

ESTTA Tracking number: **ESTTA935823**

Filing date: **11/19/2018**

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	Publicis Media Limited
Granted to Date of previous extension	11/25/2018
Address	Kensington Village Avonmore Road Pembroke Building London, W14 8DG UNITED KINGDOM
Attorney information	Stephen F. Roth Lerner David Littenberg Krumholz & Mentlik 600 South Avenue West Westfield, NJ 07090 UNITED STATES sroth@lernerdavid.com, litigation@lernerdavid.com 9086545000

Applicant Information

Application No	87716741	Publication date	05/29/2018
Opposition Filing Date	11/19/2018	Opposition Period Ends	11/25/2018
Applicant	Martell Broadcasting Systems, Inc. 1120 Palomino Ln San Marcos, TX 78666 UNITED STATES		

Goods/Services Affected by Opposition


Class 009. First Use: 2017/02/11 First Use In Commerce: 2017/02/11 All goods and services in the class are opposed, namely: Downloadable software for streaming music, video, and audiovisual content on mobile phones, tablets, personal computers, and televisions
Class 035. First Use: 2017/02/11 First Use In Commerce: 2017/02/11 All goods and services in the class are opposed, namely: Providing a website where advertisers, marketers, and content providers can reach, engage, and interact with online users for the purposes of promotion or advertising; market research services in the nature of tracking and measuring audience viewing, exposure, and reaction to online and television advertisements; preparing market reports and studies from collected marketing information and research; developing and providing marketing programs for advertisers, marketers, and content providers
Class 038. First Use: 2017/02/11 First Use In Commerce: 2017/02/11 All goods and services in the class are opposed, namely: Broadcasting of video and audio programming of entertainment content via the internet and electronic communications networks, namely, movies, television programs, and video clips in the fields of comedy, drama, educational, action, ad-

venture, sports, musicals, current events, news, documentaries, and animation over the Internet
Class 041. First Use: 2017/02/11 First Use In Commerce: 2017/02/11 All goods and services in the class are opposed, namely: Provision of non-downloadable movies, television programs, and video clips via a video-on demand service; entertainmentservices in the nature of providing non-downloadable entertainment content via the internet and electronic communications networks, namely, movies, television programs, and video clips in the fields of comedy, drama, educational, action, adventure, sports, musicals, current events, news, documentaries, and animation
Class 042. First Use: 2017/02/11 First Use In Commerce: 2017/02/11 All goods and services in the class are opposed, namely: Providing temporary use of online non-downloadable software for streaming audioand video content on mobile phones, tablets, personal computers, and televisions; cloud storage services, namely, providing electronic data storage accessible via the internet of electronic media, namely, music, video, and audiovisual content; providing temporary use of on-line non-downloadable software for analyzing media data, compiling email lists, selling advertising inventory, and communicating with users

Grounds for Opposition

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

U.S. Registration No.	5261725	Application Date	10/01/2015
Registration Date	08/08/2017	Foreign Priority Date	NONE
Word Mark	ZENITH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2016/04/04 First Use In Commerce: 2016/04/04 Advertising and marketing services; promoting the brands, goods and services of others; public relations services; brand imagery consulting services; concept and brand development services for corporate clients; brand evaluation services; brand positioning; social media strategyand marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions; pay per click (ppc) advertising managementservices; advertising and business management consultancy; marketing and directmarketing services; media buying and planning services, namely, purchasing timeand space for the delivery of advertising messages through broadcast time, print space, indoor space, outdoor space or other media such as cds and dvds or website space/time; event planning and management for marketing, branding, promotingor advertising the goods and services of others; marketing consultation and advice in the field of event planning and management; sponsorship search consultancy services; sales promotion; business research; market research; business management consultancy services; busi-		

