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

Proceeding	91216122
Party	Defendant Evergram, Inc
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Mark: EVERGRAM

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

INSTAGRAM, LLC, a Delaware limited  
liability company,  
Opposer/Registrant

v.

EVERGRAM, INC.,

Applicant/Petitioner

**ANSWER TO NOTICE OF  
OPPOSITION**

Opposition No.  
91216122

Application No. 85/613424

## ANSWER TO NOTICE OF OPPOSITION

EVERGRAM, Inc. (“Applicant” or “EVERGRAM”) hereby answers the Notice of Opposition (“Opposition”) filed by Instagram, LLC (“Opposer” or “Instagram”). Applicant denies the allegation in the unnumbered introductory paragraph of the Opposition which states that Opposer believes that it will be damaged by the issuance of a registration for the mark EVERGRAM (“Applicant’s Mark”). In response to the individually numbered paragraphs of the Opposition, Applicant responds as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Opposition, and on that basis denies each and every allegation contained therein.

2. Applicant admits that Opposer has U.S. registrations and applications for the mark INSTAGRAM, which registrations and applications speak for themselves. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Opposition, and on that basis denies each and every allegation contained therein.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Opposition, and on that basis denies each and every allegation contained therein.

4. Applicant denies each and every allegation in Paragraph 4 of the Opposition.

5. Applicant admits the allegations in Paragraph 5 of the Opposition.

6. Applicant admits the allegations in Paragraph 6 of the Opposition.

7. Applicant Admits the allegations in Paragraph 7 of the Opposition

8 Applicant incorporates its responses to Allegations 1-7 hereof as if specifically set forth herein.

9. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Opposition, and on that basis denies each and every allegation contained therein.

10. Applicant denies each and every allegation in Paragraph 10 of the Opposition.

11. Applicant denies each and every allegation in Paragraph 11 of the Opposition.

12. Applicant admits the allegations of Paragraph 12 of the Opposition

13. Applicant denies each and every allegation in Paragraph 13 of the Opposition.

14. Applicant incorporates its responses to Allegations 1-13 hereof as if specifically set forth herein.

16. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 of the Opposition, and on that basis denies each and every allegation contained therein.

17. Applicant admits that Opposer has U.S. registrations and applications for the mark INSTAGRAM, which registrations and applications speak for themselves. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 17 of the Opposition, and on that basis denies each and every remaining allegation contained therein.

18. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17 of the Opposition, and on that basis denies each and every allegation contained therein.

19. Applicant denies each and every allegation in Paragraph 19 of the Opposition.

20. Applicant denies each and every allegation in Paragraph 20 of the Opposition.

21. Applicant denies each and every allegation in Paragraph 21 of the Opposition.

22. Applicant denies each and every allegation in Paragraph 22 of the Opposition.

23. Applicant denies each and every allegation in Paragraph 22 of the Opposition.

#### **AFFIRMATIVE DEFENSES**

1. The Opposition is barred because Opposer failed to prevent continued use of GRAM formative marks by others. For Example, on the iTunes store alone, there's are 100+ "gram" named mobile apps. Some of these parties have filed trademark applications (objected to by Instagram...others with registered marks that preceded Instagram...and others with no trademark filing).

InstaPhotoGram, FamousGram, SymbolGram, Cinemagram, JitterGram, Slo-Gram, SaveGram, Pic O Gram, Textgram, TrackGram, Notestagram, Travelgram, Bordergram, MessageGram, PopularGram, Holler Gram, UglyGram, Downgram, MoneyGram, ChainGram, VineGram, RansomGram, Cutagram, Pokegram, Gifagram, BOOMigram, BirthdayGram, SlideGram, Shape'gram, FlashGram, Princess-Gram, SantaGram,

