

ESTTA Tracking number: **ESTTA747969**

Filing date: **05/23/2016**

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                                  | eHarmony, Inc.   |
| Granted to Date of previous extension | 06/01/2016   |
| Address                               | 10900 Wilshire Boulevard, Suite 17<br>Los Angeles, CA 90024<br>UNITED STATES   |
| Attorney information                  | Lisa Greenwald-Swire<br>Fish & Richardson, P.C.<br>P.O. Box 1022<br>Minneapolis, MN 55440<br>UNITED STATES<br>TrademarkGroup-SV@fr.com, tmdocto@fr.com, Greenwald-Swire@fr.com |

### Applicant Information

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 86750545   | Publication date       | 02/02/2016 |
| Opposition Filing Date | 05/23/2016   | Opposition Period Ends | 06/01/2016 |
| Applicant              | MIDWAY RENT A CAR, INC.<br>Suite 120<br>Los Angeles, CA 90010<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|  |
|--|
| Class 035. First Use: 2015/08/24 First Use In Commerce: 2015/08/24<br>All goods and services in the class are opposed, namely: Online automobile dealership services |
| Class 036. First Use: 2015/08/24 First Use In Commerce: 2015/08/24<br>All goods and services in the class are opposed, namely: Online automobile financing services  |

### Grounds for Opposition

|                                      |                                    |
|--------------------------------------|------------------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d)         |
| Dilution by blurring                 | Trademark Act Sections 2 and 43(c) |

### Marks Cited by Opposer as Basis for Opposition

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3911586    | Application Date      | 12/15/2008 |
| Registration Date     | 01/25/2011 | Foreign Priority Date | NONE       |
| Word Mark             | EHARMONY   |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | NONE  |
| Goods/Services      | <p>Class 038. First use: First Use: 2000/08/22 First Use In Commerce: 2000/08/22<br/> Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages covering general interest, classified, virtual community, social networking, photo sharing and transmission of photographic images; providing online bulletin boards for transmission of messages among users in the field of general interest; providing online discussion groups for transmission of messages among users in the field of general interest; providing online interactive bulletin boards for transmission of messages among computer users concerning information on a wide variety of topics of general interest to the public; providing on-line forums and discussion groups for transmission of message among computer users</p> <p>Class 042. First use: First Use: 2000/08/22 First Use In Commerce: 2000/08/22<br/> Computer services, namely, hosting online web facilities for organizing gatherings, and interactive discussions</p> <p>Class 044. First use: First Use: 2000/08/22 First Use In Commerce: 2000/08/22<br/> Providing a website featuring information in the area of psychological research</p> <p>Class 045. First use: First Use: 2000/08/22 First Use In Commerce: 2000/08/22<br/> Dating services, counseling, namely, offering advice regarding personal relationships and personal well being via a global computer network; Internet based introduction and social networking services; providing a website featuring information in the area of personal relationship wellness; providing information in the field of personal relationship wellness; providing information in the field of social introduction</p> |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4238070  | Application Date      | 02/18/2010 |
| Registration Date     | 11/06/2012   | Foreign Priority Date | NONE       |
| Word Mark             | EHARMONY   |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | The mark consists of the stylized wording "EHARMONY" with the "E" appearing in the color gray, and "HARMONY" appearing in the color blue.  |                       |            |
| Goods/Services        | <p>Class 045. First use: First Use: 2006/04/11 First Use In Commerce: 2006/04/11<br/> Dating services, marriage counseling, counseling, namely, offering advice regarding personal relationships and personal well being via a global computer network; Internet based introduction and social networking services; providing a website featuring information in the area of personal relationship wellness; providing information in the field of personal relationship wellness; providing information in the field of social introduction</p> |                       |            |

|             |   |
|-------------|---|
| Attachments | CarHarmony Opposition.pdf(4454823 bytes ) |
|-------------|---|

## 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 | /Lisa Greenwald-Swire/ |
|-----------|------------------------|

|      |                      |
|------|----------------------|
| Name | Lisa Greenwald-Swire |
| Date | 05/23/2016           |

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

In the matter of Application Serial No. 86/750545  
Filed on September 8, 2015  
For the mark **CAR HARMONY**  
Published in the *Official Gazette* on February 2, 2016

eHarmony, Inc.,

Opposer,

v.

Midway Rent A Car, Inc. DBA Car Harmony

Applicant.

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

**NOTICE OF OPPOSITION**

Opposer eHarmony, Inc. (“Opposer” or “eHarmony”), a Delaware corporation, having its principal place of business at 10900 Wilshire Boulevard, Suite 17, Los Angeles, CA 90024, believes that it will be damaged by registration of the mark shown at Application Serial No. 86/750545 and hereby opposes this application, alleging as grounds for its opposition that:

1. Opposer has obtained the necessary extension of time in which to oppose the challenged trademark following its publication on February 2, 2016 in the *Official Gazette*.

2. As is evidenced by the publication of the CAR HARMONY mark in the February 2, 2016 *Official Gazette*, Applicant Midway Rent A Car, Inc. DBA Car Harmony (“Applicant”) seeks to register the mark CAR HARMONY with Heart Logo (the “Proposed Mark”) as a trademark in International Class 35 for “Online automobile dealership services” and in International Class 36 for “Online automobile dealership

services.” Applicant is, upon information and belief, a California corporation, having its principal place of business at 4751 Wilshire Blvd. Suite 120, Los Angeles, CA 90010.

Applicant filed the application for the Proposed Mark based on a use-in-commerce basis.

