

ESTTA Tracking number: **ESTTA351871**

Filing date: **06/09/2010**

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	M2 SOFTWARE, INC.
Granted to Date of previous extension	06/09/2010
Address	6725 Sunset Blvd., Suite 230 Los Angeles, CA 90028 UNITED STATES

Correspondence information	M2 SOFTWARE, INC. 6725 Sunset Blvd., Suite 230 Los Angeles, CA 90028 UNITED STATES info@m2software.com
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**Applicant Information**

Application No	77739781	Publication date	02/09/2010
Opposition Filing Date	06/09/2010	Opposition Period Ends	06/09/2010
Applicant	Mason & Mason Appraisers and Consultants, Inc. Suite 100 2609 Honolulu Ave. Montrose, CA 91020 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2004/01/01 First Use In Commerce: 2004/01/01 All goods and services in the class are opposed, namely: Management and compilation of computerized databases enabling the electronic storage and presentation of files and documents relating to real estate appraisal, consulting services, namely, relating to real estate and real estate valuation matters, eminent domain and inverse condemnation cases
Class 036. First Use: 2004/01/01 First Use In Commerce: 2004/01/01 All goods and services in the class are opposed, namely: Appraisal services, namely, related to right of way acquisitions, eminent domain, inverse condemnation and other transfers of real estate property rights; real estate services, namely, property management of real estate for purposes of rental and investment
Class 042. First Use: 2004/01/01 First Use In Commerce: 2004/01/01 All goods and services in the class are opposed, namely: Providing a website featuring on-line non-downloadable software that provides web-based access to interactive electronic interface and project management tool made available for use by those associated with a real estate acquisition or appraisal matters

**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/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	M2		
Goods/Services	trade name use, general computer software		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	M2		
Goods/Services	service mark use, general computer software, financial database applications and related services		

U.S. Registration No.	1931182	Application Date	08/30/1994
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	M2		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1991/10/23 First Use In Commerce: 1992/01/10 computer software featuring business management applications for the film and music industries; and interactive multimedia applications for entertainment, education and information, in the nature of artists' performances and biographical information from the film and music industries; and instructions and information for playing musical instruments		

Related Proceedings	Opp. No. 91193587
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Attachments	OPP - 77739781.pdf ( 3 pages )(90839 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	/de/
Name	D. Escamilla
Date	06/09/2010

I hereby certify that this correspondence is being transmitted over ESTTA to the U.S. Patent and Trademark Office, via the Internet at <http://www.uspto.gov>, on the date indicated below.

By: /s David Escamilla Date: June 9, 2010

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

M2 SOFTWARE, INC.

Opposer,

v.

MASON & MASON APPRAISERS AND  
CONSULTANTS, INC.

Applicant.

Opposition No. \_\_\_\_\_

For: M2 (design):



Serial No.: 77/739,781

Published: 02/09/2010

NOTICE OF OPPOSITION

M2 SOFTWARE, INC. (“Opposer”), a Delaware corporation, believes it will be damaged by registration of Application Ser. No. 77/739,781 of applicant MASON & MASON APPRAISERS AND CONSULTANTS, INC. (“Applicant”) for the mark “M2” and hereby opposes the same. Opposer’s grounds are as follows:

1.) Opposer M2 Software is the senior user and owner of the “M2” trademark and “M2” trade name, an established brand used throughout the United States and the world for over 18 years and since long prior to the new application.

2.) Applicant is applying for M2 Software’s identical “M2” trademark modified only as to design artwork, barred by Opposer’s senior word mark registration not limited to a particular design. TMEP § 1207.01(c)(iii).

3.) Applicant seeks to use M2 Software’s mark for “management and compilation of computerized databases” and “online...software” providing an “interactive electronic interface and project management tool” targeting financial professionals. Both describe the same type of software developed by M2 Software for nearly two decades, including but not limited to database applications identified in the business management applications category of a senior registration. U.S Reg. No. 1,931,182.

4.) Applicant’s “software-as-a-service” (SaaS) is simply software, provided under a new distribution model. The Trademark Examiner thus proposed Applicant amend its application to identify International Class 009, the standard class for

software in which Opposer is registered. Office Action, 08/26/2009 (“[I]t appears from the description that applicant may actually have goods in the nature of software.”) Applicant refused, avoiding a requisite search of Class 009.

5.) Notwithstanding identification of class, by its description Applicant seeks the same “M2” mark to provide similar financial analysis functionality through online “cloud-computing” software, “computerized databases,” and “services.” All are sufficiently related to create the likelihood of confusion that a single source or sponsor would be provider or licensor if offered under an identical distinctive mark.

6.) Applicant uses and has available the non-infringing alternatives “MASON & MASON” (Reg. No. 3,491,656) and “MASON2” (Reg. No. 3,677,118) for its products and services, and no legitimate need to convert its own branding to the “M2” name, mark, and brand owned by Opposer M2 Software.

7.) Since long prior to the new application, Opposer has used its “M2” mark and name in a related field as trademark, service mark, trade name, and corporate name. Opposer’s senior registration is for “M2” in standard character form, protecting all manners of display. Opposer’s registration is valid and has not been abandoned, and has been deemed incontestable pursuant to 15 U.S.C. § 1065.

8.) Opposer has invested a substantial amount of funding, time, and resources in the development, promotion, registration, and protection of goodwill in its distinctive mark and name. The business and goodwill of Opposer will be irreversibly damaged if Applicant is permitted to register an identical mark.

9.) By its adoption of the identical “M2” symbol, which has no dictionary meaning other than as identifier of M2 Software’s products and services, Applicant is capitalizing on Opposer’s reputation, advertising efforts, and development costs, at little to no expense to itself. No authorization, approval, or permission has been granted to Applicant by Opposer for use of Opposer’s mark or name.

10.) The applied-for use is likely to cause confusion of sponsorship, affiliation, or other connection. The fanciful and distinctive nature of Opposer’s “M2” brand, and Applicant’s importation of the identical non-word identifier out of a

universe of marks, will create a likelihood of confusion that Opposer M2 Software is a source or sponsor, or is developer or licensor of the “M2”-branded products and services, or is otherwise affiliated with, connected to, or related to the Applicant.

11.) An application must be rejected under Section 2(d) if it “consists of or comprises” a mark that “so resembles” a senior mark or senior trade name as to be likely to cause confusion. 15 U.S.C. § 1052(d). The application fits this criteria.

12.) Opposer believes Application Ser. No. 77/739,781, if allowed to pass to registration, will cause injury and damage to Opposer in causing substantial confusion as to relationship, sponsorship, affiliation, or other connection with Opposer’s senior “M2” trademark, service mark, trade name, and corporate name.

WHEREFORE, Opposer requests that Application Ser. No. 77/739,781 be refused and that this Opposition be sustained.

Dated: June 9, 2010  
Los Angeles, California

Respectfully submitted,  
M2 SOFTWARE, INC.

BY: s/David Escamilla/  
David Escamilla  
President and C.E.O.

OPPOSER