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

Proceeding no.	91233862
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

Petitioner,

AMER GROUP INC.

Cancellation No. _____

Mark: Alipay

**PETITION FOR CANCELLATION OF PLEADED REGISTRATION NOS.
3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application
serial No 90,3999,222.**

AMER GROUP INC.

Petitioner

v.

ADVANCED NEW TECHNOLOGIES CO., LTD

aka Alibaba Group Holding Limited

aka Ant financial Group, LTD,

Respondents.

PETITION FOR CANCELLATIONS

Petitioner Amer Group Inc., t/a, MOBILE PAY Inc. (hereinafter “MOBILE PAY”), a corporation organized and existing under the laws of Delaware with a principal place of business at 16192 Coastal Highway, Lewes, DE 19958, is and will be damaged by the continued registration by these respondents as ADVANCED NEW TECHNOLOGIES CO., LTD

Alibaba Group Holding Limited

Ant Financial Group, LTD,. (“Respondents”) of the marks of Alipay, which are currently registered under U.S. Trademark Registration Numbers: **PLEADED REGISTRATION NOS. 3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application serial No 90,3999,222.** (hereinafter “Registrations”).

Petitioner therefore petitions to have the Registrations cancelled and revoked, *nunc pro tunc*.

As grounds for cancellations, MOBILE PAY alleges as follows:

1. MOBILE PAY designs, and markets mobile communication and media devices , sells a variety of related software, services, and accessories, and offers a wide range of digital content and applications created by third parties.

2. Due to the duration, extensive amount and nationwide reach of advertising and publicity of MOBILE PAY’s A mark, APAY Mark and other related marks, the extensive amount, volume and geographic reach of sales of products and related services sold under those marks, and the high degree of recognition those marks enjoy, MOBILE PAY’s A mark, APAY mark is famous and has been famous since long prior to the filing date of Respondents’ Applications

3. Notwithstanding MOBILE PAY’s prior IP rights, and long after MOBILE PAY’s A mark, APAY mark and related marks became well known among the consuming public, Respondents applied

REGISTRATION NOS. 3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application serial No 90,3999,222.

4. Respondents filed seven ALIPAY marks to Allege Use including thousands of items and services, but most of them never used in the United states.

5. Respondents’ specimen of use depicts what appears to be thousands items and services, purportedly offered for sale ,But most of them never used and sold in the United states.

6. Respondents intentionally selected Respondent’s Mark to cause consumers to associate that mark with MOBILE PAY’s APAY mark and accessories.

**FIRST GROUND FOR CANCELLATION LACK OF *BONA FIDE* USE IN
COMMERCE 15 U.S.C. § 1051(a)**

7. MOBILE PAY hereby incorporates each of the preceding paragraphs as if fully set forth herein.

8. On information and belief, Respondents are not using, were not using at the time it filed to Allege Use, and respondents have never used some Respondents's Marks in United States commerce in connection with Respondents's Goods.

9. Accordingly, on information and belief, Respondents's description of goods in the Registrations extends beyond any actual, *bona fide* use of Respondent's Mark in United States commerce in violation of Section 1(a), and the Registrations is therefore subject to cancellation

10. Alternatively, on information and belief, Respondents have not used Respondents's Marks in United States commerce in connection with all of Respondent's Goods at the time Respondents filed the papers to Allege Use. Because registration under Section 1(a) is allowed only as to goods in connection with which the mark is actually being used, the Registrations should be cancelled as to those goods for which Respondents had not used Respondent's Marks in United States commerce

**SECOND GROUND FOR CANCELLATION LIKELIHOOD OF CONFUSION
15 U.S.C. § 1052(d)**

11. MOBILE PAY hereby incorporates each of the preceding paragraphs as if fully set forth herein.

12. Respondents's ALIPAY Marks are confusingly similar in appearance, sound, and commercial impression to MOBILE PAY's APAY Mark.

13. Respondents' Marks wholly incorporate MOBILE PAY's APAY mark, adding only an initial "LI," and therefore the parties' marks appear nearly identical. In addition, Respondents's initial "L," when joined with "I," creates the /li/ diphthong—which rhymes with buy or eye. Thus, Respondents's Alipay marks and MOBILE PAY's APAY mark sound the same and create the same overall commercial impression.

14. Respondents's Goods are identical, closely related, or complementary to those sold by MOBILE PAY under its APAY Mark.