3. Since at least as early as August 2000, and continuously since then, the EHARMONY trademark and trade name have been used in commerce in connection with a wide variety of goods and services, including, but not limited to, dating services; marriage counseling; and offering advice regarding personal relationships and personal mind, body, and spirit wellbeing via a global computer network; Computer services, namely, hosting online web facilities for organizing gatherings, and interactive discussions; Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages covering general interest, classified, virtual community, social networking, photo sharing and transmission of photographic images; providing online bulletin boards for transmission of messages among users in the field of general interest; providing online discussion groups for transmission of messages among users in the field of general interest; providing online interactive bulletin boards for transmission of messages among computer users concerning information on a wide variety of topics of general interest to the public; providing on-line forums and discussion groups for transmission of message among computer users. We refer to the foregoing goods and services as “the eHarmony Goods and Services.” Opposer has priority over Applicant’s Proposed Mark.

4. All of the eHarmony Goods and Services have been and/or are being advertised, promoted, marketed, offered and rendered in connection with Opposer’s well known EHARMONY trademark and trade name. We refer to Opposer’s trademark and

trade name as the “eHarmony Mark.” Opposer has spent considerable time, money, and effort promoting its eHarmony Mark and developing customer recognition and goodwill in the eHarmony Mark nationwide on the Internet, television, radio, in numerous industry and non-industry publications, and on Opposer’s website at *www.eharmony.com*.

5. Opposer’s rights in the eHarmony Mark are further evidenced by its ownership of United States Registration Nos. 3,911,586 for the word mark EHARMONY and Registration No. 4,238,070 for the EHARMONY Stylized mark. We refer to the foregoing registrations as “the eHarmony Registrations.” True and correct copies of the certificates of registration for the eHarmony Registrations are attached hereto as **Exhibit A**. These registrations are in full force and effect. Opposer’s federal trademark registrations for the eHarmony Mark serve as conclusive evidence of: (a) the validity of the registered marks; (b) Opposer’s ownership of the marks; and (c) Opposer’s exclusive right to use the marks in commerce under 15 U.S.C. § 1115(b). Opposer also owns 41 other registrations for the mark EHARMONY worldwide.

6. The well-known use of the eHarmony Mark has been continuous and extensive. The eHarmony Mark has been advertised, promoted, marketed and offered in connection with the eHarmony Goods and Services since at least as early as 1999, and has been in continuous and uninterrupted use in interstate commerce ever since August 2000.

7. The level of fame and consumer recognition of the eHarmony Mark cannot be disputed. After continuous use for over sixteen years in connection with Opposer’s extremely successful business, the eHarmony Mark has come to be

immediately identified as the source of the eHarmony Goods and Services. The eHarmony Mark and its associated goodwill are assets of immense value to Opposer.

8. The eHarmony Mark is famous and is recognized by virtually every consumer in the United States. eHarmony is widely recognized as America's #1 trusted relationship service, and was founded by one of the country's most well-known relationship experts, best-selling author and clinical psychologist Dr. Neil Clark Warren. eHarmony has grown into one of the Internet's top providers of online dating and relationship services, and currently has over 44 million registered users from all 50 states and from more than 200 countries. Millions of people of all ages, ethnicities and religious backgrounds have used eHarmony's relationship service since the launch of the company in 1999. Indeed, according to a 2012 survey conducted by a leading national market research firm, an average of 438 eHarmony members marry every day in the United States as a result of being matched by the site.

9. Other than connecting compatible people together, eHarmony also offers its famous matching services for employment via its ELEVATED CAREERS BY EHARMONY. The ELEVATED CAREERS BY EHARMONY is the subject of U.S. Serial No. 86324184. See **Exhibit B**.

10. On information and belief, Applicant owns the *carharmony.com* domain and website and uses it in connection with its CAR HARMONY matching automobile services. The *carhmony.com* website references eHarmony by mimicking the same blue color that is featured on Opposer's Stylized mark as seen in Exhibit A. True and correct copies of printouts from Applicant's website are attached hereto as **Exhibit C**.

11. On information and belief, the Proposed Mark is used on *carharmony.com* for *matching* and *connecting* compatible consumers with automobiles and further references Opposer's services by evoking love, relationships and matching by prominently displaying a heart on Applicant's car logo.

12. On information and belief, Applicant's website features language such as: "See how it feels and it it's a good fit for you," "Love it? Buy it!" "Not the right fit?" and "We're the relationship managers." See **Exhibit D**.

13. The Proposed Mark incorporates the distinctive portion of Opposer's famous trademark and trade name, "HARMONY," such that the public is likely to mistakenly assume that the services provided in connection with the Proposed Mark and the *carharmony.com* domain are in some way connected with or sponsored by Opposer, since Applicant's services allow consumers to *connect* with potential automobiles and Applicant's services allow users to *connect* with potential partners. Accordingly, consumers encountering the HARMONY marks used in connection with Applicant's services would reasonably believe that CAR HARMONY is a car-oriented version of the Opposer's services, when they are not. Such assumed affiliation may lead to public confusion and deception.

14. Even the United States Patent and Trademark Office (hereinafter the "PTO") has recognized the fame of Opposer's EHARMONY trademark and trade name, in noting that trademarks containing the word HARMONY are likely to cause confusion among consumers. For example, the PTO refused registration of the trademark MEDHARMONY, Ser. No. 85/162,873, for services to match patients and doctors, noting that the marks were confusingly similar and that "consumers encountering the



HARMONY marks used in connection with the parties' services would reasonably believe that MEDHARMONY is a medically-oriented version of the EHARMONY services, and that all the services originate from the same source." A true and correct copy of the MEDHARMONY Office Action is attached hereto as **Exhibit E**.