EmojiGram, SlomoGram, Love Gram, SmileyGram, TypoGram, GifGram, Cameragram, ClipGram, Hipstagram, SenGram, DoodleGram, Phonogram, CircleGram, MessageGram, AltiGram, VidGram, Slidergram, MeteoGram, ExpressGram, ZZ Gram, SantaGram!, PictureGram, KissaGram, StereoGram, MissionaryGram, SimpleGram, HipsterGram, CarpetGram, TouchGram, PhotoGram, Melodigram, Disrupt O-Gram, BittyGram, Image Gram, BooGram, Photo Gram, HowlOGram, comPoseGram, Graham Gram, LineGram, HolidayGram, Macho Gram, No-No-Gram, q8gram, SocialGram, KudoGram, PreGram, Lampagram, GrannyGram, VidaGram, VideoGram, Otto-Gram, SlidesGram, Ounce Gram, Zombie Gram, Paintagram, Carol-O-Gram, NearGram, NailGram, Lottogram, Gram, RepostGram, Pirate Gram, ReuseGram, CreateoGram, RateMyGram, asciiGram, LazyGram, TanGram, PicGram, #FanGram, iWeatherGram, Pussygram, Fixogram, iPartyGram, PairGram, xGram, TreeeeGram, AutoGram, Stachegram, BrandGram, SlimGram, Bubble Gram, CelulaGram, Tysk Gram, WeatherGram, and 360gram

Further there are many uncontested SINGLE WORD GRAM MARKS registered and live for other products/services.

