

ESTTA Tracking number: **ESTTA323672**

Filing date: **12/22/2009**

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	Blackbaud Inc.
Granted to Date of previous extension	12/23/2009
Address	2000 DANIEL ISLAND DRIVE Charleston, SC 29492-7541 UNITED STATES

Attorney information	Joseph H. Nanney Wyrick Robbins Yates & Ponton, LLP 4101 Lake Boone Trail Suite 300 Raleigh, NC 27607 UNITED STATES ip@wyrick.com Phone:919-781-4000
----------------------	---

Applicant Information

Application No	77714046	Publication date	08/25/2009
Opposition Filing Date	12/22/2009	Opposition Period Ends	12/23/2009
Applicant	Network for Good, Inc. 7920 Norfolk Avenue Bethesda, MD 20814 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 1999/11/01 First Use In Commerce: 1999/11/01 All goods and services in the class are opposed, namely: Online non-downloadable software for use by charitable, nonprofit and fundraising organizations in creating and managing online fundraising and marketing campaigns, including soliciting contributions and processing donations

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Related Proceedings	Opposer has filed simultaneously a motion to oppose Applicant's application serial no. 77/714036 for EMAILNOW.
Attachments	donatenowopp.pdf (5 pages)(357534 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	/JHN/
Name	Joseph H. Nanney
Date	12/22/2009

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

BLACKBAUD, INC.,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	U.S. Appl. Serial No. 77/714,046
)	
NETWORK FOR GOOD, INC.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer, Blackbaud, Inc., a Delaware Corporation, with a business address of 2000 Daniel Island Drive, Charleston, South Carolina 29492-7541 believes that it will be damaged by the registration of the Application Serial No. 77/ 714,046 and hereby opposes registration of the mark DONATENOW. The instant application was published in the August 29, 2009 Edition of the U.S. Patent & Trademark Office's (PTO) *Official Gazette*. Opposer respectfully requests that registration to Applicant be refused.

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

1. Opposer, Blackbaud, Inc. is one of the leading suppliers of software products specifically designed for charities, schools, universities, and other not-for-profit organizations. Its software products focus on fundraising, financial management, ticket sales, education administration, and web site management.
2. On April 15, 2009, Applicant, Network for Good filed an application for DONATENOW, Serial No. 77/714,046 on a Section 1(a) basis, claiming use in interstate commerce since November 01, 1999 of the mark in connection with online non-downloadable software for use

by charitable, nonprofit and fundraising organizations in creating and managing online fundraising and marketing campaigns, including soliciting contributions and processing *donations*.

3. In its application, Applicant did not voluntarily disclaim the terms “DONATE” and/or “NOW” and the Examining Attorney assigned to examine Application Ser. No. 77/714,046 failed to issue an Office Action citing the descriptiveness of the mark as a bar to registration. The Examining Attorney also did not require Applicant to amend the application to provide a disclaimer of the terms “DONATE” and/or “NOW” as required under § 6, 15 USC § 1056.

4. On April 21, 2009, the USPTO issued a Notice of Pseudo Mark in which the pseudo mark DONATE NOW was assigned to the application.

5. It is immediately apparent that Applicant’s mark merely consists of two descriptive words strung together. The mark is not registrable because the individual components retain their descriptive meaning in relation to the services and the combination results in a composite mark that is itself descriptive.

6. Taken as a whole and in context with Applicant’s website, applicant’s mark would immediately inform consumers that the services involve a donation service and the laudatory nature of the term “NOW” would merely create a perception of immediacy of results and/or delivery of service.

7. Opposer and others in Applicant and Opposer’s industry have a real and substantial interest in the descriptive terms “donate now”. Many in Applicant’s industry, including Opposer, use the generic term “donate now” in a descriptive manner on their websites.

8. Applicant’s registration of the DONATENOW trademark would provide an unfair advantage whereby Applicant could exclude others from using terms integral and relevant to the industry. Further, with the imprimatur of registration of the mark with the U.S. Patent & Trademark Office, Applicant could expose Opposer and others in the industry to further damages through the

needless expense in responding to Applicant's attempts to enforce the descriptive DONATENOW trademark and in defending against Applicant's frivolous and meritless claims of infringement that may derive from Opposer and others use in the marketplace.

9. Applicant's website located at <http://www1.networkforgood.org/nonprofits/fundraising/donatenow> describes the DONATENOW offering as being an "...online donation processing service for nonprofits to accept credit card gifts on the Web." [emphasis added].

10. Applicant's webpage located at <http://www1.networkforgood.org/nonprofits/fundraising/how-donatenow-works> describes the features and capabilities of the DONATENOW product in the following manner "(a) donor visits your web site and clicks on your DonateNow button"; "donor arrives at your donation page on the Network for Good secure web server. This donation page is branded with your logo and language. Additionally, you have control over all of the various donation options available to your donor on the donation page"; and "The donor enters and submits donation information." In the website's section discussing how the DONATENOW service works, the variant forms of the term donate, "donor" and "donation" are used no less than twenty-eight (28) times. It is apparent that Applicant cannot find another word to describe its own service. Should Applicant be allowed registration of the instant mark, Opposer and others in the industry will have an even more difficult time describing their similar services.

11. Opposer believes that registration of the mark shown in the opposed application will result in damage to Opposer and asks that registration of Applicant's application be denied pursuant to the provisions of Section 2(e) of the U.S. Trademark Act, 15 U.S.C. §1052(e) pursuant to the allegations above.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted this 22nd day of December, 2009.

/JHN/

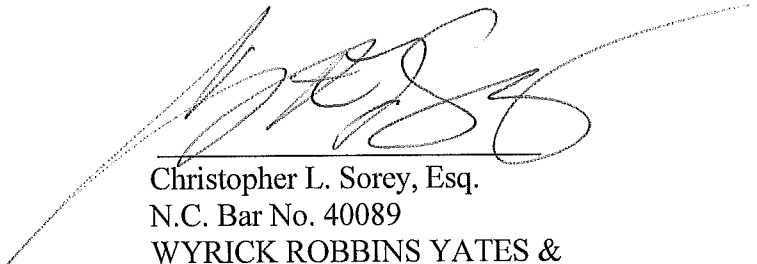
Joseph H. Nanney, Jr.
N.C. Bar No. 18355 and
Christopher L. Sorey
N.C. Bar No. 40089
WYRICK ROBBINS YATES & PONTON, LLP
P. O. Drawer 17803
Raleigh, North Carolina 27619
Telephone: (919) 781-4000
Attorneys for Opposer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22 2009 a true and correct copy of the foregoing Notice of Opposition was electronically filed with the TTAB via the ESTTA Filing System with the same served upon counsel of record for Opposer by email and U.S. Mail, postage prepaid, addressed as follows:

William G. Pecau, Esq.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1704
Phone Number: 202-429-3000
Fax Number: 202-429-3902
Email: wpecau@steptoe.com

Counsel for Applicant
NETWORK FOR GOOD, INC.



Christopher L. Sorey, Esq.
N.C. Bar No. 40089
WYRICK ROBBINS YATES &
PONTON, LLP
P. O. Drawer 17803
Raleigh, North Carolina 27619
Telephone: (919) 781-4000
Email: csorey@wyrick.com