15. Before the Trademark Trial and Appeal Board (hereinafter "TTAB"), Opposer successfully opposed a previous applicant's application to register JOBHARMONY, Ser. No. 77/290,652, filed September 25, 2007, for "employment hiring, recruiting, placement, staffing and career networking services; providing an on-line searchable database featuring classified ad listings and employment opportunities." As a result, the TTAB refused the registration of that application and sustained Opposer's motion for summary judgment in that matter. A true and correct copy of the JOBHARMONY Board Decision is attached hereto as **Exhibit F**. The present Proposed Mark deals with the same issues of likelihood of confusion and dilution involved in the JOBHARMONY dispute.

16. There is no issue as to priority. Opposer has used its eHarmony Mark for over sixteen years, and on information and belief, Applicant has started commercial use of the Proposed Mark no earlier than August 24, 2015. Opposer's first use date is over fifteen years prior to the filing date of the application for the Proposed Mark.

17. The Proposed Mark is confusingly similar to Opposer's eHarmony Mark. The Proposed Mark is nearly identical to the eHarmony Mark in appearance, sound, and commercial impression when used in connection with Applicant's services, as identified in Serial No. 86/750,545. The dominant portions of the respective parties' marks are identical, as the Proposed Mark wholly and prominently incorporates the widely

recognized and distinctive HARMONY element of the eHarmony Mark. The mere addition of the descriptive term “car” does little to add distinctive value to Applicant’s Proposed Mark, and because the term “car” is descriptive, HARMONY is the dominant and only distinctive element of the Proposed Mark.

18. Applicant’s listed services in Serial No. 86/750,545 overlap with and/or are related to the eHarmony Goods and Services. Applicant’s intended business model of matching perspective customers with compatible used cars is very similar to eHarmony’s business model of matching compatible individuals, whether it be for love, or for employment. Applicant’s services are squarely within eHarmony’s natural scope of expansion. It is also likely that Applicant’s targeted consumer base will significantly overlap with Opposer’s targeted consumer base.

19. Applicant’s use of the Proposed Mark is likely to cause confusion, mistake or deception in the minds of prospective purchasers as to the origin, source, sponsorship or association of Applicant’s services, thereby causing loss, damage and injury to Opposer. The extent of potential confusion among consumers between Applicant’s Proposed Mark and the eHarmony Mark is substantial.

20. Consumers familiar with the eHarmony Mark are likely to mistakenly believe that Applicant’s services are sponsored, authorized, associated with or otherwise approved by Opposer because the Proposed Mark is nearly identical to Opposer’s eHarmony Mark. Inferior quality, deficiencies or other faults in Applicant’s services are likely to reflect negatively upon, tarnish, and seriously injure the reputation which Opposer has established for the goods and services marketed under the eHarmony Mark.

This is likely to result in loss of revenues to Opposer and damage to Opposer's reputation.

21. Applicant's use of the Proposed Mark does or is likely to falsely suggest a relationship between Applicant's services and Opposer's services. Such use of the Proposed Mark is likely to cause confusion, mistake, or deception with respect to the source or sponsorship of Applicant's services. Such use is thus likely to cause a significant increase in the level of Applicant's sales and Internet traffic due to consumers' mistaken belief that Opposer is the source or sponsor of Applicant's services.

Applicant's use of the Proposed Mark is therefore likely to result in Applicant's trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

22. Registration of Applicant's Proposed Mark would be a further source of damage to Opposer because it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer's prior use of its famous and distinctive eHarmony Mark.

23. On information and belief, Applicant was aware of Opposer prior to its adoption of the Proposed Mark.

24. On information and belief, Applicant was aware of Opposer's eHarmony Mark prior to its adoption of the Proposed Mark.

25. Applicant applied for registration of the Proposed Mark without the consent or agreement of Opposer.

26. On information and belief, Applicant's selection and adoption of its Proposed Mark is part of a campaign to intentionally and willfully deceive the public and free ride on Opposer's valuable goodwill in the eHarmony Mark.

27. In the unlikely event that any consumers may not be confused into believing that Applicant's services originate from or are related to those of Opposer, Applicant's use of the Proposed Mark would diminish the distinctive quality of Opposer's famous eHarmony Mark, thereby causing dilution of Opposer's famous eHarmony Mark in violation of Lanham Act Section 43(c)(1), 15 U.S.C. § 1125(c)(1), and in violation of Opposer's rights under state dilution and unfair competition law. As a result, the ability of Opposer's eHarmony Mark to identify the eHarmony Goods and Services is weakened, thereby causing loss, damage and injury to Opposer.

28. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Sections 2 and 43 of the Lanham Act, 15 U.S.C. §§ 1052 and 1125, and Opposer would be damaged thereby.

29. In order to protect the public against confusion and deceit, and to protect Opposer's famous eHarmony Mark from infringement, dilution and unfair competition, registration of Applicant's Proposed Mark should be refused under Sections 2(d), 43(c)(1) and 13 of the Lanham Act, 15 U.S.C. §§ 1052(d), 1125(c)(1), and 1063.

WHEREFORE, Opposer respectfully prays for the following:

a. a finding that Opposer eHarmony has priority as to Applicant's application to register the CAR HARMONY mark in connection with the services listed in Serial No. 86/750,545;

- b. a finding that Applicant's proposed CAR HARMONY mark is likely to cause confusion with Opposer's eHarmony Mark;
- c. a finding that Applicant's proposed CAR HARMONY mark dilutes Opposer's eHarmony Mark; and
- d. pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, that the opposition be sustained and Application Serial No. 86/750,545 and the mark therein sought, for the services identified therein, be denied and refused.

This Notice of Opposition is submitted electronically. Please apply the \$300 fee to Deposit Account No. 06-1050, making reference to 24237-1051PP1.

Respectfully Submitted,



Date May 23, 2016

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Lisa Greenwald-Swire  
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Fish & Richardson P.C.  
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ATTORNEY FOR  
Opposer eHarmony, Inc.

