

ESTTA Tracking number: **ESTTA452570**

Filing date: **01/23/2012**

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	Fuse Networks LLC
Granted to Date of previous extension	01/22/2012
Address	11 Penn Plaza New York, NY 10001 UNITED STATES

Attorney information	Kathleen E. McCarthy King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036 UNITED STATES nytrademarks@kslaw.com, kmccarthy@kslaw.com, jrichards@btjd.com
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**Applicant Information**

Application No	85251222	Publication date	07/26/2011
Opposition Filing Date	01/23/2012	Opposition Period Ends	01/22/2012
Applicant	Fuze Network, Inc. 2825 E Cottonwood Pkwy, 5th Floor Salt Lake City, UT 84121 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 036. First Use: 2010/01/15 First Use In Commerce: 2010/01/15 All goods and services in the class are opposed, namely: Financial services, namely, electronic funds transfer services and electronic processing, transmission of bill payment data, electronic credit and debit transaction processing, processing payments to third parties, bill payment services, debit and stored value card services, credit card services, debit card services, and cash card services
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**Grounds for Opposition**


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	2849560	Application Date	11/11/2002
Registration Date	06/01/2004	Foreign Priority	NONE

		Date	
Word Mark	FUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2003/05/19 First Use In Commerce: 2003/05/19 Cable television and Internet broadcasting services Class 041. First use: First Use: 2003/05/19 First Use In Commerce: 2003/05/19 Cable television programming services		

U.S. Registration No.	2870618	Application Date	04/08/2003
Registration Date	08/03/2004	Foreign Priority Date	NONE
Word Mark	FUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2003/05/19 First Use In Commerce: 2003/05/19 Cable television and internet broadcasting services Class 041. First use: First Use: 2003/05/19 First Use In Commerce: 2003/05/19 Cable television programming services		

U.S. Registration No.	3900483	Application Date	05/21/2010
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	FUSE		
Design Mark			
Description of Mark	The mark consists of the literal element "FUSE" in stylized form.		

Goods/Services	<p>Class 038. First use: First Use: 2009/04/04 First Use In Commerce: 2009/04/04 Broadcasting services, namely, broadcasting of television programming via television, cable, satellite, global computer network, audio and video media, wireless communications and wired communications</p> <p>Class 041. First use: First Use: 2009/04/04 First Use In Commerce: 2009/04/04 Entertainment services, namely, providing entertainment programming for television and cable television; providing on-line entertainment programming, scheduling, information and news; production and scheduling of television programs distributed via cable television, satellite television, audio and video media and wireless communications, wired communications and global computer networks; providing nondownloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network</p>
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U.S. Registration No.	4088220	Application Date	06/04/2008
Registration Date	01/17/2012	Foreign Priority Date	NONE
Word Mark	FUZE		
Design Mark			
Description of Mark	The mark consists of lower case letters in white on a square black background.		
Goods/Services	Class 009. First use: First Use: 2009/04/04 First Use In Commerce: 2009/04/04 sound recordings featuring music		

Attachments	<p>78234973#TMSN.gif ( 1 page )( bytes )  85044588#TMSN.jpeg ( 1 page )( bytes )  77490328#TMSN.jpeg ( 1 page )( bytes )  Fuse Networks - Notice of Opposition (FUZE NETWORK).pdf ( 7 pages )(51700 bytes )</p>
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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	/Emily B. Brown/
Name	Emily B. Brown
Date	01/23/2012

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


FUSE NETWORKS LLC	§	Opposition No.
	§	
Opposer,	§	_____
	§	
v.	§	
	§	
FUZE NETWORKS, INC.	§	
	§	
Applicant.	§	In the matter of Application
	§	Serial No. 85/251,222
	§	For the mark: FUZE NETWORK
	§	Published: July 26, 2011


**NOTICE OF OPPOSITION**


Opposer, Fuse Networks LLC (hereinafter “Opposer” or “Fuse”), is a New York Limited Liability Company with its principal place of business at 11 Penn Plaza, New York, New York 10001. Opposer believes it will be damaged by registration of the mark FUZE NETWORK (“Applicant’s Mark”) for “financial services, namely, electronic funds transfer services and electronic processing, transmission of bill payment data, electronic credit and debit transaction processing, processing payments to third parties, bill payment services, debit and stored value card services, credit card services, debit card services, and cash card services” in Class 36 (“Applicant’s Services”), which mark is the subject of application Serial No. 85/251,222, filed on February 24, 2011 by Fuze Network, Inc. (“Applicant”) and published for opposition in the Official Gazette on July 26, 2011, and, by and through its undersigned attorneys, hereby opposes the same.

The grounds for this Opposition are as follows:

1. Opposer operates and owns all intellectual property associated with the national music television network FUSE that features original series and specials, exclusive interviews, live concerts and video blocks all related to music. Opposer has used the mark FUSE, long prior to Applicant's use of Applicant's Mark, in connection with, e.g., cable television and internet broadcasting services, cable television programming services, sound recordings featuring music, broadcasting services, and entertainment services. In addition, Opposer's company name is FUSE NETWORKS, LLC and the FUSE television channel is known as the FUSE network.
2. Since at least as early as 2003, Opposer (including its predecessors in interest) has continuously used and extensively promoted its FUSE mark in interstate commerce.
3. Opposer is the owner of all right, title, and interest in and to several U.S. trademark registrations covering the mark FUSE, including the following:

Trademark Serial & Registration No.	Dates of Filing, Use & Registration	Goods/Services
<p style="text-align: center;">FUSE</p> <p>SN: 78-183640</p> <p>RN: 2,849,560</p>	<p>Registration Date: 6-1-2004</p> <p>Date of First Use: 5-19-2003</p> <p>Date of First Use in Commerce: 5-19-2003</p> <p>Filing Date: 11-11-2002</p>	<p style="text-align: center;">Class 38: Cable television and Internet broadcasting services</p> <p style="text-align: center;">Class 41: Cable television programming services</p>
 <p>SN: 78-234973</p> <p>RN: 2,870,618</p>	<p>Registration Date: 8-3-2004</p> <p>Date of First Use: 5-19-2003</p> <p>Date of First Use in Commerce: 5-19-2003</p> <p>Filing Date: 4-8-2003</p>	<p style="text-align: center;">Class 38: Cable television and internet broadcasting services</p> <p style="text-align: center;">Class 41: Cable television programming services</p>

Trademark Serial & Registration No.	Dates of Filing, Use & Registration	Goods/Services
 <p>SN: 85-044588 RN: 3,900,483</p>	<p>Registration Date: 1-4-2011 Date of First Use: 4-4-2009 Date of First Use in Commerce: 4-4-2009 Filing Date: 5-21-2010</p>	<p>Class 38: Broadcasting services, namely, broadcasting of television programming via television, cable, satellite, global computer network, audio and video media, wireless communications and wired communications</p> <p>Class 41: Entertainment services, namely, providing entertainment programming for television and cable television; providing on-line entertainment programming, scheduling, information and news; production and scheduling of television programs distributed via cable television, satellite television, audio and video media and wireless communications, wired communications and global computer networks; providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network</p>

Trademark Serial & Registration No.	Dates of Filing, Use & Registration	Goods/Services
 <p>SN: 77-490328 RN: 4,088,220</p>	<p>Registration Date: 1-17-2012 Date of First Use: 4-4-2009 Date of First Use in Commerce: 4-4-2009 Filing Date: 6-4-2008</p>	<p>Class 09: sound recordings featuring music</p>

4. Said registrations are valid and enforceable. In addition, Registration Nos. 2,849,560 and 2,870,618 have become incontestable under Section 15 of the Lanham Act.
5. By virtue of Opposer's distribution, sale, promotion and advertising of products and services using the FUSE marks, said marks have become identified with high quality services and products originating with Opposer.
6. As a result of Opposer's extensive use of the FUSE marks, said marks have become well-known to consumers generally, enjoy widespread recognition, and are entitled to a broad scope of protection.
7. As a result of Opposer's long, widespread, and extensive use of the FUSE marks, said marks represent tremendous goodwill and are of great value to Opposer.
8. By the Application, Applicant seeks to register the mark FUZE NETWORK in connection with "financial services, namely, electronic funds transfer services and electronic processing, transmission of bill payment data, electronic credit and debit transaction processing, processing payments to third parties, bill payment services, debit

and stored value card services, credit card services, debit card services, and cash card services” in Class 36.

9. FUZE NETWORK is confusingly similar to Opposer’s marks in sight, sound, meaning, and commercial impression.

10. Upon information and belief, Applicant’s Services will be encountered by the same or similar class of purchasers as those who are interested in or familiar with the goods and services sponsored, promoted, offered and provided by Opposer under the well-known FUSE marks.

11. The Application is based on use of Applicant’s Mark in commerce and claims a date of first use of January 15, 2010.

12. By virtue of its prior use and registrations, Opposer has rights in its marks prior and superior to any rights covered in the Application.

13. Upon information and belief, Applicant is unable to establish, with respect to Opposer’s use of the FUSE marks, priority of use or priority of rights in the United States in connection with Applicant’s Mark.

14. Applicant’s Mark, when used in connection with Applicant’s Services, so resembles Opposer’s marks as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant’s Services, with respect to Opposer’s sponsorship thereof or connection or affiliation therewith, and/or in other ways.

15. Opposer would be damaged by registration of Applicant’s Mark because such registration would constitute prima facie evidence of Applicant’s exclusive right to use Applicant’s Mark for and in connection with Applicant’s Services, which would be



inconsistent with and detrimental to Opposer's prior, established and superior rights in the its marks.

16. Applicant's Mark falsely suggests a connection or affiliation with Opposer and Applicant is therefore not entitled to registration of Applicant's Mark.

17. Opposer's marks are famous within the meaning of Section 43(c) of the Lanham Trademark Act, and Applicant's Mark for Applicant's Services is likely to cause dilution of the distinctive quality of Opposer's marks pursuant to Section 43(c).

18. By reason of the foregoing facts, Opposer believes it will be irreparably damaged by the registration of Applicant's Mark.

PRAYER FOR RELIEF

WHEREFORE, Opposer respectfully prays that the Application of Fuze Network, Inc. identified by Serial No. 85/251222 for the alleged mark FUZE NETWORK be refused registration in Class 36, and that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer.

Date: January 23, 2012

Respectfully submitted,

/Kathleen E. McCarthy/  
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Emily B. Brown  
Attorneys for Opposer  
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New York, New York 10036  
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**CERTIFICATE OF TRANSMISSION**

I hereby certify that the foregoing Notice of Opposition is being transmitted to the United States Patent and Trademark Office through the Electronic System for Trademark Trials and Appeals (“ESTTA”) on the date indicated below:

Dated: January 23, 2012

/Kathleen E. McCarthy/  
Kathleen E. McCarthy  
An Attorney for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Opposition was served upon Applicant on the date indicated below by depositing a true and correct copy thereof with the United States Postal Service as First Class Mail, postage prepaid, addressed to the correspondent of record for the Applicant as indicated in the USPTO TARR database as follows:

Jared M. Richards  
Bennett Tueller Johnson Deere  
3165 Millrock Dr. Ste 500  
Salt Lake City, UT 84121-4704

Dated: January 23, 2012

/Kathleen E. McCarthy/  
Kathleen E. McCarthy  
An Attorney for Opposer