15. Respondents's use of a mark highly similar to MOBILE PAY's APAY Mark for goods that are identical, closely related, and complementary to those offered by MOBILE PAY under those marks is likely to lead consumers mistakenly to believe that

Respondents's Goods are associated with, endorsed by, connected with, or affiliated with MOBILE PAY.

16. MOBILE PAY will be damaged by the continued registration of Respondents's Marks because Respondents's Marks so closely resembles MOBILE PAY's previously used APAY Mark as to be likely to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of Respondents's Goods or the affiliation between Respondents and MOBILE PAY, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**THIRD GROUND FOR CANCELLATION LIKELIHOOD OF DILUTION
15 U.S.C. § 1125(c)**

17. MOBILE PAY hereby incorporates each of the preceding paragraphs as if fully set forth herein.

18. MOBILE PAY's APAY mark is distinctive in relation to MOBILE PAY's goods and services under the mark.

19. MOBILE PAY's APAY mark also is widely recognized by the general consuming public of the United States as designating MOBILE PAY as the source of its goods and services under the mark. MOBILE PAY's APAY mark therefore is famous and distinctive within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

20. MOBILE PAY's APAY mark has been famous within the meaning of Section 43(c) since prior to Respondents's filing date or any first date of *bona fide* use in United States commerce that Respondents may be able to establish.

21. MOBILE PAY also has engaged in substantially exclusive use of its APAY mark in connection with its goods and services under the mark.

22. Respondents's Alipay marks are highly similar to MOBILE PAY's APAY mark. Respondents Alipay marks wholly contains MOBILE PAY's famous and distinctive APAY mark, differing only in Respondent's addition of an initial "LI." The combination of "L," "I," and "alipay" is pronounced the same like as MOBILE PAY's APAY mark.

23. Respondents' use of the Alipay marks in connection with Respondent's Goods is likely to cause consumers to associate Respondent's Mark with MOBILE's famous APAY mark.

24. Respondents's Alipay marks therefore is likely to dilute the distinctiveness of MOBILE PAY's famous APAY mark by eroding consumers' exclusive identification of that mark with MOBILE PAY, and by otherwise lessening the capacity of the APAY mark to identify and distinguish MOBILE PAY's goods and services, in violation of Section 43(c)(1).

25. The Registration also gives Respondents a *prima facie* exclusive right to use Respondents's Mark in connection with Respondents's Goods, thus causing damage and injury to MOBILE PAY.

26. On information and belief, The Trump administration banned all ALIPAY marks for national security, IP theft, and trade secrets stolen.

27. On information and belief, Jack Ma aka Ma Yun(Former CEO and founder), promised the Trump administration one million jobs in the United States, but it was a fraud.

28. On information and belief, Jack Ma aka Ma Yun(Former CEO and founder), Daniel Zhong aka Zhong Ron, etc made false statements about a \$35 billion IPO, another fraud, IPO was cancelled by the Chinese government.

29. On information and belief, Jack Ma aka Ma Yun(Former CEO and founder), Daniel Zhong aka Zhong Ron, etc bribed Zhou Jing Ron(Secretary of CCP of three respondents headquarters city) and his brother, Zhou Jing ron and his brother arrested by the CCP.

30. On information and belief, three respondents got a \$2.8 billion fine for antitrust by the Chinese government. petitioner requested 28 billion compensation(2.8 x 5 x 2), for IP theft and antitrust which were noticed to two respondents.

31. On information and belief, all ALIPAY apps and marks were banned and cancelled by the Indian government.

32. MOBILE PAY therefore asks the Board to sustain this proceeding in MOBILE PAY's favor and cancel **REGISTRATION NOS. 3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application serial No 90,3999,222.**

The required filing fee is being electronically processed in connection with this Petition for Cancellation.

APPLICANT'S MOTION TO AMEND ANSWER AND COUNTERCLAIM FOR CANCELLATION OF PLEADED REGISTRATION NOS. 3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application serial No 90,3999,222.

Applicant, MOBILE PAY Inc., through its counsel, hereby Answers the Notice of Opposition as follows:

Applicant denies each and every allegation of the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Answering paragraph 1 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 1 of the Notice, and therefore denies the same.
2. Answering paragraph 2 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 2 of the Notice, and therefore denies the same.
3. Answering paragraph 3 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 3 of the Notice, and therefore denies the same

4. Answering paragraph 4 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 4 of the Notice, and therefore denies the same.
5. Answering paragraph 5 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 5 of the Notice, and therefore denies the same.
6. Answering paragraph 6 of the Notice, applicant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 6 of the Notice, and therefore denies the same.
7. Admitted.
8. Answering paragraph 8 of the Notice, applicant lacks knowledge or information

sufficient to form a belief concerning the allegations of paragraph 8 of the Notice,

and therefore denies the same.