# Exhibit A

# United States of America

United States Patent and Trademark Office

## EHARMONY

**Reg. No. 3,911,586**

**Registered Jan. 25, 2011**

**Int. Cls.: 38, 42, 44, and  
45**

**SERVICE MARK**

**PRINCIPAL REGISTER**

EHARMONY, INC. (DELAWARE CORPORATION)  
888 EAST WALNUT STREET, 2ND FLOOR  
PASADENA, CA 91101

FOR: PROVIDING ONLINE CHAT ROOMS AND ELECTRONIC BULLETIN BOARDS FOR REGISTERED USERS FOR TRANSMISSION OF MESSAGES COVERING GENERAL INTEREST, CLASSIFIED, VIRTUAL COMMUNITY, SOCIAL NETWORKING, PHOTO SHARING AND TRANSMISSION OF PHOTOGRAPHIC IMAGES; PROVIDING ONLINE BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG USERS IN THE FIELD OF GENERAL INTEREST; PROVIDING ONLINE DISCUSSION GROUPS FOR TRANSMISSION OF MESSAGES AMONG USERS IN THE FIELD OF GENERAL INTEREST; PROVIDING ONLINE INTERACTIVE BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING INFORMATION ON A WIDE VARIETY OF TOPICS OF GENERAL INTEREST TO THE PUBLIC; PROVIDING ON-LINE FORUMS AND DISCUSSION GROUPS FOR TRANSMISSION OF MESSAGE AMONG COMPUTER USERS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 8-22-2000; IN COMMERCE 8-22-2000.

FOR: COMPUTER SERVICES, NAMELY, HOSTING ONLINE WEB FACILITIES FOR ORGANIZING GATHERINGS, AND INTERACTIVE DISCUSSIONS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 8-22-2000; IN COMMERCE 8-22-2000.

FOR: PROVIDING A WEBSITE FEATURING INFORMATION IN THE AREA OF PSYCHOLOGICAL RESEARCH, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 8-22-2000; IN COMMERCE 8-22-2000.



FOR: DATING SERVICES, COUNSELING, NAMELY, OFFERING ADVICE REGARDING PERSONAL RELATIONSHIPS AND PERSONAL WELL BEING VIA A GLOBAL COMPUTER NETWORK; INTERNET BASED INTRODUCTION AND SOCIAL NETWORKING SERVICES; PROVIDING A WEBSITE FEATURING INFORMATION IN THE AREA OF PERSONAL RELATIONSHIP WELLNESS; PROVIDING INFORMATION IN THE FIELD OF PERSONAL RELATIONSHIP WELLNESS; PROVIDING INFORMATION IN THE FIELD OF SOCIAL INTRODUCTION, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 8-22-2000; IN COMMERCE 8-22-2000.

*David J. Kyros*

Director of the United States Patent and Trademark Office

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

**Reg. No. 3,911,586** OWNER OF U.S. REG. NOS. 2,764,705, 3,422,967, AND 3,483,503.

SN 77-633,598, FILED 12-15-2008.

PAUL MORENO, EXAMINING ATTORNEY



# United States of America

United States Patent and Trademark Office

# eHarmony

**Reg. No. 4,238,070**

**Registered Nov. 6, 2012**

**Int. Cl.: 45**

**SERVICE MARK**

**PRINCIPAL REGISTER**

EHARMONY, INC. (DELAWARE CORPORATION)  
2401 COLORADO AVENUE, SUITE A200  
SANTA MONICA, CA 90404

FOR: DATING SERVICES, MARRIAGE COUNSELING, COUNSELING, NAMELY, OFFERING ADVICE REGARDING PERSONAL RELATIONSHIPS AND PERSONAL WELL BEING VIA A GLOBAL COMPUTER NETWORK; INTERNET BASED INTRODUCTION AND SOCIAL NETWORKING SERVICES; PROVIDING A WEBSITE FEATURING INFORMATION IN THE AREA OF PERSONAL RELATIONSHIP WELLNESS; PROVIDING INFORMATION IN THE FIELD OF PERSONAL RELATIONSHIP WELLNESS; PROVIDING INFORMATION IN THE FIELD OF SOCIAL INTRODUCTION, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 4-11-2006; IN COMMERCE 4-11-2006.

OWNER OF U.S. REG. NOS. 2,764,705 AND 3,422,967.

THE COLOR(S) GREY AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE STYLIZED WORDING "EHARMONY" WITH THE "E" APPEARING IN THE COLOR GRAY, AND "HARMONY" APPEARING IN THE COLOR BLUE.

SN 77-939,426, FILED 2-18-2010.

GEOFFREY FOSDICK, EXAMINING ATTORNEY



*David J. Kyjars*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

# Exhibit B

## Trademark/Service Mark Application, Principal Register

Serial Number: 86324184

Filing Date: 06/30/2014

The table below presents the data as entered.