1-800-HOTGRAM

ACTIVITYGRAM

AEROGRAM

AGGRAM

ALEXAGRAM

ALFAGRAM

ALUGRAM

AMIGRAM

ANAGRAM

ANGRAM

ANIGRAM

ANTIGRAM

ANTIVIROGRAM

APOTHAGRAM

APPLEGRAM

ASTROGRAM

ATTOGRAM

AUDIOGRAM

AUTHENTIGRAM

BABYGRAM

BABYGRAMS

BALL-GRAM

BALLOONGRAM

BANAGRAMS

BANANA-GRAM

BANANAGRAMS

BEAN-A-GRAM

BEAR-GRAM

BEERGRAM

BENIGRAM

BENITOGRAM

BETTERPROGRAM

BILLYGRAMS

BIOCECOGRAM

BIONOGRAM

BIRTHDAYGRAM

BITCHOGRAM

BLESS-U-GRAM

BLOOM-A-GRAM

BOOKGRAM

BRAINOGRAM

BROADWAYGRAM

BUILD-A-GRAM

C-GRAMS

CALLIGRAM

CANDY-GRAM

CARDIO-GRAM

CARDIOCHANNELGRAM

CAREGRAM

CASETAGRAM

CATALAGRAM

CENT-O-GRAM

CENTIGRAM

CGRAM

CHALLAGRAM

CHEEKYGRAM

CHOCOTELEGRAM

CHRONOGRAM

CIGAR-GRAM

CINEMAGRAM

COLORGRAM

COMBIGRAM

CRAPPYGRAM

CREDITGRAM

DAILYGRAM

DECOGRAM

DENTIGRAM

DENTOGRAM

DIAGRAM

DIAL-O-GRAM

DIGIGRAM

DIVAGRAMS

EGRAM

EGRAMS

EMOTIGRAM

ENDOGRAM

ENERGYGRAM

EVOKEDPOTENTIALGRAM

EZGRAM

FIGURGRAM

FITNESSGRAM

FLOWERGRAM

FLUGRAM

GAZE-O-GRAMS

GENOGRAM

GILDA-GRAM

GIVEAGRAM

GLOBALGRAM

GOLDGRAMS

GOODGRAM



GOOSEYGRAMS

GOPLANOGRAM

GRAM

GRAMAGRAM

GRAMPA-GRAM

GRANT-A-GRAM

GROCERGRAM

HALIGRAM

HEALTHGRAM

HEARTAGRAM

HEAVENLYGRAM

HERB-A-GRAM

HERBALGRAM

HEXAGRAM

HOLLOWGRAM

HOLOGRAM

HOTTIEGRAM

HUG-E-GRAM

HYPERGRAM

HYPNO-GRAM

IMAGRAM

INFOGR.AM

INFOGRAM

INGRAM

INSTITUGRAM

INTELLIGRAM

I PROGRAM

JITTERGRAM

JOBGRAM

KALEIDOGRAMS

KICKSTAGRAM

KIDDYGRAM

KILOGRAM

KINEGRAM

KRAZYGRAMS

LAUGH-A-GRAM

LAWGRAM

LEATHERGRAM

LEGACYGRAM

LEXAGRAM

LEXIGRAM

LIFEGRAM

LIGHTYGRAM

LITOGRAM

LIVELYGRAM

LOVE-A-GRAM

LOVEGRAM

LOVEYOUGRAM

LUCKYGRAM

LULLAGRAM

MAGNEGRAM

MALEGRAMS

MAN-O-GRAMS  
MANOGRAM  
MESSAGE-O-GRAM  
MECHANIGRAM  
MEMO-GRAM  
METALAGRAM  
MOLOGRAM  
MONEYGRAM  
MONOGRAM  
MOOLGRAM  
NANA-GRAMS  
NANOGRAM  
NEGGRAM  
NETGRAM  
NEUROGRAM  
NEWSTOGRAM  
NOODLEGRAM  
NOTE-O-GRAM  
NUTRIGRAM  
NYSTAGRAM  
OCEANGRAM  
OPERAGRAM.COM  
OPTIGRAM  
OTOGRAM  
PAGEGRAM  
PAJAMAGRAM

PANDAGRAM

PANOGRAM

PENTAGRAM

PETIGRAM

PHONE-O-GRAM

PHOTOGRAM

PIANOGRAM

PICTOGRAM

PIGEONGRAM

PILLOWGRAMS

PIZZAGRAM

POLYGRAM

POP-GRAM

POP-GRAM

POPPAGRAM

POSTALGRAM

POWERGRAM

PREPROGRAM

PRESS-TELEGRAM

PROGRAM

PROMOGRAM

PYROGRAM

QIAGRAM

QUALIGRAM

QUIPTOGRAM

RAPAGRAM

REDI-GRAM

RELAX-A-GRAM

SCENT-A-GRAM

SCREEN-A-GRAM

SCRIPT-O-GRAM

SEAGRAM

SILOGRAM

SNAPGRAM

SNAPSTAGRAM JUST PRINTS

SNORE-O-GRAM

SOAPYGRAM

SOCIAGRAM

SORRYGRAM

SPAGRAMS

SPOON-O-GRAM

STAR-TELEGRAM

STAT/GRAM

STICKYGRAM

STORYGRAMS

STRUCTOGRAM

SUNNYGRAM

SYNAGRAM

TACTIC\*GRAM

TAMAGRAMS

TANAGRAM

TANGRAM

TAPGRAM

TEAGRAM

TEDDYGRAMS

TELLALLGRAM

TERAGRAM

THANK-U-GRAM

THERMAGRAM

THRIVE-O-GRAM

TILEGRAM

TIPPYGRAM

TRANS-O-GRAM

TRAUMAGRAM

TRAVELGRAM

TRIPGRAM

TRUSTGRAM

UNDERGRAM

UNIGRAM

VECTOGRAM

VEG-E-GRAM

VEOGRAM

VIOLINOGRAM

VIRTUAGRAM

VISIGRAM

VISUALGRAM

VITAGRAM

VOWELGRAM

VOXGRAM

WATERGRAM

WELLGRAM

WHEEZOGRAM

WINEGRAM

ZIPGRAM

ZODIAGRAM

Upon information and belief, Opposer has taken no action to bar or stop the use of any of the foregoing.

- 1(a) The Opposition is barred by the doctrine by estoppel by consent
  2. The Opposition is barred by the doctrine of estoppel by acquiescence by permitting third.
  3. The Opposition is barred by the doctrine of estoppel by laches.
  4. The Opposition is barred by the doctrine of equitable estoppel.
  5. The Opposition is barred by the doctrine of unclean hands.
  6. The Opposition is barred because the INSTAGRAM Marks have been abandoned due to naked licensing.
  7. The Opposition is barred because the INSTAGRAM Marks are descriptive and lack secondary meaning.
  8. The Opposition is barred by the First Amendment to the United States Constitution.
  9. Applicant reserves right to amend its answer to add additional or other affirmative defenses as may become necessary after a reasonable opportunity for appropriate discovery
- Wherefore, Applicant requests that the instant opposition be dismissed with prejudice

Respectfully submitted,



**Jay Begler, Niesar & Vestal LLP**

Dated:: April 6, 2015

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached ANSWER (Opposition No. 91216122) is being electronically transmitted to the Trademark Trial and Appeal Board on April 6, 2015 and served by first class mail, postage prepaid, and by email to :

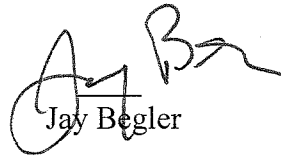
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