

ESTTA Tracking number: **ESTTA319350**

Filing date: **11/30/2009**

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	MAYA Design, Inc.
Granted to Date of previous extension	11/29/2009
Address	2730 Sidney Street Building 2, Suite 300 Pittsburgh, PA 15203 UNITED STATES

Attorney information	Joseph E. Washington Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave., N.W.; Attn: TMSU Washington, DC 20004 UNITED STATES chowell@morganlewis.com, jwashington@morganlewis.com, pwatt-morse@morganlewis.com, trademarks@morganlewis.com Phone:202-739-5965
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Applicant Information

Application No	77669414	Publication date	06/02/2009
Opposition Filing Date	11/30/2009	Opposition Period Ends	11/29/2009
Applicant	Byrne Electrical Specialists, Inc. 320 Byrne Industrial Drive Rockford, MI 49341 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. All goods and services in the class are opposed, namely: planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments

Applicant Information

Application No	77662367	Publication date	06/02/2009
Opposition Filing Date	11/30/2009	Opposition Period Ends	
Applicant	Byrne Electrical Specialists, Inc. 320 Byrne Industrial Drive Rockford, MI 49341 UNITED STATES		

Goods/Services Affected by Opposition

Class 042.

All goods and services in the class are opposed, namely: planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments

Applicant Information

Application No	77669408	Publication date	06/02/2009
Opposition Filing Date	11/30/2009	Opposition Period Ends	
Applicant	Byrne Electrical Specialists, Inc. 320 Byrne Industrial Drive Rockford, MI 49341 UNITED STATES		

Goods/Services Affected by Opposition

Class 042.
All goods and services in the class are opposed, namely: planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments

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. Application No.	77838032	Application Date	09/30/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KIVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 Design services for circular conference rooms and work spaces to facilitate collaboration and innovation		

U.S. Application No.	77838028	Application Date	09/30/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INSTAKIVA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 019. First use: First Use: 2008/03/01 First Use In Commerce: 2008/03/01 Portable free-standing barriers, namely white-board units used to create temporary conference room enclosures designed to enhance audio and visual interactions

Attachments	77838032#TMSN.jpeg (1 page)(bytes) 77838028#TMSN.jpeg (1 page)(bytes) kivaopp1.pdf (5 pages)(193806 bytes) kivaopp2.pdf (5 pages)(202837 bytes) kivaopp3.pdf (5 pages)(193295 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	/Joseph E. Washington/
Name	Joseph E. Washington
Date	11/30/2009

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

In the Matter of:

Trademark Application Serial No. 77669414
Filed: February 12, 2009
For the Mark: KIVA (Stylized)

MAYA Design, Inc.)
)
Opposer,)
)
v.)
)
Byrne Electrical Specialists, Inc.)
)
Applicant.)

NOTICE OF OPPOSITION

Opposer, MAYA Design, Inc., a Pennsylvania corporation with a business address of 2730 Sidney Street, SSW, Building 2, Suite 300, Pittsburgh, Pennsylvania 15203 (“Opposer”), believes it will be damaged by registration of the mark KIVA (Stylized) that is the subject matter of Application Serial No. 77669414, filed by Byrne Electrical Specialists, Inc. (“Applicant”). Opposer hereby opposes the same under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d) and 1063 and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

1. Opposer is the owner of all right, title and interest in and to the marks KIVA and INSTAKIVA. Opposer has used the mark KIVA in interstate commerce in connection with design services for circular conference rooms and work rooms since at least as early as

December 1997, and Opposer has used the mark INSTAKIVA in interstate commerce in connection with portable free-standing barriers that are used to create temporary conference room enclosures since at least as early as March 2008.

2. In addition to the above-mentioned common law rights, Opposer is the owner of Application Serial No. 77838032 for the mark KIVA covering “design services for circular conference rooms and work spaces to facilitate collaboration and innovation” in Class 42, and Application Serial No. 77838028 for the mark INSTAKIVA covering “portable free-standing barriers, namely white-board units used to create temporary conference room enclosures designed to enhance audio and visual interactions” in Class 19.