| Input Field   | Entered  |
|---|--|
| <b>SERIAL NUMBER</b>  | 86324184   |
| <b>MARK INFORMATION</b>   |  |
| <b>*MARK</b>  | <a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\241\86324184\xml1\APP0002.JPG</a>  |
| <b>SPECIAL FORM</b>   | YES  |
| <b>USPTO-GENERATED IMAGE</b>  | NO   |
| <b>LITERAL ELEMENT</b>  | ELEVATED CAREERS BY EHARMONY   |
| <b>COLOR MARK</b>   | NO   |
| <b>*DESCRIPTION OF THE MARK<br/>(and Color Location, if applicable)</b> | The mark consists of the word ELEVATED, within which the letter V is stylized to resemble an arrow, above the words CAREERS BY EHARMONY.   |
| <b>PIXEL COUNT ACCEPTABLE</b>   | YES  |
| <b>PIXEL COUNT</b>  | 750 x 320  |
| <b>REGISTER</b>   | Principal  |
| <b>APPLICANT INFORMATION</b>  |  |
| <b>*OWNER OF MARK</b>   | eHarmony, Inc.   |
| <b>*STREET</b>  | 2401 Colorado Avenue, Suite A200   |
| <b>*CITY</b>  | Santa Monica   |
| <b>*STATE<br/>(Required for U.S. applicants)</b>                        | California   |
| <b>*COUNTRY</b>   | United States  |
| <b>*ZIP/POSTAL CODE<br/>(Required for U.S. applicants only)</b>         | 90404  |
| <b>LEGAL ENTITY INFORMATION</b>   |  |
| <b>TYPE</b>   | corporation  |
| <b>STATE/COUNTRY OF INCORPORATION</b>                                   | Delaware   |
| <b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>                      |  |
| <b>INTERNATIONAL CLASS</b>  | 009  |
|   | Computer software for the collection, editing, organizing, modifying, bookmarking, transmission, storage and sharing of data and information in the fields of business and social networking, employment, careers and recruiting; Downloadable electronic publications in the nature of newsletters, research reports, articles and white papers on topics of professional interest, all in the fields of business and |

|  |  |
|--|--|
| <b>*IDENTIFICATION</b>                     | social networking, recruiting and employment, and personal and career development; Computer software development tools that are used to develop software for use in recruiting, job-seeking, career development, self-improvement and business and social networking; Computer software that provides web-based access to applications and services in the nature of an interactive web interface through a web operating system or portal interface to access candidate listings and individual profiles; Computer software for use in employment-matching services |
| <b>FILING BASIS</b>                        | SECTION 1(b)   |
| <b>ADDITIONAL STATEMENTS SECTION</b>       |  |
| <b>PRIOR REGISTRATION(S)</b>               | The applicant claims ownership of U.S. Registration Number(s) 3422967, 4238070, 3911586, and others.   |
| <b>ATTORNEY INFORMATION</b>                |  |
| <b>NAME</b>                                | Lisa Greenwald-Swire   |
| <b>ATTORNEY DOCKET NUMBER</b>              | 24237-0938001  |
| <b>FIRM NAME</b>                           | Fish & Richardson P.C.   |
| <b>STREET</b>                              | P.O. Box 1022  |
| <b>CITY</b>                                | Minneapolis  |
| <b>STATE</b>                               | Minnesota  |
| <b>COUNTRY</b>                             | United States  |
| <b>ZIP/POSTAL CODE</b>                     | 55440-1022   |
| <b>PHONE</b>                               | 650-839-5070   |
| <b>FAX</b>                                 | 877-769-7945   |
| <b>EMAIL ADDRESS</b>                       | tmdoctc@fr.com   |
| <b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b> | Yes  |
| <b>CORRESPONDENCE INFORMATION</b>          |  |
| <b>NAME</b>                                | Lisa Greenwald-Swire   |
| <b>FIRM NAME</b>                           | Fish & Richardson P.C.   |
| <b>STREET</b>                              | P.O. Box 1022  |
| <b>CITY</b>                                | Minneapolis  |
| <b>STATE</b>                               | Minnesota  |
| <b>COUNTRY</b>                             | United States  |
| <b>ZIP/POSTAL CODE</b>                     | 55440-1022   |
| <b>PHONE</b>                               | 650-839-5070   |
| <b>FAX</b>                                 | 877-769-7945   |
| <b>EMAIL ADDRESS</b>                       | tmdoctc@fr.com   |
| <b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b> | Yes  |
| <b>FEE INFORMATION</b>                     |  |
| <b>NUMBER OF CLASSES</b>                   | 1  |
| <b>FEE PER CLASS</b>                       | 325  |

|                              |                |
|------------------------------|----------------|
|                              |                |
| <b>*TOTAL FEE DUE</b>        | 325            |
| <b>*TOTAL FEE PAID</b>       | 325            |
| <b>SIGNATURE INFORMATION</b> |                |
| <b>SIGNATURE</b>             | /SRCarter/     |
| <b>SIGNATORY'S NAME</b>      | Steve Carter   |
| <b>SIGNATORY'S POSITION</b>  | Vice President |
| <b>DATE SIGNED</b>           | 06/27/2014     |

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 86324184**

**Filing Date: 06/30/2014**

### To the Commissioner for Trademarks:

**MARK:** ELEVATED CAREERS BY EHARMONY (stylized and/or with design, see [mark](#))

The literal element of the mark consists of ELEVATED CAREERS BY EHARMONY.

The applicant is not claiming color as a feature of the mark. The mark consists of the word ELEVATED, within which the letter V is stylized to resemble an arrow, above the words CAREERS BY EHARMONY.

The applicant, eHarmony, Inc., a corporation of Delaware, having an address of  
2401 Colorado Avenue, Suite A200  
Santa Monica, California 90404  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Computer software for the collection, editing, organizing, modifying, bookmarking, transmission, storage and sharing of data and information in the fields of business and social networking, employment, careers and recruiting; Downloadable electronic publications in the nature of newsletters, research reports, articles and white papers on topics of professional interest, all in the fields of business and social networking, recruiting and employment, and personal and career development; Computer software development tools that are used to develop software for use in recruiting, job-seeking, career development, self-improvement and business and social networking; Computer software that provides web-based access to applications and services in the nature of an interactive web interface through a web operating system or portal interface to access candidate listings and individual profiles; Computer software for use in employment-matching services  
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 3422967, 4238070, 3911586, and others.

#### The applicant's current Attorney Information:

Lisa Greenwald-Swire of Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis, Minnesota 55440-1022  
United States

The attorney docket/reference number is 24237-0938001.