9. Answering paragraph 9 of the Notice, applicant lacks knowledge or information

sufficient to form a belief concerning the allegations of paragraph 9 of the Notice,

and therefore denies the same.

10. Denied.

WHEREFORE, Applicant prays that the Notice of Opposition be denied, that this action be dismissed with prejudice, and that Application Serial No. 86/821204 be forwarded for issuance.

APPLICANT'S COUNTERCLAIM

11. Applicant is the owner of U.S. Trademark Application No. 86/821,204 for the mark APAY for "Financial services, namely, administration of transactions involving funds drawn from securities, stocks, funds, equities, bonds, cash, or other types of financial investments in retirement plans using a credit or debit card over a global data network;

Payment processing services, namely, credit card and debit card transaction processing services; Providing electronic processing of credit card transactions and electronic payments via a global computer network; providing payment processing services and payment verification services for mobile payments, contactless credit and debit card transactions, gift card transactions, loyalty reward card transactions, and bill payment transactions with retailers, merchants, and vendors via mobile devices; providing financial information by electronic means, namely, providing credit and debit card information; financial services, namely, processing and administration of mobile payments and contactless debit and credit card transactions, loyalty reward card transactions, and bill payment transactions with retailers, merchants, and vendors via mobile devices” in Class 36 and “Providing user authentication of electronic funds transfer in the nature of mobile payments, contactless credit and debit card transactions, gift card transactions, loyalty reward card transactions, and bill payment transactions with retailers, merchants, and vendors via mobile devices” in Class 45 (“Applicant’s Application”).

12. Opposer filed an opposition to Applicant's Application on the basis of priority and likelihood of confusion pertaining to its U.S. Registrations for the marks ALIPAY (U.S. Reg. Nos. 3,761,346, 4,036,742 and 5,071,223; collectively, “Opposer’s Registrations”).

13. Opposer registered Reg. No. 3,761,346 (“Opposer’s 3,761,346 Registration”) on March 16, 2010.

14. Opposer registered Reg. No. 4,036,742 (“Opposer’s 4,036,742 Registration”) on October 11, 2011.

15. Opposer registered Registration No. 5,071,223 (“Opposer’s 5,071,223 Registration”) on November 1, 2016.

16. Pursuant to Applicant’s discovery in the instant opposition, Applicant issued the

following Interrogatories and Requests for Production:

- • **Interrogatory 2:** Separately, for each product and service listed in Registration Nos. 3761346 and 4036742, state:
 - a. the volume of sales in the U.S. in dollars in each year beginning with the date of first use in the U.S. and up to the present;
 - b. the volume of sales in the U.S. in units in each year beginning with the date of first use in the U.S. and up to the present;
 - c. the dollar amount in advertising spent in the U.S. in each year beginning with the date of first use in the U.S. and up to the present;
- • **Interrogatory 5:** Separately, for each product and service listed in Registration No. 5071223 for which there has been use, state:
 - a. the volume of sales in the U.S. in dollars in each year beginning with the date of first use in the U.S. and up to the present;

- b. the volume of sales in the U.S. in units in each year beginning with the date of first use in the U.S. and up to the present;
- c. the dollar amount in advertising spent in the U.S. in each year beginning with the date of first use in the U.S. and up to the present;

- • **Request for Production 10:** Documents sufficient to identify Opposer's annual volume of sales in dollars or projected sales in the United States for each of Opposer's products and services offered under the mark ALIPAY in the U.S.
- • **Request for Production 11:** Documents sufficient to identify Opposer's annual volume of sales in units or projected sales in the United States for each of Opposer's products and services offered under the mark ALIPAY in the U.S.

• **Request for Production 16:** Documents concerning any assignment, license, or other transfer or grant of any rights to or from Opposer in Opposer's Mark ALIPAY.

17. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer is not using the ALIPAY mark in US commerce.
18. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer has allowed Opposer's Registrations for the mark ALIPAY to be used by third parties without adequate quality controls and/or supervision.
19. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer has allowed Opposer's Registrations for the mark ALIPAY to be used by third parties without a written license having adequate quality controls on the goods and services identified in the registrations.
20. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer has allowed Opposer's Registrations for the mark ALIPAY to be used by third parties without supervision on the goods and services identified in the registrations.
21. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer has allowed the mark ALIPAY to be used by third parties

license having adequate quality controls or supervisory requirements on the goods and services identified in the respective marks.

