

ESTTA Tracking number: **ESTTA826123**

Filing date: **06/12/2017**

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	Whistle Labs, Inc
Granted to Date of previous extension	06/11/2017
Address	3180 18th Street, Suite 102 SAN FRANCISCO, CA 94110 UNITED STATES

Attorney information	Jason J. Mazur Arent Fox LLP 1717 K St. NW Washington, DC 20006 UNITED STATES tmdocket@arentfox.com, loni.sherwin@arentfox.com, jason.mazur@arentfox.com, jimeelah.berryman@arentfox.com
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Applicant Information

Application No	87105246	Publication date	12/13/2016
Opposition Filing Date	06/12/2017	Opposition Period Ends	06/11/2017
Applicant	Whistle Recruiting, LLC c/o 963 Trail Terrace Dr. Naples, FL 34103 UNITED STATES		

Goods/Services Affected by Opposition


Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: computer application software for mobile phones, handheld computers and laptop computers, namely, software for use in communicating with and recruiting players for sports teams

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4748549	Application Date	10/02/2012
Registration Date	06/02/2015	Foreign Priority Date	NONE
Word Mark	WHISTLE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2013/10/28 First Use In Commerce: 2013/10/28 computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors

U.S. Registration No.	4748548	Application Date	01/11/2013
Registration Date	06/02/2015	Foreign Priority Date	NONE
Word Mark	WHISTLE		
Design Mark			
Description of Mark	The mark consists of an outline of a whistle before the word "WHISTLE".		
Goods/Services	Class 009. First use: First Use: 2013/10/28 First Use In Commerce: 2013/10/28 Computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors		

Attachments	85975601#TMSN.png(bytes) 85975600#TMSN.png(bytes) WHISTLE RECRUITING - Notice of Opposition with Exhibits.PDF(705587 bytes)
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Signature	/Loni J. Sherwin/
Name	Loni J. Sherwin
Date	06/12/2017

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

In re Application No. 87105246 for the mark WHISTLE RECRUITING, filed July 15, 2016, and published December 13, 2016

WHISTLE LABS, INC.,)	
)	
Opposer,)	Mark: WHISTLE RECRUITING
v.)	
)	Opp. No. _____
WHISTLE RECRUITING, LLC)	
)	
Applicant.)	
_____)	


NOTICE OF OPPOSITION

Whistle Labs, Inc. (“Opposer”), a corporation duly organized and existing under the laws of the State of Delaware, having a place of business at 3180 18th Street, Suite 102, San Francisco, California 94110, believes that it will be damaged by the registration of the mark shown in Application Serial No. 87105246, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer owns all right, title, and interest in and to marks containing or comprised of WHISTLE (the “WHISTLE® Marks”), which Opposer uses in interstate commerce on and in connection with, *inter alia*, computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; and pet video monitors.

2. Opposer’s rights in the WHISTLE® Marks have been recognized by the United States Patent and Trademark Office (“USPTO”), which has issued federal registrations to Opposer, including the following:

Trademark	Registration No.	Registration Date	Goods/Services
WHISTLE	4748549	June 2, 2015	Computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors.
 Whistle	4748548	June 2, 2015	Computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors.

3. Opposer’s registrations are valid and subsisting. These registrations provide *prima facie* evidence of Opposer’s ownership of the WHISTLE® Marks, of the validity of the marks, and of Opposer’s exclusive right to use the marks in commerce. Printouts concerning the pleaded registrations from the USPTO’s TESS and assignment databases are attached hereto as Exhibit A.

4. Opposer adopted and first used in interstate commerce the WHISTLE® Marks at least as early as October 28, 2013, which is long prior to any alleged first use of, and application for registration of, Applicant’s alleged mark.

5. As a result of Opposer’s use of the WHISTLE® Marks since at least as early as October 28, 2013, consumers recognize the WHISTLE® Marks as distinctive indicators of the origin of Opposer’s goods, and the marks have become valuable symbols of Opposer’s goodwill.

6. Notwithstanding Opposer’s prior established rights in the WHISTLE® Marks, applicant Whistle Recruiting, LLC (“Applicant”) filed application Serial No. 87105246 with the USPTO on July 15, 2016 for the mark WHISTLE RECRUITING for “computer application software for mobile phones, handheld computers and laptop computers, namely, software for use in communicating with and recruiting players for sports teams” in Class 9.

7. Upon information and belief, Applicant knew or had reason to know of Opposer's prior rights in the WHISTLE® Marks when Applicant filed its application.

8. The first and dominant portion of Applicant's alleged mark, "WHISTLE," is identical visually, aurally, and in overall commercial impression to Opposer's WHISTLE® Marks or the dominant portions thereof.

9. The goods for which Applicant has applied to register the mark WHISTLE RECRUITING, and the goods for which Opposer owns rights in the WHISTLE® Marks, are closely related.

Count I – Likelihood of Confusion – §2(d)

10. The mark that Applicant seeks to register so closely resembles Opposer's WHISTLE® Marks or the dominant portions thereof that the use and registration of Applicant's alleged mark are likely to cause confusion, mistake, or deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by the WHISTLE® Marks.

11. Applicant's goods are so closely related to Opposer's goods such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant is in some way connected or affiliated with, or approved or sponsored by, Opposer, all to Opposer's irreparable damage.

12. Likelihood of confusion is enhanced by the fact that Applicant's goods and Opposer's goods are offered for sale in the same trade channels.

13. Likelihood of confusion is enhanced by the fact that purchasers of Applicant's goods are purchasers or prospective purchasers of Opposer's goods, and vice-versa.

14. Likelihood of confusion is enhanced by the fact that Applicant is using its alleged

mark in connection with a design element that is nearly identical to the design element of the mark in Opposer's Registration No. 4748548. *See* Exhibit B.

WHEREFORE, Opposer prays that the Board sustain this opposition and deny registration of the mark identified in Applicant's application.

WHISTLE LABS, INC.

Dated: June 12, 2017

By: /Loni J. Sherwin/
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*Attorneys for Opposer
Whistle Labs, Inc.*

Exhibit A



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WHISTLE

Word Mark WHISTLE

Goods and Services IC 009. US 021 023 026 036 038. G & S: computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors. FIRST USE: 20131028. FIRST USE IN COMMERCE: 20131028

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85975601

Filing Date October 2, 2012

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 5, 2014

Registration Number 4748549

Registration Date June 2, 2015

Owner (REGISTRANT) WHISTLE LABS, INC. CORPORATION DELAWARE 3180 18th Street, Suite 102
SAN FRANCISCO CALIFORNIA 94110

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Courtney Laginess

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator **LIVE**

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No assignment has been recorded at the USPTO

For Serial Number: 85975601

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Word Mark WHISTLE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer hardware; computer software for wireless data communication for tracking, displaying and managing information regarding activity levels, nutrition, health and fitness for the purpose of pet healthcare; pet video monitors. FIRST USE: 20131028. FIRST USE IN COMMERCE: 20131028

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 22.01.09 - Whistles

Serial Number 85975600

Filing Date January 11, 2013

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 5, 2014

Registration Number 4748548

Registration Date June 2, 2015

Owner (REGISTRANT) Whistle Labs, Inc. CORPORATION DELAWARE 3180 18th Street, Suite 102 SAN FRANCISCO CALIFORNIA 94110

Attorney of Record Courtney Laginess

Description of Mark Color is not claimed as a feature of the mark. The mark consists of an outline of a whistle before the word "WHISTLE".

Type of Mark TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

-
- | | | | | | | | | | |
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For Serial Number: 85975600

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Exhibit B



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