#### The applicant's current Correspondence Information:

Lisa Greenwald-Swire  
Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis, Minnesota 55440-1022  
650-839-5070(phone)  
877-769-7945(fax)  
tmdoctc@fr.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the

trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

#### **Declaration Signature**

Signature: /SRCarter/ Date: 06/27/2014

Signatory's Name: Steve Carter

Signatory's Position: Vice President

RAM Sale Number: 86324184

RAM Accounting Date: 06/30/2014

Serial Number: 86324184

Internet Transmission Date: Mon Jun 30 13:14:51 EDT 2014

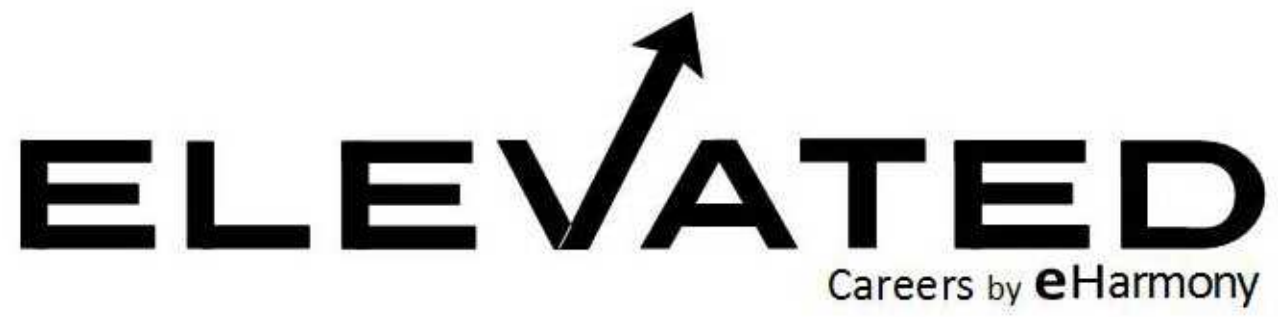
TEAS Stamp: USPTO/BAS-XXX.XXX.XX.XXX-201406301314514

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DA-12315-20140627151449959271





# Exhibit C

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(/)

(/)

Filters

Sort By

Search Anything...

207 Vehicles Match

</Car-Details/2016-Jeep-Cherokee/B09923af-C3f5-E511-80f4-005056827101>  
2016 Jeep Cherokee Latitude Sport Utility 4D  
WHITE



CAR HARMONY



</car-details/2016-Jeep-Cherokee/b09923af-c3f5-e511-80f4-005056827101>

Stock #: CWE 125245  
26,400 mi  
Engine: 4-Cyl, 2.4 Liter

\$18,990



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

0  
2016 Jeep Cherokee Limited Sport Utility 4D. (/Car-Details/2016-  
Jeep-Cherokee/2f509118-40fb-E511-80f4-  
005056827101)  
BLACK



CAR HARMONY



(/car-details/2016-Jeep-Cherokee/2f509118-40fb-e511-80f4-005056827101)

Stock #: CWE 165289

12,800 mi

**\$23,700**

Engine: 4-Cyl, 2.4 Liter



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

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0  
2016 Jeep Cherokee Limited Sport Utility 4D (/Car-Details/2016-  
Jeep-Cherokee/019ef382-3d12-E611-80f4-  
005056827101)  
White



CAR HARMONY



(/car-details/2016-Jeep-Cherokee/019ef382-3d12-e611-80f4-005056827101)

Stock #: CWE 158661  
16,900 mi  
Engine: 4-Cyl, 2.4 Liter

\$23,000



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

02016 Buick LaCrosse Leather Sedan 4D (/Car-Details/2016-  
Buick-LaCrosse/7d509118-40fb-E511-80f4-  
005056827101)  
SILVER



# CAR HARMONY



(/car-details/2016-Buick-LaCrosse/7d509118-40fb-e511-80f4-005056827101)

**Stock #:** CWE 114852

13,100 mi

Engine: V6, 3.6 Liter

**\$24,000**



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

0



02015 Ford Fusion SE Sedan 4D (/Car-Details/2015-Ford-Fusion/82e986d0-75af-48a8-830d-ebb05b4cae3a)  
Silver



# CAR HARMONY



(/car-details/2015-Ford-Fusion/82e986d0-75af-48a8-830d-ebb05b4cae3a)

**Stock #:** 3151449

18,483 mi

Engine: 4-Cyl, 2.5 Liter

**\$15,990**



(//www.carfax.com/VehicleHistory/p/Report.cfx?

partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

02015 Jeep Cherokee Latitude Sport Utility 4D (/Car-Details/2015-Jeep-Cherokee/Da15718a-D5d5-E511-80f4-005056827101)  
GRAY





# CAR HARMONY



(/car-details/2015-Jeep-Cherokee/da15718a-d5d5-e511-80f4-005056827101)

**Stock #:** CHE 656039

21,238 mi

Engine: 4-Cyl, Pzev, 2.4 Liter

**\$17,399**



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

0

(/Car-Details/2016-Hyundai-Elantra/45b0a3dc-061e-E611-80f4-005056827101)  
2016 Hyundai Elantra SE Sedan 4D  
BLACK



# CAR HARMONY



(/car-details/2016-Hyundai-Elantra/45b0a3dc-061e-e611-80f4-005056827101)

Stock #: CH 483591

24,644 mi

Engine: 4-Cyl, 1.8 Liter

**\$13,799**



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

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0  
3  
005056827101  
2015 BMW 3 Series 328i Sedan 4D (/Car-Details/2015-BMW-3 Series/8f0cb669-9510-e611-80f4-005056827101)  
WHITE



