

ESTTA Tracking number: **ESTTA295412**

Filing date: **07/15/2009**

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	C10, Inc.
Granted to Date of previous extension	07/15/2009
Address	20 Century Drive Mill Valley, CA 94941 UNITED STATES

Attorney information	R.J. Heher, Esq. Fenwick & West LLP 801 California Street Silicon Valley Center Mountain View, CA 94041 UNITED STATES trademarks@fenwick.com
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Applicant Information

Application No	77516736	Publication date	03/17/2009
Opposition Filing Date	07/15/2009	Opposition Period Ends	07/15/2009
Applicant	Wright, Marcus T. 6655 Malvern Avenue Philadelphia, PA 19151 UNITED STATES		


Goods/Services Affected by Opposition


<p>Class 041. First Use: 2007/11/17 First Use In Commerce: 2007/11/17 All goods and services in the class are opposed, namely: Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring coverage of high school athletic events, athletes, coaches and fans; Entertainment, namely, production of television shows featuring high school athletic events, athletes, coaches and fans for on-line viewing; Providing a web site featuring information on youth sports; Providing a web site featuring sporting information; Providing a web site that provides sports league player statistics</p>
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Opposer also asserts as a basis for its Opposition to the registration and use of VARSITY 365 all of its common law rights accrued in and arising from Opposer's use of the VARSITYPIX mark in the United States and abroad.

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77236267	Application Date	07/23/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VARSITYPIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: website featuring non-downloadable photographs in the field of sports		

U.S. Application No.	77236264	Application Date	07/23/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VARSITYPIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: on-line retail store services featuring photographs in the field of sports		

Attachments	77236267#TMSN.jpeg (1 page)(bytes) 77236264#TMSN.jpeg (1 page)(bytes) SF-5268519-v1-Opposition_re_VARSITY_365.pdf (3 pages)(30576 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	/R.J. Heher/
Name	R.J. Heher, Esq.
Date	07/15/2009

NOTICE OF OPPOSITION

The VARSITYPIX applications were filed with the United States Patent and Trademark Office on July 23, 2007. Statements of Use were filed on July 2, 2009 stating the date of first use of July 13, 2007 for the services in Class 35 and a date of first use in commerce of July 13, 2007 in Class 35; date of first use of September 7, 2007 for the services in Class 41 and a date of first use in commerce of September 7, 2007 for the services in Class 41.

Opposer's VARSITYPIX applications are valid and subsisting and constitute *prima facie* evidence of Opposer's exclusive right to use the VARSITYPIX mark in commerce with the services specified therein. There is no issue as to priority. Opposer filed its applications to register VARSITYPIX and began using the VARSITYPIX mark before applicant filed its application and began using its VARSITY 365 mark. Applicant filed its application on July 8, 2008 and claims a date of first use of November 17, 2007 for its first use of the VARSITY 365 mark.

Further, Opposer notes that it owns a registration of the domain name varsitypix.com, and has maintained an active web site at the varsitypix.com URL since September 2007. Opposer bases this Opposition on all rights arising from its use of the VARSITYPIX mark on the worldwide web.

Opposer's VARSITYPIX mark is confusingly similar to Applicant's VARSITY 365 mark. VARSITYPIX and VARSITY 365 are phonetically identical in their dominant terms and are highly similar in appearance and commercial impression. The services to which Opposer's mark pertains and the services with which Applicant uses its mark are highly related and competitive, and will be marketed, distributed and rendered in the same channels of trade.

Opposer also asserts as a basis for its Opposition to the registration and use of VARSITY 365 all of its common law rights accrued in and arising from Opposer's use of the VARSITYPIX mark in the United States and abroad.

Through its significant investment of time, energy and resources, Opposer has secured recognition and goodwill in the distinctive name and mark, VARSITYPIX, throughout the United States. VARSITYPIX has become identified in the mind of the public with Opposer's services, which Opposer markets, distributes and renders. The VARSITYPIX mark serves to distinguish Opposer as the source of services bearing or rendered in connection with the mark, and serves to indicate the high quality of those services.

Opposer's use of VARSITYPIX has earned it a reputation for high quality, and gives it a valid, legal right to continue to use VARSITYPIX in connection with its services, which right precludes the use of similar marks in a manner that is likely to cause confusion with Applicant's services, to blur or tarnish, or erode or lessen the capacity of Opposer's VARSITYPIX mark to identify and distinguish Opposer's services in the mind of the public, whether by creating negative associations with Opposer's mark or weakening the uniqueness and distinctive significance of Opposer's mark, and its capacity to give customers the assurance of quality and satisfaction they have in knowing that they have purchased services bearing the VARSITYPIX mark.

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WHEREFORE, Opposer prays that it's Notice of Opposition be sustained, that Applicant's application Serial No. 77/516,736 be rejected, and that Applicant be denied registration of VARSITY 365 as a service mark for the service specified in that application.

Respectfully submitted,

Date: _____

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