

ESTTA Tracking number: **ESTTA955131**

Filing date: **02/19/2019**

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    | Cyril Hour   |             |               |
| Entity  | Individual   | Citizenship | UNITED STATES |
| Address | 382 NE 191st Street, #56301<br>Miami, FL 33179-3899<br>UNITED STATES |             |               |

|                      |  |  |  |
|----------------------|--|--|--|
| Attorney information | Brian Roffe<br>Law Office of Brian Roffe<br>9206 Avers Avenue<br>Evanston, IL 60203<br>UNITED STATES<br>patentattorney@comcast.net, broffe@msn.com<br>2245347337 |  |  |
|----------------------|--|--|--|

**Applicant Information**

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 76720538  | Publication date       | 01/22/2019 |
| Opposition Filing Date | 02/19/2019  | Opposition Period Ends | 02/21/2019 |
| Applicant              | Hawk Enterprises 2, LLC<br>1650 Market Street<br>One Liberty Place, Suite 4900<br>Philadelphia, PA 19103<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

|   |
|---|
| Class 036. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: electronic commodities, crypto currencies, and digital assets exchange services; providing financial services in the nature of providing an exchange for commodities and commodities derivatives cryptocurrencies, and digital assets; providing online exchange services in the nature of online purchasing and selling of commodities and commodities derivatives, crypto currencies, and digital assets; providing online commodities and commodity-derivatives, crypto currencies, and digital assets pricing and related financial information; financial services in thenature of assisting others with the completion of financial transactions for commodities and commodity derivatives, crypto currencies, and digital assets; services relating to financial transactions,namely, trading of commodities and commodity derivatives, crypto currencies, and digital assets; providing financial services in the nature of offering, sponsoring, managing and administering commodities, commodity derivatives, crypto currencies, and digital assets and related financial instruments; merchant services,namely, payment transaction processing services; financial custody services, namely, maintaining possession of financial assets for others for financial management purposes |
|---|

## Grounds for Opposition

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

## Mark Cited by Opposer as Basis for Opposition

|                                    |  |                  |      |
|------------------------------------|--|------------------|------|
| U.S. Application/ Registration No. | NONE   | Application Date | NONE |
| Registration Date                  | NONE   |                  |      |
| Word Mark                          | BAKKT  |                  |      |
| Goods/Services                     | providing an on-line trading platform for enabling transactions involving futures contracts for crypto currencies; providing an on-line platform that enables individuals to generate, buy and sell contracts for futures for crypto currencies; providing an on-line peer-to-peer platform to enable individuals to trade futures contracts running on the blockchain; providing a decentralized trading platform to enable individuals to generate, buy and sell future contracts for crypto currencies; and providing a platform to enable individuals to generate future contracts for crypto currencies |                  |      |

|             |  |
|-------------|--|
| Attachments | BAKKT_Notice_of_Opposition.pdf(42059 bytes ) |
|-------------|--|

|           |               |
|-----------|---------------|
| Signature | /Brian Roffe/ |
| Name      | Brian Roffe   |
| Date      | 02/19/2019    |

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

|                          |   |                        |
|--------------------------|---|------------------------|
| CYRIL HOURI,             | ) |                        |
|                          | ) |                        |
| Opposer,                 | ) |                        |
|                          | ) |                        |
| v.                       | ) | Opposition No.: _____  |
|                          | ) |                        |
| HAWK ENTERPRISES 2, LLC, | ) | Serial No.: 76/720,538 |
|                          | ) |                        |
| Applicant                | ) | Mark: BAKKT            |
|                          | ) |                        |
|                          | ) |                        |

Trademark Trial and Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Cyril Houri (Opposer), an individual having a mailing address of 382 NE 191st Street, #56301, Miami, Florida 33179-3899, believes he is or will be damaged by registration on the Principal Register of the mark BAKKT for services in Class 36 sought to be registered by Hawk Enterprises 2, LLC, (Applicant), a Delaware corporation having a mailing address of 1650 Market Street, One Liberty Place, Suite 4900, Philadelphia Pennsylvania, in U.S. Trademark Application Serial No. 76/720,538, published in the Official Gazette on January 22, 2019.

