

ESTTA Tracking number: **ESTTA945804**

Filing date: **01/07/2019**

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	ADP, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	One ADP Boulevard Roseland, NJ 07068 UNITED STATES		

Attorney information	Susan E. Hollander and Sharoni S. Finkelstein Venable LLP 101 California Street, Suite 3800 San Francisco, CA 94111 UNITED STATES ipdocketingsf@venable.com, sehollander@venable.com, ssfinkelstein@venable.com, trademarks@adp.com 4156533750		
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Applicant Information

Application No	88033421	Publication date	12/11/2018
Opposition Filing Date	01/07/2019	Opposition Period Ends	01/10/2019
Applicant	Jack, Eseoghene E Suite 600, #101 27131 Cinco Ranch Blvd Katy, TX 77494 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 computers, mobile phones and other handheld computers, namely, software for use in mobile and digital payments, use in electronic communication and use in electronic storage of data
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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. Application No.	87616441	Application Date	09/20/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	WISELY BY ADP
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0 Debit card services, namely, processing of debit card transactions and payments; payment processing services, namely, debit card transaction processing services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards; on-line prepaid card services, namely, processing of prepaid card transactions and payments; issuing prepaid debit cards for electronic cash transactions</p>

U.S. Application No.	87616444	Application Date	09/20/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	WISELY WITH ADP
Design Mark	
Description of Mark	The mark consists of the wording "WISELY" in black font with the wording "WITH" in gray font and "ADP" in white font outlined in gray to the bottom right of the wording "WISELY". To the left of "WISELY" is a stylized image of a light blue circle overlapping a red circle, with the intersecting part of the two circles in dark blue. In the center of the circles is a white circle, creating the stylized image of an eye.
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards</p> <p>Class 036. First use: First Use: 0 First Use In Commerce: 0 Debit card services, namely, processing of debit card transactions and payments; payment processing services, namely, debit card transaction processing</p>

	services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards; on-line prepaid card services, namely, processing of prepaid card transactions and payments; issuing prepaid debit cards for electronic cash transactions
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Attachments	87616441#TMSN.png(bytes) 87616444#TMSN.png(bytes) Notice Of Opposition - YZLY.pdf(244135 bytes)
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Signature	/sharoni s. finkelstein/
Name	Sharoni S. Finkelstein
Date	01/07/2019

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

**In the matter of Application Serial No. 88/033,421
Published in the *Official Gazette* December 11, 2018
Mark: YZLY**

ADP, LLC,

Opposer,

v.

Eseoghene E Jack

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

ADP, LLC, a limited liability company organized and existing under the laws of Delaware, with a business address of One ADP Boulevard, Roseland, New Jersey 07068 (“Opposer”) believes that it will be damaged by registration of the YZLY word mark shown in Application Serial No. 88/033,421, and hereby opposes its registration pursuant to 15 U.S.C. §§ 1051 *et seq.*, including specifically 15 U.S.C. § 1063.

This Notice of Opposition has been timely filed. As grounds for its opposition, Opposer alleges as follows:

1. Upon information and belief, applicant Eseoghene E Jack is an individual with a mailing address of 27131 Cinco Ranch Boulevard, Suite 600, #101, Katy, Texas 77494 (hereinafter, “Applicant”).

2. As illustrated in Application Serial No. 88/033,421, Applicant seeks to register the mark YZLY for “Computer application software for computers, mobile phones and other handheld


computers, namely, software for use in mobile and digital payments, use in electronic communication and use in electronic storage of data” in International Class 9.

3. On December 11, 2018, Applicant’s Trademark Application Serial No. 88/033,421 for the YZLY mark was published for opposition in the Official Gazette of the United States Patent and Trademark Office (“USPTO”).

4. Opposer is one of the world’s leading providers of human capital management and business outsourcing services. Opposer offers a broad range of human resources, payroll, tax, benefits administration, and business management solutions, including payroll and cash cards and related services, all from a single source. In connection with these services, Opposer offers employers a variety of electronic payment options. At least as early as September 25, 2018, Opposer introduced its newest electronic payment options with WISELY payment cards, self-issued payroll checks, and payment card services including, for example, magnetically encoded debit cards and payment processing services. Opposer also offers mobile applications for processing electronic payments, credit and debit card transactions, and prepaid card transactions.

5. Opposer owns several United States Trademark Applications for marks that predominantly consist of WISELY for use in connection with, among other things, mobile applications for processing electronic payments, and that allow users to manage financial transactions (the “WISELY Marks”). Below is a list showing Opposer’s U.S. applications for its WISELY Marks.

Mark	App. No.	App. Date	Goods/Services
WISELY BY ADP	87/616,441	9/20/2017	<p>Class 9 – Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards</p> <p>Class 36 – Debit card services, namely, processing of debit card transactions and payments; payment</p>

Mark	App. No.	App. Date	Goods/Services
			processing services, namely, debit card transaction processing services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards; on-line prepaid card services, namely, processing of prepaid card transactions and payments; issuing prepaid debit cards for electronic cash transactions
WISELY WITH ADP & Design 	87/616,444	9/20/2017	Class 9 – Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards Class 36 – Debit card services, namely, processing of debit card transactions and payments; payment processing services, namely, debit card transaction processing services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards; on-line prepaid card services, namely, processing of prepaid card transactions and payments; issuing prepaid debit cards for electronic cash transactions

True and correct copies of pages printed from the USPTO's online database reflecting the applications for Opposer's WISELY Marks listed above are attached hereto as Exhibit A.

