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October 22, 2012

By Express Mail

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Discover Financial Service's
Notice of Opposition to U.S. Serial No. 85/374,521
Ref. No. 26033.138

Dear Commissioner:

We enclose a Notice of Opposition to Application Serial Number 85/374,521.

We also enclose a check in the amount of \$300 to cover filing fees. If additional fees are necessary, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Deborah K. Squiers of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.

A handwritten signature in black ink, appearing to read "Deborah K. Squiers", written over a horizontal line.

Deborah K. Squiers
Attorneys for Opposer

Enclosure

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

In re Application Serial No. 85/374,521
Filed: July 22, 2011
For Mark: ZP ZIPPAY and Design
Published in the Official Gazette: April 24, 2012

TTAB

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DISCOVER FINANCIAL SERVICES,	Opposition No.
Opposer,	
v.	<u>NOTICE OF OPPOSITION</u>
ZIPPAY, LLC,	
Applicant.	
-----X	

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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Discover Financial Services ("Discover"), a Delaware corporation, with offices at 2500 Lake Cook Road, Riverwoods, Illinois 60015, believes that it will be damaged by registration of the mark ZP ZIPPAY and Design ("Applicant's Mark") for "computer software application for use in making online payments via mobile phones, smart phones, tablet computers, personal digital assistants (PDAs) and computers" in International Class 9, as shown in Application Serial No. 85/374,521 (the "Application"), and hereby opposes the same.



10-22-2012

U.S. Patent and Trademark Office #72

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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on 10/22/2012
(Date of Deposit) FLORENCE O. REDOMA
(Print name)
Florence O. Redoma
(Signature)

As grounds for opposition, it is alleged that:

1. Since prior to July 22, 2011, the filing date of Applicant's intent to use application, Discover, its affiliated and related entities (collectively referred to hereinafter as "Opposer") have used the mark ZIP, alone or with design elements (the "Opposer's Marks"), in connection with financial, banking and electronic fund transfer services, credit card, debit card and payment card payment processing services through wireless devices, and various related goods and services.

2. Opposer owns United States federal registrations for Opposer's Marks, namely Registration Nos. 3,640,199 and 3,640,200 both covering "radio frequency transponder encrypted with information for use with contactless payment; card readers for credit cards and debit cards; readers for contactless payment devices; wireless devices, namely mobile phones" in Class 9 and "provision of debit card and credit card services by means of radio frequency identification devices; providing credit card and debit card account information via hand-held devices; credit card, debit card and payment card payment services, namely, making and processing payments through wireless devices" in Class 36.

3. Since prior to July 22, 2011, the filing date of Applicant's intent to use application, Opposer has promoted and advertised the sale and distribution of services and goods bearing or offered in connection with Opposer's Marks, and have rendered such services and offered such goods in commerce.

4. As a result of the sales and promotion of its services and goods bearing or offered in connection with Opposer's Marks, Opposer has built up highly valuable goodwill in Opposer's Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

5. On July 22, 2011, Applicant filed the Application for Applicant's Mark for "computer software application for use in making online payments via mobile phones, smart phones, tablet computers, personal digital assistants (PDAs) and computers" in International Class 9, on an intent to use basis.

6. Upon information and belief, Applicant did not use Applicant's Mark for the goods covered in the Application in United States commerce prior to the filing date of its application of July 22, 2011.

7. The goods covered by the Application are identical and/or closely related to the services rendered and goods offered in connection with Opposer's Marks.

8. Applicant's Mark so resembles Opposer's Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

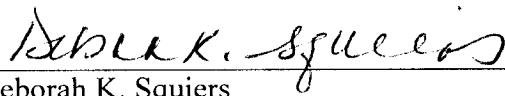
WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied. Please recognize as attorney for Opposer in this proceeding Deborah K. Squiers (member of the bar of

the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Dated: New York, New York
October 22 , 2012

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 

Deborah K. Squiers
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 22, 2012, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's attorneys of record addressed as follows: Raj Abhyanker, 1580 W El Camino Real, Suite 8, Mountain View, CA 94040.

The law office of Raj Abhynaker informed Opposer's counsel that it no longer represents Applicant. Accordingly, I further certify that, on October 22, 2012, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, directly to Applicant addressed as follows: ZIPPAY, LLC, 2060 Walsh Ave., Santa Clara, California 95050.

/Deborah K. Squiers/
Deborah K. Squiers