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ESTTA Tracking number: **ESTTA802070**

Filing date: **02/17/2017**

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	THINKSMART, S.A.
Granted to Date of previous extension	02/18/2017
Address	C/ Francisca Delgado, No. 11 4 PlantaN. 2, Arroyo de la Vega Alcobendas (MADRID), 28108 SPAIN

Attorney information	Daniel L. Scales Choate Hall & Stewart LLP Two International Place Boston, MA 02110 UNITED STATES tmadmin@choate.com

Applicant Information

Application No	87113461	Publication date	12/20/2016
Opposition Filing Date	02/17/2017	Opposition Period Ends	02/18/2017
Applicant	Lion Capital Investments 5509 39th Street, N.W. Washington, DC 20015 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2014/04/30 First Use In Commerce: 2014/04/30
All goods and services in the class are opposed, namely: Providing temporary use of non-downloadable cloud-based software for the management and administration of sports and activity businesses that take appointmentsand conduct classes, including customerenrollment, relationship management, instruction and class scheduling, grading,messaging, and attendance tracking, staff scheduling, and invoicing

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4677191	Application Date	11/06/2012
Registration Date	01/27/2015	Foreign Priority Date	NONE

Word Mark	THINKSMART
Design Mark	
Description of Mark	The mark consists of the literal element "THINKSMART" with the word "think" appearing in gray and "smart" in blue. Above the letters "in" of "think", a stylized depiction of the sun and a cloud appears in color blue.
Goods/Services	Class 042. First use: First Use: 2004/12/31 First Use In Commerce: 2012/03/05 Design and development of analytic and reporting software used in connection with Software as a Service Platform services, namely, Software as a Service (SaaS)platform that provides Reporting and Incentive solutions for channel sales

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THINKSMART		
Goods/Services	Design and development of analytic and reporting software used in connection with Software as a Service Platform services, namely, Software as a Service (SaaS)platform that provides Reporting and Incentive solutions for channel sales		

Attachments	85772737#TMSN.png(bytes) Notice of Opposition - ThinkSmart.pdf(132959 bytes)

Signature	/sara bauer/
Name	Sara M. Bauer
Date	02/17/2017

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

In the matter of Application Serial No. 87/113,461
Filed on July 22, 2016
For the trademark **THINKSMART**
Published in the *Official Gazette* on December 20, 2016

ThinkSmart, S.A. *Opposer*, v. Lion Capital Investments, *Applicant*.	Opposition No. _____

NOTICE OF OPPOSITION

ThinkSmart, S.A. ("Opposer" or "ThinkSmart"), believes that it will be damaged by the registration of the trademark THINKSMART that is the subject of Application Serial No. 87/113,461 ("Application"), which was published for opposition on December 20, 2016. Applicant hereby opposes the Application pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, alleging as grounds for its opposition that:

1. Opposer is a Spanish corporation having a place of business at Calle Francisca Delgado, No. 11, 4a planta, Núcleo 2, Arroya de la Vega, Alcobendas (Madrid) Spain 28108.

2. Upon information and belief, Applicant is a Nevada limited liability company with an address of 5509 39th Street, N.W., Washington, District of Columbia, 20015, United States.

3. ThinkSmart has obtained the necessary extension of time in which to oppose the Application following its publication on December 20, 2016 in the *Official Gazette*.

4. ThinkSmart was established in 1998 with the aim of designing and developing analytics and reporting software that improves the performance of individuals and groups involved in sales processes.

5. Today, ThinkSmart manages strategic projects for more than 70 Fortune 500 and Ibex 35 companies in more than 20 countries.

6. ThinkSmart owns a valid and subsisting federal registration for the THINKSMART and design mark, Reg. No. 4,677,191 for and in connection with "[d]esign and development of analytic and reporting software used in connection with Software as a Service Platform services, namely, Software as a Service (SaaS) platform that provides Reporting and Incentive solutions for channel sales" in International Class 42, used in interstate commerce since at least as early as March 5, 2012. ("Registration").

7. In addition to the Registration, ThinkSmart has common law rights in the THINKSMART trade name and trademark by virtue of its use of the THINKSMART trademark in interstate commerce since at least as early as February 2012 (collectively with the Registration, the "THINKSMART Trademarks").

8. Lion Capital Investments ("Applicant") applied to register the trademark THINKSMART for "providing temporary use of non-downloadable cloud-based software for the management and administration of sports and activity businesses that take appointments and conduct classes, including customer enrollment, relationship management, instruction and class scheduling, grading, messaging, and attendance tracking, staff scheduling, and invoicing" in Class 42 ("Applicant's Services") on July 22, 2016.

9. Upon information and belief, ThinkSmart's first use of the THINKSMART Trademarks precedes the July 22, 2016 filing date of the Application, the April 30, 2014 asserted date of first use in the Application, and any date upon which Applicant can rely.

10. Applicant's trademark THINKSMART fully incorporates ThinkSmart's THINKSMART Trademarks.

11. Applicant's trademark THINKSMART is confusingly similar to ThinkSmart's THINKSMART Trademarks in appearance, sound and commercial impression, particularly when used in connection with Applicant's Services, and is likely to be confused with the same.

12. Applicant seeks to register the trademark THINKSMART in connection with non-downloadable software for management and administration of business activity, which is similar to ThinkSmart's business and services.

13. Upon information and belief, Applicant's targeted consumer base overlaps with ThinkSmart's targeted consumer base.

14. Applicant is not entitled to the registration it seeks for the reason, among others, that Applicant's THINKSMART trademark, for use on or in connection with the Applicant's Services, so resembles ThinkSmart's previously used and registered THINKSMART Trademarks, as applied to ThinkSmart's services, and is therefore likely to cause confusion, to cause mistake or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), thereby damaging ThinkSmart.

15. Registration of the trademark THINKSMART by the Applicant would be a further source of damage to ThinkSmart because it would confer upon Applicant various statutory presumptions to which it is not entitled, to ThinkSmart's detriment.

WHEREFORE, ThinkSmart prays that this Opposition be sustained in favor of Opposer and that Serial No. 87/113,461 be refused registration.

Respectfully submitted,

Date: February 17, 2017

/Daniel L. Scales/

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