3. By adopting and using the KIVA mark since at least as early as December 1997, and the INSTAKIVA mark since at least as early as March 2008, Opposer has acquired exclusive rights in the KIVA and INSTAKIVA marks that, upon information and belief, predate any rights upon which Applicant may rely.

4. The mark KIVA and INSTAKIVA are inherently distinctive as used in connection with Opposer’s goods and services.

5. Opposer’s longstanding use of the KIVA and INSTAKIVA marks has created in the mind of the public a strong association between those marks and Opposer’s goods and services.

6. On February 12, 2009, Applicant filed an intent to use based application under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), to register the designation KIVA (Stylized) (Application Serial No. 77669414).

7. The application for KIVA (Stylized) (Application Serial No. 77669414) currently covers the following services in Class 42:

“Planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments.”

8. Applicant’s KIVA (Stylized) designation was published for opposition in the Official Gazette on June 2, 2009.

9. The Trademark Trial and Appeal Board extended the opposition period for Applicant’s KIVAFLEX application by granting Opposer’s timely filed requests for extensions of time to oppose. The opposition period for Application Serial No. 77662367 is currently set to expire on Sunday, November 29, 2009. Therefore, Opposer timely files this opposition on Monday, November 30, 2009.

10. Applicant’s KIVA (Stylized) designation incorporates Opposer’s KIVA mark in its entirety. The stylized component of Applicant’s designation does not serve to distinguish it from Opposer’s KIVA and INSTAKIVA marks.

11. The Applicant’s KIVA (Stylized) designation is confusingly similar to Opposer’s KIVA and INSTAKIVA marks.


12. The Class 42 services for which Applicant seeks registration of its KIVA (Stylized) designation are related to the goods and services offered by Opposer under its KIVA and INSTAKIVA marks.

13. Opposer believes it will be damaged by registration of Applicant’s KIVA (Stylized) designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the KIVA and INSTAKIVA marks used by Opposer in the United States as to be likely, when used on or in connection with the services identified in the KIVA (Stylized) application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77669414 and requests the opposition be sustained and that registration to Applicant be refused.

Dated: November 30, 2009

Respectfully submitted,

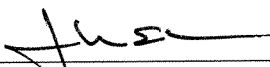
By: 
Peter M. Watt-Morse
Joseph E. Washington
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001

Attorneys for Opposer
MAYA Design, Inc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2009, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Attorney of Record at the following address:

THOMAS L. LOCKHART
VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
333 BRIDGE STREET, PO BOX 352
GRAND RAPIDS, MI 49501-0352



Joseph E. Washington

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

In the Matter of:

Trademark Application Serial No. 77662367
Filed: February 3, 2009
For the Mark: KIVAFLEX

_____)
MAYA Design, Inc.)
)
Opposer,)
)
v.)
)
Byrne Electrical Specialists, Inc.)
)
Applicant.)
_____)

NOTICE OF OPPOSITION

Opposer, MAYA Design, Inc., a Pennsylvania corporation with a business address of 2730 Sidney Street, SSW, Building 2, Suite 300, Pittsburgh, Pennsylvania 15203 (“Opposer”), believes it will be damaged by registration of the mark KIVAFLEX that is the subject matter of Application Serial No. 77662367, filed by Byrne Electrical Specialists, Inc. (“Applicant”). Opposer hereby opposes the same under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d) and 1063 and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

1. Opposer is the owner of all right, title and interest in and to the marks KIVA and INSTAKIVA. Opposer has used the mark KIVA in interstate commerce in connection with design services for circular conference rooms and work rooms since at least as early as

December 1997, and Opposer has used the mark INSTAKIVA in interstate commerce in connection with portable free-standing barriers that are used to create temporary conference room enclosures since at least as early as March 2008.

2. In addition to the above-mentioned common law rights, Opposer is the owner of Application Serial No. 77838032 for the mark KIVA covering “design services for circular conference rooms and work spaces to facilitate collaboration and innovation” in Class 42, and Application Serial No. 77838028 for the mark INSTAKIVA covering “portable free-standing barriers, namely white-board units used to create temporary conference room enclosures designed to enhance audio and visual interactions” in Class 19.

