)	
	)	
UrTurn, LLC,	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Opposer, Turn, Inc. (hereafter “Opposer”), a Delaware corporation having a principal place of business at 1600 Seaport Boulevard, Suite 300, Redwood City, CA 94063, believes it will be damaged by registration of the mark shown in Trademark Application No. 77/465,751 and hereby opposes that application, alleging as grounds for its opposition that:

1. As is evidenced by the publication of the mark URTURN in the Official Gazette in the March 31, 2009 issue, Applicant, UrTurn, LLC (hereafter “Applicant”), seeks to register URTURN as a trademark for “incentive award programs that utilize on-line tracking software to promote the sale of products and services of others” in International Class 35. Applicant filed its application on May 5, 2008, under Section 1(a) of the Trademark Act claiming use of the mark as of April 2008.

2. Opposer is a leading provider of software and solutions that track online consumer behavior and then analyze and use the resulting data to more-efficiently connect advertisers with potential customers.

3. Opposer owns U.S. Trademark Registration No. 3,518,537 for the mark TURN for “advertising services; dissemination of advertising for others via the internet; advertising services, namely, providing advertising space on internet web sites; advertising services, namely, allocating, brokering, and managing the use of advertising space on internet web sites; advertising services, namely, promoting the goods and services of others by preparing and contextually placing targeted advertisements on linked web sites on a global computer network; customer relationship management services” in International Class 35 and “application service

provider (ASP) featuring software for use in managing, in providing interactive communication services, and in providing publishing services in the field of advertising and/or promoting the goods and services of others” in International Class 42. Opposer filed its application on April 22, 2005, which registered on October 14, 2008. Additionally, Opposer has used the TURN mark in commerce at least as early as November 11, 2006.

4. Opposer’s registered TURN mark is valid and subsisting and is prima facie evidence of Opposer’s exclusive rights to use the mark in connection with the services identified therein.

5. Opposer’s TURN mark was applied for prior to the filing date of Applicant’s application for URTURN.

6. As a result of Opposer’s extensive use and promotion of its TURN mark in commerce, the mark has become well known in the advertising/internet usage tracking space to identify Opposer’s services. As a result, Opposer’s TURN mark has become a valuable asset of Opposer and a principal symbol of its goodwill.

7. Given the nearly identical nature of the parties’ marks and the similarity, overlapping, and/or related nature of the parties’ services, Opposer hereby alleges that Applicant’s URTURN mark so resembles Opposer’s TURN mark used in the United States, and not abandoned, as to be likely to cause confusion or to cause mistake or to deceive and to dilute the value and source-identifying power of Opposer’s mark, thereby causing loss, damage, and injury to Opposer and the public.

8. Opposer prays that this Notice of Opposition be sustained, that Applicant’s Trademark Application Serial No. 77/465,751 be rejected, and that Applicant be denied registration of URTURN as a trademark for the services as specified in that application.

9. This Notice of Opposition is being submitted along with the requisite \$300.00 fee to oppose the application. Please charge any additional fees to our Deposit Account No. 50-0261.

24608/00070/DOCS/2061768.1