# CAR HARMONY



(/car-details/2015-BMW-3 Series/8f0cb669-9510-e611-80f4-005056827101)

**Stock #:** CH 853113

24,493 mi

Engine: 4-Cyl, Turbo, 2.0 Liter

**\$25,900**



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



Try at Home

Get Pre-Qualified

0  
Details/  
2015 Mercedes-Benz C-Class C300 4MATIC Sedan 4D (/Car-Details/2015-Mercedes-Benz-C-Class/78e257c8-24a2-4979-8ceb-Fd3553fe905d)  
Grey



# CAR HARMONY



(/car-details/2015-Mercedes-Benz-C-Class/78e257c8-24a2-4979-8ceb-fd3553fe905d)

**Stock #:** CH 3150283

9,048 mi

Engine: 4-Cyl, Turbo, 2.0 Liter

**\$30,899**



(//www.carfax.com/VehicleHistory/p/Report.cfx?

partner=NWC\_0&vin=1GYS4TKJ0FR556053)



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[Get Pre-Qualified](#)

0  
2016 Kia Sportage LX Sport Utility 4D (/Car-Details/2016-Kia-Sportage/1e509118-40fb-e511-80f4-005056827101)  
BLUE



CAR HARMONY



(/car-details/2016-Kia-Sportage/1e509118-40fb-e511-80f4-005056827101)

**Stock #:** CWE 819805

23,100 mi

Engine: 4-Cyl, Gdi, 2.4 Liter

**\$18,900**



(//www.carfax.com/VehicleHistory/p/Report.cfx?  
partner=NWC\_0&vin=1GYS4TKJ0FR556053)



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Terms and Conditions: Pre-qualified offer is provided by Westlake Services, LLC and was based on the personal information provided in this application. Final approval is pending validation of your identity, income, and residence. You must be at least 18 years of age to be eligible. You may be required to provide additional supporting documentation. Prices may not include government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.

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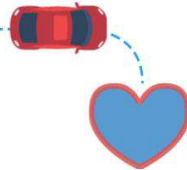
# Exhibit D



3

## Try it out for 3 days.

Try your new car on your terms! We can bring you the car for a quick test drive, or you have up to 3 days to drive the car. See how it feels and if it's a good fit for you.



## Love it? Buy it!

We can help with the financing.

Not the right fit? We'll pick it up, or drop it off at one of our many locations, no questions asked. Or we can swap it for another!


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 CAR HARMONY


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## Who We Are


We're the relationship managers




Ian Anderson  
Co-Founder




Craig Nehamen  
Co-Founder




Casey Harmon  
Co-Founder




Ken Sopp  
Co-Founder




Sean Morgan  
Director



Evan Crovo  
Relationship Manager



Josh Berman  
Relationship Manager



Eric De Los Santos  
Relationship Manager

# Exhibit E

**To:** CORNACCHIA, LOUIS G ([XM@SECUREYOURTRADEMARK.COM](mailto:XM@SECUREYOURTRADEMARK.COM))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85162873 - MEDHARMONY - N/A  
**Sent:** 2/2/2011 6:41:30 PM  
**Sent As:** ECOM113@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)  
[Attachment - 5](#)  
[Attachment - 6](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 85162873

**MARK:** MEDHARMONY

**\*85162873\***

**CORRESPONDENT ADDRESS:**

XAVIER MORALES  
LAW OFFICE OF XAVIER MORALES  
PO BOX 2987  
NEW YORK, NY 10008-2987

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** CORNACCHIA, LOUIS G

**CORRESPONDENT'S REFERENCE/DOCKET NO :**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[XM@SECUREYOURTRADEMARK.COM](mailto:XM@SECUREYOURTRADEMARK.COM)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:** **2/2/2011**

**TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE:** Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. The following issues were noted in this review:

1. Registration of the mark is refused under Trademark Act Section 2(d)
2. A prior-filed application presents a potential bar to refusal of the mark

Applicant must respond timely and completely to these issues, which are further discussed below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

## **SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3911586. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

A likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). Next, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

### *Similarity of the Marks*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The applicant's proposed mark MEDHARMONY is similar to the registered mark EHARMONY because the marks share the dominant term HARMONY. Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

This is particularly true in the present case, where the "med" and "e" prefixes in the marks are highly suggestive or descriptive of the services. "MED" in the applicant's mark is an abbreviation for "medical" and "e" in the registered mark suggests the electronic nature of the services. Thus, MEDHARMONY and EHARMONY convey the impression of being "harmony" services of different types.

### *Relatedness of the Goods/Services*

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

That is the case here. The applicant seeks to register the mark for use on various computer software services, all of which feature software "for use in connecting doctors with their patients." The registered mark is used in connection with, in relevant part, "providing online bulletin boards for transmission of messages among users in the field of general interest; providing online discussion groups for transmission of messages among users in the field of general interest; providing online interactive bulletin boards for transmission of messages among computer users concerning information on a wide variety of topics of general interest to the public; providing on-line forums and discussion groups for transmission of message among computer users" and "computer services, namely, hosting online web facilities for organizing gatherings, and interactive discussions." The services of the parties are related because they are used for a similar purpose.

The registrant's services provide for the transmission of messages between computer users, as well as allow users to organize gatherings and interactive discussions. The applicant's services allow patients to "connect with their doctors." The application does not specify how this connection takes place; however, it is presumed that such 'connection' includes the transmission of messages between doctors and patients, as well as some capability for interactive discussions between doctors and their patients. In any event, the applicant's MEDHARMONY mark is used to identify services that allow individuals to connect with one another, which individuals are doctors and patients. The registrant's EHARMONY services allow users to connect with one another, without any specific type of people being listed. Accordingly, consumers encountering the HARMONY marks used in connection with the parties' services would reasonably believe that MEDHARMONY is a medically-oriented version of the EHARMONY services, and that all the services originate from the same source.