22. Upon information and belief based on Opposer's responses to Applicant's

discovery requests, including in response to Applicant's meet and confer requests, Opposer has allowed the mark ALIPAY to be used by third parties without supervision on the goods and services identified in the respective marks.

23. Because Opposer has allowed use of Opposer's Registrations without controls and/or supervision, the marks in Opposer's Registrations have lost all capacity as source indicators for the involved goods and services, and Opposer has abandoned its rights in Opposer's Registrations.
24. Opposer's Registrations should be cancelled based on abandonment.
25. Opposer's 5,071,223 Registration covers the mark ALIPAY ("Opposer's

5,071,223 Mark") for "Education, namely, providing live and online seminars and conferences in the field of business and e-commerce; providing of training in the field of business and e-commerce; entertainment, namely, providing online video games and non-downloadable playback of digital music; organizing community sporting and cultural activities; publication of texts, books and journals; sporting and cultural activities, namely, organizing community sporting and cultural events; publication of newspapers, magazines and periodicals containing diagrams, images and photographs; education, namely, training courses and instructional classes in the field of telecommunications hardware and software, operation of computers, computer programming, web site design, e-commerce, business management and advertising; provision of education, recreation, instruction and training via online

interactive and non-interactive courses, classes, workshops and seminars in the field of business and e-commerce; design of educational courses, namely, development of curriculum and examinations for others in the field of business and e-commerce; entertainment provided via electronic and digital interactive media, namely, providing online computer games; electronic games services provided by means of the Internet, namely, providing online computer games; provision of information about education, entertainment information, information in the field of sports and sporting events, and information in the field of recreation and leisure activities and cultural activities and exhibitions; providing online non- downloadable electronic publications, namely, books, journals, newsletters and articles in the field of business and e-commerce; arranging, organizing, hosting and conducting singing competitions; arranging, organizing, hosting and conducting musical concerts. arranging, organizing, hosting and conducting events and competitions for education or entertainment purposes, namely, providing conferences, competitions and symposia in the field of business and e-commerce; entertainment services, namely, production and distribution of a game show; entertainment ticket agency services; providing entertainment information and information about education from a computer database or the Internet; providing non-downloadable prerecorded digital music from the Internet; providing non- downloadable prerecorded digital music from MP3 Internet web sites; entertainment and education services, namely, conducting courses of instruction relating to planning, production and

distribution of sound, images, digital music, movies, live or recorded audio, visual or audiovisual material for broadcasting on terrestrial cable, satellite channels, the Internet, wireless or wirelink systems and other means of communications; music entertainment services, namely, live music concerts; rental of sound recordings; entertainment in the nature of on-going television programs in the fields of business and e-commerce; producing entertainment, educational, documentary and news programs in the fields of business and e-commerce for broadcasting; news reporters' services; providing news in the field of sporting or cultural events, and current events reporting provided by satellite television transmission, the Internet or radio; production of television and radio programs and film production; production of television programs; provision of information, data, graphics, sound, music, videos, animation and text for entertainment purpose, namely, animation rendered by means of a global computer network; game services provided online from a computer network; provision of recreation, sporting and gymnasium facilities; live performances by a musical band; night club services, discotheque, and fashion shows for entertainment purposes; club services relating to entertainment, education and cultural services, namely, arranging and conducting educational conferences, conventions, seminars and training workshops in the field of business and e-commerce; organizing and conducting exhibitions for cultural or educational purposes; art exhibition services; art gallery services, namely, rental of artwork; training services in the field of occupational health and safety, and environmental conservation; provision of cigar appreciation classes, wine tasting classes; providing educational research and information about educational research; arranging, organizing, planning and running of educational seminars in the field of business and e-commerce; animal training; direction in producing broadcasting programs, namely, production of television and radio programs and film production; instructional services, namely, training in operation of audiovisual machines and equipment, which is used for the production of broadcasting programs; providing audio and visual studios; providing sports facilities; providing facilities for movies, shows, plays, music or educational training; entertainment booking agencies, namely, booking of seats for shows and sports events; rental of motion pictures; rental and leasing of musical instruments; rental and leasing of television programmes; rental and leasing of television sets; lending libraries; archive library services; subtitling services, namely, preparing subtitles for movies; sign language interpretation services; rental of entertainment software, namely, rental of computer game software; providing online non-downloadable music and movies through the internet; providing online computer games and conducting contests; rental of pre-recorded video tapes; rental and leasing of game machines; rental of arcade game equipment; photography; translation; language interpretation; educational and training programs in the field of risk management; provision of news in the nature of current event reporting; lottery services; provision of facilities for shows and performances, namely, performance venues, studios, sets, dressing rooms; educational and training programs relating to certification; provision of news; providing on-line videos featuring news, sports, entertainment, popular culture, lifestyles, music, artwork, education, information technology, finance, architecture, law, psychology, business administration, marketing, financial literacy and financial planning, not downloadable; tutoring;