6. On December 12, 2018, Opposer submitted a Statement of Use in connection with U.S. Application No. 87/616,441. On December 21, 2018, Opposer submitted a Statement of Use in connection with U.S. Application No. 87/616,444.

7. The inherent distinctiveness of the WISELY Marks is buttressed by the substantial effort Opposer has expended in promoting and advertising the WISELY Marks. In the short time since their introduction to the public, the WISELY Marks have been featured in articles in both trade and general publications, and on Opposer's various websites, and the WISELY Marks are prominently featured in advertising material prepared by Opposer's business units.

8. No issue of priority exists. Opposer filed its applications for the WISELY Marks on September 20, 2017 based on an intent to use, and has filed with the USPTO Statements of Use. The filing of these applications constitutes constructive use of the WISELY Marks pursuant to 15

U.S.C. § 1057(c). By contrast, Applicant's YZLY application was not filed until July 11, 2018—that is, *after* Opposer's constructive first use of the WISELY Marks—and is based on Section 1(b) of the Lanham Act. Upon information and belief, the YZLY mark is not yet in use.

9. Applicant's proposed YZLY mark is phonetically identical to Opposer's WISELY Marks, and is confusingly similar in sound, appearance, and overall impression pursuant to 15 U.S.C. § 1052(d). Indeed, Applicant's proposed YZLY mark merely eliminates Opposer's ADP house mark, and would therefore be perceived as the same.

10. In addition, the goods offered by Applicant and Opposer directly overlap. As described above, Opposer uses its WISELY Marks in connection with various electronic payment options, including payment cards, self-issued payroll checks, and payment card services including payment processing services. Opposer also offers a mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions, and for managing financial transactions. Applicant proposes to use its YZLY mark in connection with mobile application software for use in mobile and digital payments. In other words, the phonetically identical WISELY and YZLY marks would be used for virtually identical mobile applications for processing electronic payments.

11. Because Opposer's WISELY Marks and Applicant's YZLY mark are similar in sound and commercial impression, and are used in connection with directly overlapping goods that are provided to the same class of consumers and are marketed through the same channels of trade, Applicant's YZLY mark is confusingly similar to Opposer's WISELY Marks.

12. The maturation of Applicant's application into registration will cause a likelihood of confusion, mistake or deception with respect to the source or origin of Applicant's goods.

Consumers will erroneously believe that Applicant's goods are offered by, licensed, or associated with Opposer.

13. Pursuant to 15 U.S.C. § 1063(a), Opposer will be damaged by registration of Applicant's proposed mark, which would grant Applicant a *prima facie* exclusive right to use the proposed mark despite Opposer's priority over Applicant and the likelihood of confusion that will be caused by Applicant's mark.

14. In summary, registration of the proposed mark would be incorrect and improper in view of the requirements of the Trademark Act of 1946, as amended, including specifically but not limited to the provisions of 15 U.S.C. §§ 1051, *et seq.*

WHEREFORE, Opposer prays that this Opposition be sustained, and that registration to Applicant for YZLY in Application Serial No. 88/033,421 be denied.

Dated: January 7, 2019

Respectfully submitted,

VENABLE LLP

/s/ Susan E. Hollander

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EXHIBIT A



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WISELY BY ADP

Word Mark	WISELY BY ADP
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards
	IC 036. US 100 101 102. G & S: Debit card services, namely, processing of debit card transactions and payments; payment processing services, namely, debit card transaction processing services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards, on-line prepaid card services, namely, processing of prepaid card transactions and payments; issuing prepaid debit cards for electronic cash transactions
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	87616441
Filing Date	September 20, 2017
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	May 1, 2018
Owner	(APPLICANT) ADP, LLC LIMITED LIABILITY COMPANY DELAWARE One ADP Boulevard Roseland NEW JERSEY 07068
Attorney of Record	Susan E. Hollander and Sharoni S. Finkelstein
Type of Mark	TRADEMARK, SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Word Mark WISELY WITH ADP

Goods and Services IC 009. US 021 023 026 036 038. G & S: Magnetically encoded debit cards; downloadable mobile application for processing electronic payments, credit and debit card transactions, and prepaid card transactions; downloadable mobile application that allows users to manage financial transactions on credit, debit, and prepaid debit cards

IC 036. US 100 101 102. G & S: Debit card services, namely, processing of debit card transactions and payments; payment processing services, namely, debit card transaction processing services; prepaid purchase card services, namely, processing electronic payments through prepaid cards, issuing prepaid credit cards; on-line prepaid card services, namely, processing of prepaid card transactions and payments, issuing prepaid debit cards for electronic cash transactions

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

Design Search Code 02.11.02 - Eyes, human; Human eyes; Iris (eye)
26.01.15 - Circles, exactly three circles; Three circles
26.01.16 - Circles touching or intersecting
26.01.21 - Circles that are totally or partially shaded.

Serial Number 87616444

Filing Date September 20, 2017

Current Basis 1B

Original Filing Basis 1B

Published for Opposition July 10, 2018

Owner (APPLICANT) ADP, LLC LIMITED LIABILITY COMPANY DELAWARE One ADP Boulevard Roseland NEW JERSEY 07068

Attorney of Record Susan E. Hollander and Sharoni S. Finkelstein

Description of Mark The color(s) light blue, dark blue, red, white, black and gray is/are claimed as a feature of the mark. The mark consists of the wording "WISELY" in black font with the wording "WITH" in gray font and "ADP" in white font outlined in gray to the bottom right of the wording "WISELY". To the left of "WISELY" is a stylized image of a light blue circle overlapping a red circle, with the intersecting part of the two circles in dark blue. In the center of the circles is a white circle, creating the stylized image of an eye.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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