3. By adopting and using the KIVA mark since at least as early as December 1997, and the INSTAKIVA mark since at least as early as March 2008, Opposer has acquired exclusive rights in the KIVA and INSTAKIVA marks that, upon information and belief, predate any rights upon which Applicant may rely.

4. The mark KIVA and INSTAKIVA are inherently distinctive as used in connection with Opposer’s goods and services.

5. Opposer’s longstanding use of the KIVA and INSTAKIVA marks has created in the mind of the public a strong association between those marks and Opposer’s goods and services.

6. On February 3, 2009, Applicant filed an intent to use based application under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), to register the designation KIVAFLEX (Application Serial No. 77662367).

7. The application for KIVAFLEX (Application Serial No. 77662367) currently covers the following services in Class 42:

“Planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments.”

8. Applicant’s KIVAFLEX designation was published for opposition in the Official Gazette on June 2, 2009.

9. The Trademark Trial and Appeal Board extended the opposition period for Applicant’s KIVAFLEX application by granting Opposer’s timely filed requests for extensions of time to oppose. The opposition period for Application Serial No. 77662367 is currently set to expire on Sunday, November 29, 2009. Therefore, Opposer timely files this opposition on Monday, November 30, 2009.

10. Applicant’s KIVAFLEX designation incorporates Opposer’s KIVA mark in its entirety. The “FLEX” component of Applicant’s designation does not serve to distinguish it from Opposer’s KIVA and INSTAKIVA marks.

11. The Applicant’s KIVAFLEX designation is confusingly similar to Opposer’s KIVA and INSTAKIVA marks.

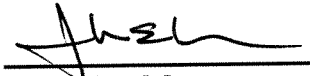
12. The Class 42 services for which Applicant seeks registration of its KIVAFLEX designation are related to the goods and services offered by Opposer under its KIVA and INSTAKIVA marks.

13. Opposer believes it will be damaged by registration of Applicant’s KIVAFLEX designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the KIVA and INSTAKIVA marks used by Opposer in the United States as to be likely, when used on or in connection with the services identified in the KIVAFLEX application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77662367 and requests the opposition be sustained and that registration to Applicant be refused.

Dated: November 30, 2009

Respectfully submitted,

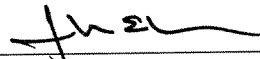
By: 
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Attorneys for Opposer
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333 BRIDGE STREET, PO BOX 352
GRAND RAPIDS, MI 49501-0352



Joseph E. Washington

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

In the Matter of:

Trademark Application Serial No. 77669408
Filed: February 12, 2009
For the Mark: KIVA

_____)
MAYA Design, Inc.)
)
Opposer,)
)
v.)
)
Byrne Electrical Specialists, Inc.)
)
Applicant.)
_____)

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5. Opposer’s longstanding use of the KIVA and INSTAKIVA marks has created in the mind of the public a strong association between those marks and Opposer’s goods and services.

6. On February 12, 2009, Applicant filed an intent to use based application under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), to register the designation KIVA (Application Serial No. 77669408).

7. The application for KIVA (Application Serial No. 77669408) currently covers the following services in Class 42:

“Planning of buildings and infrastructure systems for buildings, namely, providing layout matrices for flexible building environments.”

8. Applicant’s KIVA designation was published for opposition in the Official Gazette on June 2, 2009.

9. The Trademark Trial and Appeal Board extended the opposition period for Applicant’s KIVAFLEX application by granting Opposer’s timely filed requests for extensions of time to oppose. The opposition period for Application Serial No. 77662367 is currently set to expire on Sunday, November 29, 2009. Therefore, Opposer timely files this opposition on Monday, November 30, 2009.

10. Applicant’s KIVA designation is identical to Opposer’s KIVA mark.

11. The Applicant’s KIVA designation is confusingly similar to Opposer’s INSTAKIVA mark.

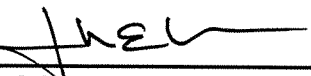
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WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77669408 and requests the opposition be sustained and that registration to Applicant be refused.

Dated: November 30, 2009

Respectfully submitted,

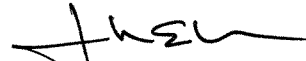
By: 
Peter M. Watt-Morse
Joseph E. Washington
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Attorneys for Opposer
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