As grounds for Opposition, Opposer alleges:

1. Opposer, himself and through affiliates, is engaged in the business of operating and managing an Internet-based platform to enable individuals to conduct financial transactions relating to crypto currencies since at least as early as May 22, 2018. The Internet-based platform is accessible at a website assigned the domain name “www.backt.com” (hereinafter “the BACKT website”) and has been accessible since at least as early as May 22, 2018. The BACKT website is owned and managed by Opposer himself and through affiliates.

2. Opposer believes he is the exclusive owner of rights under the common law in the mark BACKT for at least one of the services of providing an on-line trading platform for enabling transactions involving futures contracts for crypto currencies; providing an on-line

platform that enables individuals to generate, buy and sell contracts for futures for crypto currencies; providing an on-line peer-to-peer platform to enable individuals to trade futures contracts running on the blockchain; providing a decentralized trading platform to enable individuals to generate, buy and sell future contracts for crypto currencies; and providing a platform to enable individuals to generate future contracts for crypto currencies (each of which is referred to as the “Opposer’s Services”).

3. Opposer has expended considerable sums in developing, managing and promoting Opposer’s Services using the mark BACKT in interstate commerce, and the BACKT website and has created valuable goodwill among the consuming public under its BACKT mark that have used Opposer’s Services to transact crypto currency related financial transactions. Development and promotional expenses include website acquisition and management costs for the BACKT website, costs for generating animated explanations of Opposer’s Services associated with the BACKT mark and website, code hosting services for the BACKT website, costs for programming and software for the BACKT website, and costs for attending a crypto currency conference to promote Opposer’s Services in association with the BACKT mark.

4. Upon information and belief, the BACKT mark was distinct when used prior to July 12, 2018 for Opposer’s Services and but for Applicant’s use of the mark BAKKT, Opposer’s mark BACKT would continue to be distinct for Opposer’s Services.

5. Opposer’s use and promotion of the mark BACKT for Opposer’s Services created an association in the minds of customers between Opposer’s mark BACKT and crypto currency financial services of the nature available at the BACKT website managed by Opposer.

6. Opposer used the mark BACKT in ways that informed prospective seekers, users and purchasers of crypto currency financial services that the BACKT website was available to enable them to perform such services, thereby identifying Opposer as the source for enabling performance of such services in association with the mark BACKT, including prominent and repeated use of the mark BACKT at its BACKT website.

7. Opposer has been using the BACKT mark for Opposer’s Services from a date prior to July 12, 2018 and has not abandoned the mark, and acquired common law trademark rights to the mark BACKT for such services as a result of its use in commerce.

8. Opposer has proprietary rights in the mark BACKT in that it has at least one of: use in commerce of the mark BACKT prior to July 12, 2018; use of the mark BACKT in

advertising analogous to trademark use prior to July 12, 2018; use in commerce of the mark BACKT as a trade name prior to July 12, 2018; and use in commerce of the mark BACKT that has resulted in establishing a trade identity prior to July 12, 2018.

9. Applicant submitted a trademark application to the U.S. Patent and Trademark Office for the mark BAKKT using the Express Mail service of the United States Postal Service on July 11, 2018. The application submitted by Applicant was received by the USPTO on July 12, 2018, and assigned Serial No. 76/720,538 (the ‘538 application”) and a filing date of July 12, 2018.

10. As published, the ‘538 application includes services in Class 36, namely, electronic commodities, crypto currencies, and digital assets exchange services; providing financial services in the nature of providing an exchange for commodities and commodities derivatives crypto currencies, and digital assets; providing online exchange services in the nature of online purchasing and selling of commodities and commodities derivatives, crypto currencies, and digital assets; providing online commodities and commodity derivatives, crypto currencies, and digital assets pricing and related financial information; financial services in the nature of assisting others with the completion of financial transactions for commodities and commodity derivatives, crypto currencies, and digital assets; services relating to financial transactions, namely, trading of commodities and commodity derivatives, crypto currencies, and digital assets; providing financial services in the nature of offering, sponsoring, managing and administering commodities, commodity derivatives, crypto currencies, and digital assets and related financial instruments; merchant services, namely, payment transaction processing services; financial custody services, namely, maintaining possession of financial assets for others for financial management purposes.