For the reasons discussed above, registration of the applicant's mark is refused under Trademark Act Section 2(d) based on a likelihood of confusion with the mark in U.S. Registration No. 3911586.

### **Prior Pending Application—Potential Section 2(d) Refusal**

Information regarding pending Application Serial No. 77939426 is also enclosed. The filing date of the referenced application precedes

applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced mark. If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes that there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant has any questions or needs assistance in responding to this Office Action, please contact the assigned examining attorney.

/Kimberly Frye/  
Trademark Examining Attorney  
Law Office 113  
(571) 272-9430 (phone)  
(571) 273-9430 (fax)

**TO RESPOND TO THIS LETTER:** Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/mailling date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

**DESIGN MARK**

**Serial Number**

77633598

**Status**

REGISTERED

**Word Mark**

EHARMONY

**Standard Character Mark**

Yes

**Registration Number**

3911586

**Date Registered**

2011/01/25

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

eHarmony, Inc. CORPORATION DELAWARE 888 East Walnut Street, 2nd Floor  
Pasadena CALIFORNIA 91101

**Goods/Services**

Class Status -- ACTIVE. IC 038. US 100 101 104. G & S: Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages covering general interest, classified, virtual community, social networking, photo sharing and transmission of photographic images; providing online bulletin boards for transmission of messages among users in the field of general interest; providing online discussion groups for transmission of messages among users in the field of general interest; providing online interactive bulletin boards for transmission of messages among computer users concerning information on a wide variety of topics of general interest to the public; providing on-line forums and discussion groups for transmission of message among computer users. First Use: 2000/08/22. First Use In Commerce: 2000/08/22.

**Goods/Services**

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Computer services, namely, hosting online web facilities for organizing

gatherings, and interactive discussions. First Use: 2000/08/22.  
First Use In Commerce: 2000/08/22.

**Goods/Services**

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Providing a website featuring information in the area of psychological research. First Use: 2000/08/22. First Use In Commerce: 2000/08/22.

**Goods/Services**

Class Status -- ACTIVE. IC 045. US 100 101. G & S: Dating services, counseling, namely, offering advice regarding personal relationships and personal well being via a global computer network; Internet based introduction and social networking services; providing a website featuring information in the area of personal relationship wellness; providing information in the field of personal relationship wellness; providing information in the field of social introduction. First Use: 2000/08/22. First Use In Commerce: 2000/08/22.

**Prior Registration(s)**

2764705;3422967;3483503

**Filing Date**

2008/12/15

**Examining Attorney**

MORENO, PAUL

**Attorney of Record**

Lisa Greenwald-Swire

EHARMONY



**DESIGN MARK**

**Serial Number**

77939426

**Status**

NOTICE OF ALLOWANCE - ISSUED

**Word Mark**

EHARMONY

**Standard Character Mark**

No

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**

eHarmony, Inc. CORPORATION DELAWARE 2401 Colorado Avenue, Suite A200  
Santa Monica CALIFORNIA 90404

**Goods/Services**

Class Status -- ACTIVE. IC 038. US 100 101 104. G & S: Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages covering general interest, classified, virtual community, social networking, photo sharing and transmission of photographic images; providing online bulletin boards for transmission of messages among users in the field of general interest; providing online discussion groups for transmission of messages among users in the field of general interest; providing online interactive bulletin boards for transmission of messages among computer users concerning information on a wide variety of topics of general interest to the public; providing on-line forums and discussion groups for transmission of message among computer users.

**Goods/Services**

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Computer services, namely, hosting online web facilities for organizing gatherings, and interactive discussions; providing a website featuring information in the area of psychological research.

**Goods/Services**

Class Status -- ACTIVE. IC 045. US 100 101. G & S: Dating services, marriage counseling, counseling, namely, offering advice regarding personal relationships and personal well being via a global

computer network; Internet based introduction and social networking services; providing a website featuring information in the area of personal relationship wellness; providing information in the field of personal relationship wellness; providing information in the field of social introduction.

**Prior Registration(s)**

2764705;3422967

**Description of Mark**

The mark consists of the stylized wording "EHARMONY" with the "E" appearing in the color gray, and "HARMONY" appearing in the color blue.

**Colors Claimed**

The color(s) grey and blue is/are claimed as a feature of the mark.

**Filing Date**

2010/02/18

**Examining Attorney**

FOSDICK, GEOFFREY

**Attorney of Record**

Lisa Greenwald-Swire

eHarmony

**To:** CORNACCHIA, LOUIS G ([XM@SECUREYOURTRADEMARK.COM](mailto:XM@SECUREYOURTRADEMARK.COM))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85162873 - MEDHARMONY - N/A  
**Sent:** 2/2/2011 6:41:32 PM  
**Sent As:** ECOM113@USPTO.GOV  
**Attachments:**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

**USPTO OFFICE ACTION HAS ISSUED ON 2/2/2011 FOR  
SERIAL NO. 85162873**

Please follow the instructions below to continue the prosecution of your application:

**TO READ OFFICE ACTION:** Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

**PLEASE NOTE:** The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

**RESPONSE IS REQUIRED:** You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from 2/2/2011 (or sooner if specified in the office action).

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System [Response Form](#).**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

**Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.**

# Exhibit F

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

WINTER

Mailed: July 31, 2009

Opposition No. 91185082

eHarmony.com

v.

InqHire Corporation

Opposer's motion for summary judgment (filed May 13, 2009) is hereby granted as conceded. See Trademark Rule 2.127(a) and Fed. R. Civ. P. 56.

Accordingly, judgment is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused.

*By the Trademark Trial  
and Appeal Board*