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

Proceeding	91200167
Party	Defendant Higher Logic, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**M2 SOFTWARE, INC.**

**Opposer,**

**v.**

**HIGHER LOGIC, LLC,**

**Applicant.**

**OPPOSITION NO. 91200167**

**SERIAL NO. 85/017,071; 85/017,090**

**MARK: M2 MOBILE MEMBERSHIP**

**RESPONSE TO NOTICE OF OPPOSITION**

HIGHER LOGIC, LLC (“HIGHER LOGIC” or “Applicant”), hereby responds to the Notice of Opposition (“Notice”), filed by M2 SOFTWARE, INC. (“CONNECT” or “Opposer”), and which opposes Applicant’s application, Serial Nos. 85/017,071 and 85/017,090 for the mark M2 MOBILE MEMBERSHIP.

1. Answering Paragraph 1 of the Opposition, Applicant is without knowledge or information sufficient to admit or deny the allegations in the Paragraph and therefore denies the same.

2. Answering Paragraph 2 of the Opposition, Applicant denies the allegations contained therein.

3. Answering Paragraph 3 of the Opposition, Applicant denies the allegations that Applicant describes its goods as “computer application software” for handheld platforms, including computer software providing online database access. The description in Applicant’s application is computer application software for mobile devices, namely, software for providing access to online community websites and databases; and facilitating social networking. Answering the remaining allegations contained in Paragraph 3 of the Opposition, Applicant is without knowledge or

information sufficient to admit or deny the allegations in the Paragraphs and therefore denies the same.

4. Answering Paragraph 4 of the Opposition, Applicant is without knowledge or information sufficient to admit or deny the allegations in the Paragraphs and therefore denies the same.

5. Answering Paragraph 5 of the Opposition, Applicant is without knowledge or information sufficient to admit or deny the allegations in the Paragraph and therefore denies the same. However, this proceeding is based on Opposer's existing trademark registration which is specific to the film and music industry: 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.

6. Answering Paragraph 6 of the Opposition, Applicant is without knowledge or information sufficient to admit or deny the allegations in the Paragraph that Opposer's M2 brand is a fanciful trademark symbol created by M2 Software in 1991 with no dictionary meaning and no senior user in any remotely related field and therefore denies the same. Answering the remaining allegations in Paragraph 6 of the Opposition, Applicant denies the allegations contained therein.

7. Answering Paragraph 7 of the Opposition, Applicant denies the allegations that by its adoption of an identical mark for similar products, Applicant is capitalizing on Opposer's reputation, goodwill, advertising, and development costs, at little to no expense to itself. Answering the remaining allegations in Paragraph 7 of the Opposition, Applicant admits the allegations contained therein.

8. Answering Paragraphs 8 through 10 of the Opposition, Applicant denies the allegations contained therein.

9. Answering the WHEREFORE clause, Applicant denies the Opposer is entitled to the relief sought.

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## AFFIRMATIVE DEFENSES

1. Applicant repeats, realleges and incorporates herein each and every allegation of the preceding paragraphs as if fully set forth herein.
2. Opposer's Opposition is barred because there is no likelihood of confusion because the marks are distinctively different and/or are used on distinctively different goods.
3. Opposer's Opposition is barred by the doctrine of estoppel.
4. Opposer's Opposition is barred by the doctrine of laches.
5. Opposer's Opposition is barred by the doctrine of waiver.
6. Opposer's Opposition is barred by the doctrine of unclean hands.
7. Opposer's Opposition is barred because it has failed to state a claim against Applicant upon which relief can be granted.
8. Opposer's Opposition is barred because it has not pleaded any law or facts that justify the Opposition of Applicant's mark.

Applicant respectfully requests:

- (a) That the Opposition be denied in its entirety;
- (b) That judgment be entered in favor of Applicant; and
- (c) That Applicant be granted such other and further relief as the Board deems just and proper.

Respectfully Submitted,

Dated: July 20, 2011

/s/ Lauri S. Thompson

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**CERTIFICATE OF FILING AND SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Response to Notice of Opposition is being filed electronically with the United States Patent and Trademark Office Trademark Trial and Appeals Board and being served by first class mail, postage prepaid, on July 20, 2011, on the following:

D. Escamilla  
M2 Software, Inc.  
6725 Sunset Blvd., Suite 230  
Los Angeles, CA 90028

/s/ Cynthia L. Ney  
An employee of Greenberg Traurig, LLP