	<p>ness organisation and planning; business management of event hospitality services; opinion polls; compilation, processing and analysis of statistics; advertising agency services for arranging business introductions; arranging and conducting of tradeshows, conferences and exhibitions for advertising/commercial purposes; organisation, operation and supervision of sales and promotional incentive schemes, namely, arranging and conducting incentive reward programs to promote the sale of products and services of others; planning and placement of advertisements including undertaking the purchasing of the relevant media space; all the aforesaid services also provided on-line via computer websites or through wireless transmissions; direct mail advertising; advertising by postal mail; advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; direct marketing; marketing services, namely, marketing to consumers for others by means of computer databases; telemarketing; statistical analysis and reporting for business purposes; database management; business information services; business consulting services in the field of electronic commerce; advertising and marketing management agency services, namely, the creation, development and dissemination of advertising and promotional materials via direct mail, newspaper, radio, television, mobile devices, a global computer network and other interactive media; business research consultation; provision of commercial and promotional information in the field of consumer products, consumer services, business to business products and business to business services through cloud based storage; advertising and marketing services, namely, creating corporate logos for others and creating corporate and brand identity for others; brand concept and brand development services for corporate and individual clients; advertising in the nature of a viral marketing program via mobile phone networks and direct mail advertisements, mobile advertising services for others; media relations; business consulting services in the fields of employee relations; business consultation in the field of crisis management; business risk management, business risk management consultation and business risk assessment services; copy writing for advertising and promotional purposes; writing of marketing communications; writing of publicity texts; web site traffic optimization, namely, search engine optimization for sales promotion; assistance, advisory services and consultancy with regard to business planning, business analysis, business management, business organization, marketing and customer analysis; design of publicity and advertising materials; design and placing of banner advertisements</p> <p>Class 042. First use: First Use: 2016/04/04 First Use In Commerce: 2016/04/04</p> <p>Industrial research in the field of advertising and marketing; industrial and commercial design services; graphic design services; research into and design of new products; new product development; implementation of software for reporting, simulation and optimization of marketing spend; information technology support services, namely, 24/7 service desk or help desk services for IT infrastructure, operating systems, database systems, and web applications; consultancy and advisory services relating to computer software, application software, telecommunications technology and graphic design services; electronic storage of digital media, photographs, film, video tape, sound tracks, emails; electronic storage of secure digital media, photographs, film, video tape, sound tracks, emails, electronic storage of documentary records; electronic storage of documents; storage of electronically stored data or documents; electronic storage of data in the field of commercial and promotional information; providing a website for the electronic storage of data in the field of commercial and promotional information; electronic remote file storage; file and document retrieval; graphic design services for creating graphic elements of corporate logos</p>
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Attachments	86774932#TMSN.png(bytes) 5677686_1.pdf(11622 bytes)
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Signature	/Stephen F. Roth/
Name	Stephen F. Roth
Date	11/19/2018

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

Publicis Media Limited,	:	Serial No. 87/716741
	:	
Opposer,	:	Filed: 12/11/17
	:	
v.	:	For: ZENITHER
	:	
Martell Broadcasting Systems, Inc.,	:	Published: 5/29/18
	:	
	:	
Applicant.	:	
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, Publicis Media Limited, a limited liability company under the laws of the United Kingdom, and having a place of business at Kensington Village Avonmore Road, Pembroke Building, London, W14 8DG, United Kingdom, believes it will be damaged by the registration of the mark shown in application Serial No. 87/716741 (the "Application") and hereby opposes registration of such mark. The specific grounds for such opposition are as follows:

1. Opposer owns and uses through its licensed affiliated companies the mark ZENITH in connection with services offered in interstate commerce in the United States.
2. Opposer has been using the mark ZENITH since at least as early as April 4, 2016, long before Applicants filed for the Application for registration of the mark ZENITHER on December 11, 2017.
3. Opposer is the owner of United States Trademark Registration

No. 5,261,725 for the mark ZENITH covering various advertising and marketing services.

4. Applicants' mark ZENITHER so resembles Opposer's mark ZENITH as to result in a likelihood of confusion.

5. Applicants' mark ZENITHER is used for, or will be used for, related and confusingly similar services such that the marks are likely to be confused.

6. Opposer will suffer harm as a result of the confusion likely to arise from the registration of the Application and from Opposer's prior and ongoing use of the ZENITH mark.

7. This opposition is timely given that the original publication date of the Application was May 29, 2018, and requests to extend time to oppose have been granted up and until November 25, 2018.

WHEREFORE, Opposer requests that its opposition be sustained, and the Board refuse registration of Application Serial No. 87/716741.

Please charge the fee of \$2000.00 for a Notice of Opposition in two classes to our Deposit Account No. 12-1095. The undersigned is authorized to make charges to said deposit account.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
*Attorneys for Opposer, Publicis Media
Limited*

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Westfield, NJ 07090

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Fax: 908.654.7866

Dated: November 19, 2018

By s/ Stephen F. Roth
Stephen F. Roth

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within NOTICE OF OPPOSITION was served upon the following this 19th day of November, 2018, as follows:

VIA FIRST-CLASS MAIL

Brian Spross, Esq.
Jones & Spross, PLLC
1605 Lakecliff Hills Lane
Suite 100
Austin, Texas 78732

s/ Stephen F. Roth
Stephen F. Roth