Consultancy, information and advisory services relating to the aforesaid services”in Class 41 (“Opposer’s 5,071,223 Services”).

26. In support of the application that matured to Opposer’s 5,071,223 Registration,

Opposer’s representative signed a declaration stating that Opposer had a bona fide intention to use Opposer’s 5,071,223 Mark in connection with Opposer’s 5,071,223 Services in U.S. commerce. (See Exhibit A – Application No. 86/746,863).

27. In Applicant’s First Set of Interrogatories and First Set of Requests for the Production of Documents and Things To Opposer, Applicant sought information regarding Opposer’s bona fide intent to use Opposer’s 5,071,223 Services, including in the following Interrogatories and Requests for Production:

- • **Interrogatory 4:** Separately, for each product and service listed in Registration No. 5071223, state whether there has been use in the U.S. and identify the date of first use.
- • **Interrogatory 5:** Separately, for each product and service listed in Registration no. 5071223 for which there has been use, state:
 - a. the volume of sales in the U.S. in dollars in each year beginning with the date of first use in the U.S. and up to the present;
 - b. the volume of sales in the U.S. in units in each year beginning with the date of first use in the U.S. and up to the present;
 - c. the dollar amount in advertising spent in the U.S. in each year beginning with the date of first use in the U.S. and up to the present
- • **Interrogatory 7:** Separately, for each product and service listed in Registration No. 5071223, identify all documents which support Opposer’s alleged intent to use the mark in the U.S. as of the filing date of that Registration.
- • **Interrogatory 8:** Separately, for each product and service listed in Registration No. 5071223 for which there has not been use, identify all documents which support Opposer’s current intent to use the mark in the U.S.

• **Request for Production 1:** Each document that Opposer was required to identify in its response to Applicant’s first set of interrogatories, or from which it derived information used in preparing said responses.

28. Upon information and belief based on Opposer’s responses to Applicant’s discovery requests, including in response to Applicant’s meet and confer

requests, Opposer did not have a bona fide intent to use Opposer's 5,071,223 Mark in connection with Opposer's 5,071,223 Services as of the filing date of Opposer's 5,071,223 Registration, as required under Trademark Act § 44(e), 15 U.S.C. §1126(e).

29. Upon information and belief based on Opposer's responses to Applicant's discovery requests, including in response to Applicant's meet and confer requests, Opposer does not have a continuing bona fide intent to use Opposer's 5,071,223 Mark in connection with Opposer's 5,071,223 Services, as required under Trademark Act § 44(e), 15 U.S.C. §1126(e).
30. By reason of the foregoing, Opposer's 5,071,223 Registration is void *ab initio* for Opposer's lack of a bona fide intent to use Opposer's 5,071,223 Mark in connection with Opposer's 5,071,223 Services in commerce and should be cancelled.
31. By reason of the foregoing, Applicant will be damaged by the continued registration of Opposer's Registrations in as much as Opposer is relying on Opposer's Registrations to cancel Applicant's Application, and Opposer's Registrations should be cancelled.

WHEREFORE, in the foregoing light, Petitioner respectfully prays that Respondents' **REGISTRATION NOS. 3,761,346; 4,036,742; 5,071,223; 6,056,136; 6,344,323; 5,207,206; And application serial No 90,3999,222**, should be denied, cancelled and revoked *nunc pro tunc*.

Respectfully submitted by,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITION FOR CANCELLATION was initially served on March 22, 2022, and reserved with typo-corrected version, on March 23, 2022, by electronic mail on the following counsel for Advanced New Technologies Co., Ltd. aka Alibaba Group Holding Limited aka Ant financial Group, LTD,

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