11. The ‘538 application was filed based on an intent to use the mark, did not contain any indication of use of the mark in commerce, and an Amendment to Allege Use was not filed. Applicant has not indicated anywhere in connection with the ‘538 application that Applicant has used the mark BAKKT prior to Opposer’s first use of the mark BACKT, assuming Opposer’s first use in commerce of the mark BACKT is at least as early as May 22, 2018.

12. The ‘538 application was published for opposition in the Official Gazette on January 22, 2019.

13. As a result of Opposer's use in commerce of its mark BACKT for Opposer's Services prior to filing of the '538 application by Applicant, upon information and belief Opposer's rights to the mark BACKT arose prior to any rights Applicant has in the mark BAKKT and thus Opposer has prior and proprietary rights in the mark BACKT that are superior to those of the Applicant.

14. Opposer would be damaged by registration of Applicant's mark and Opposer's prior rights are sufficient to support prevailing in this Opposition and prevent registration of the mark BAKKT by Applicant for services in Class 36.

15. Registration of the BAKKT mark should be barred by the provisions of 15 U.S.C. §1052(d) because the mark consists of a mark (BAKKT) which so resembles a mark previously used in the United States by Opposer (BACKT), and not abandoned, as to be likely, when used in connection with Applicant's services in Class 36, to cause confusion, mistake or deception.

16. Applicant's mark is confusingly similar to the Opposer's mark in sight, sound and/or commercial impression differing in spelling by only one letter, and pronounced the same or substantially the same.

17. The services identified in Class 36 in the '538 application are confusingly similar to Opposer's Services in that, for example, they both involve or reasonably could involve use of crypto currencies.

18. The services identified in Class 36 in the '538 application are likely to be offered in similar trade channels as Opposer's Services in that, for example, they both involve use of the Internet to perform financial services.

19. The services identified in Class 36 in the '538 application are likely to be offered to similar classes of consumers as Opposer's Services in that, for example, they both are directed to individuals involved in crypto currency transactions.

20. Consumers familiar with the Opposer's mark are therefore likely to mistakenly believe that the Applicant's services are sponsored by, authorized, endorsed, affiliated with or otherwise approved by the Opposer because the Applicant's mark sought to be registered and used by the Applicant is confusingly similar to the Opposer's mark and the services identified in Class 36 in the '538 application are similar to Opposer's Services.

21. Opposer contends that there has already been confusion between the Opposer's mark and the Applicant's mark. In a news release by the Coin News Desk, at <https://coinnewsdesk.com/bakkt-raises-capital-of-180-million-dollars/5925/>, there is a statement that "Bakkt (backt), a subsidiary of the Intercontinental Exchange (ICE), has acquired \$180 million (equivalent to about 20 billion yen) as the first capital raising". Upon information and belief, the "Bakkt" referred to in this news release is an affiliated entity to the Applicant.

22. Applicant was aware of the Opposer's BACKT mark as least as early as August 29, 2018 when Applicant's counsel, Mr. Paul A. Taufer, was notified by Opposer's undersigned counsel of a claim of ownership of the mark BACKT in association with crypto currency related financial services.

23. In spite of such knowledge and upon information and belief, Applicant has not taken any steps to correct the news release and indicate that BACKT is not their own mark, but rather is the Opposer's mark.

24. Applicant's BAKKT mark so resembles Opposer's BACKT mark in sound, sight, and commercial impression as to be likely, when applied to Applicant's services identified in Class 36 in the '538 application, to cause confusion, mistake, or deception in the minds of consumers by causing the public to believe that Applicant's services originate from, or are otherwise sponsored or endorsed by, Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent damage to Opposer and the public within the meaning of 15 U.S.C. § 1063(a). The registration sought by Applicant is thus contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

25. WHEREFORE, Opposer respectfully requests that registration of the BAKKT mark in the '538 application for services in Class 36 be refused and that this Opposition be sustained in favor of Opposer.

Dated: February 19, 2019

Respectfully Submitted,

By: Brian Roffe /  
Brian Roffe, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served upon the Attorneys of Record for the Applicant, HAWK ENTERPRISES 2, LLC, by e-mailing said copy to: Paul A. Taufer, IP Group of DLA Piper LLP (US), 1650 Market Street, Philadelphia, PA 19103-7301, paul.taufer@dlapiper.com, on February 19, 2019.

Dated: February 19, 2019

/Brian Roffe/  
Brian Roffe, Esq.

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