

ESTTA Tracking number: **ESTTA981403**

Filing date: **06/18/2019**

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	Dlive22891 Corp.		
Entity	Corporation	Citizenship	NY
Address	22 Fortune Road East Middletown, NY 10941 UNITED STATES		

Attorney information	Gary Schuster Jacobowitz & Gubits LLP 158 Orange Avenue Walden, NY 12586 UNITED STATES gms@jacobowitz.com, kap@jacobowitz.com 845-778-2121		
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**Applicant Information**

Application No	88228476	Publication date	05/21/2019
Opposition Filing Date	06/18/2019	Opposition Period Ends	06/20/2019
Applicant	Dlive Inc. 19450 Stevens Creek Blvd., Suite 100 Cupertino, CA 95014 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: (Based on Intent To Use) Distribution of advertising materials in the nature of videos; On-line retail store services featuring downloadable pre-recorded music and video
Class 038. First Use: 2018/09/07 First Use In Commerce: 2018/09/07 All goods and services in the class are opposed, namely: (Based on Use in Commerce) Streaming of video material on the Internet; Video broadcasting services over the Internet or other communication network featuring the uploaded, posted and tagged videos of others
Class 041. First Use: 2018/09/07 First Use In Commerce: 2018/09/07 All goods and services in the class are opposed, namely: (Based on Use in Commerce) Entertainment in the nature of providing on-line non-downloadable videos in the fields of comedy, drama, action, adventure, sports, musicals, current events, news, documentaries, pop culture, gaming, and animation
Class 042. First Use: 2018/09/07 First Use In Commerce: 2018/09/07 All goods and services in the class are opposed, namely: (Based on Use in Commerce) Providing a website featuring technology that enables users to upload and share user-generated videos on a

wide variety of topics and subjects

Class 045. First Use: 2018/09/07 First Use In Commerce: 2018/09/07

All goods and services in the class are opposed, namely: (Based on Use in Commerce) Online social networking services

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)
Deceptiveness	Trademark Act Section 2(a)

Attachments	Statement of Claim.pdf(12571 bytes )
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Signature	/Gary Schuster/
Name	Gary Schuster
Date	06/18/2019

## **Notice of Opposition**

### **Statement of Claim**

“Dlive” Serial Number 88228476

1. Dlive22891 Corp. (“Opposer”) opposes the application of Dlive, Inc., (“Applicant”) Serial Number 88228476 (the “Application”).
2. The mark sought to be registered in the Application is “Dlive” (“Applicant’s Mark”).
3. Opposer has been using the mark “Dlive” (the “Opposer’s Mark”) on YouTube since 2009, and has generated over 1.2 million subscribers. Opposer’s videos have generated in excess of 500,000,000 views. Opposer’s YouTube channel is dlive22891 and can be located by using the following link: <https://www.youtube.com/user/dlive22891> (last accessed June 13, 2019).
4. The facts above demonstrate that Opposer’s Mark is used in interstate commerce, is famous, and Opposer is a prior user, having established common law trademark rights in his mark “Dlive” since at least as early as 2009.
5. As a coined word, Dlive is inherently unique and distinctive.
6. The Application states that Applicant’s Mark was first used September 7, 2018, which is long after Opposer began using Opposer’s Mark since at least as early as 2009.
7. Opposer has a real and legitimate interest in opposing the Application because Applicant’s Mark and Opposer’s Mark are identical, and Applicant’s services and Opposer’s services are identical. For these reasons there is a strong likelihood of confusion as to the source of services and the ownership of the marks.
8. In fact, there has already been actual confusion between Applicant’s Mark and Opposer’s Mark in the market place, as demonstrated by “tweets” to Opposer on his Twitter account from consumers who have been actually confused by the existence of identical marks.
9. Applicant’s use of Opposer’s Mark also represents a severe threat to Opposer of trademark dilution because Applicant enables its users to create email addresses using “dlive” as the domain portion of the email address, e.g. [johnsmith@dlive.tv](mailto:johnsmith@dlive.tv). Thousands or even millions of users could have Opposer’s Mark in their email addresses, which would severely dilute Opposer’s Mark.
10. Because Applicant’s Mark and Opposer’s Mark are identical, and Applicant’s services and Opposer’s services are identical, there is a strong likelihood that consumers will

assume that the sources of their respective services are identical, or that they are affiliated, or that one party has authorized or endorsed the other, when in fact, none of the foregoing is true.

11. Applicant's use of Opposer's Mark constitutes trademark blurring because Applicant's use diminishes the unique and exclusive nature of Opposer's Mark.

12. Applicant's use of Opposer's Mark constitutes trademark tarnishment because Applicant's services are of poor quality, distasteful, and are likely to reflect adversely upon Opposer and its services.

13. Applicant's use of the Opposer's Mark infringes and dilutes Opposer's Mark in violation of the Lanham Act, as well as state and common law.

14. Moreover, because the Opposer has made considerable efforts to establish the goodwill of its inherently distinctive trademark and because the trademark is well-known, the Applicant's use of Opposer's Mark constitutes unlawful misappropriation of Opposer's trademark and the goodwill associated with Opposer's Mark.

15. Finally, confusion, dilution, tarnishment, and blurring will divert consumers away from Opposer and to Applicant.