

ESTTA Tracking number: **ESTTA1017811**

Filing date: **11/23/2019**

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	Twitter, Inc.
Granted to Date of previous extension	11/24/2019
Address	1355 MARKET STREET SUITE 900 SAN FRANCISCO, CA 94103 UNITED STATES

Attorney information	ADAM S. WEISS POL SINELLI PC 150 N. RIVERSIDE PLAZA SUITE 3000 CHICAGO, IL 60606 UNITED STATES uspt@polsinelli.com, aweiss@polsinelli.com, dmullarkey@polsinelli.com, rrice@polsinelli.com 3128733644
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Applicant Information

Application No	79240516	Publication date	05/28/2019
Opposition Filing Date	11/23/2019	Opposition Period Ends	11/24/2019
International Registration No.	1422290	International Registration Date	04/17/2018
Applicant	AreTheyHappy BVBA Jakob Heremansstraat 4 bus 402 B-9000 Gent BELGIUM		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Software for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content acrossmultimedia channels, including the internet, mobile applications and related digital applications; Software for calculating sales conversion and return on investment; Software for integrating promotional campaigns, digital discount coupons, advertising, interactive advertising and marketing content in other media channels and social media; Downloadable cloud-based software for accessing the internet; Application software for mobile phones, tablets and portable computers for managing customer feedback, market reviews, brand identity, promotional campaigns, digital discount coupons and promotional campaigns</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Consultancy in the field of advertising, mar-</p>

keting and sales promotions; Business surveys; Business services, namely, consultancy for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content; Organisation of promotions using digital discount coupons; Business administration of consumer loyalty programs involving discounts or incentives; Business management of reimbursement programs for others; Brand positioning services; Dissemination of advertising for others via an online communications network on the Internet; Promotion of goods and services of others through online communications; Business analysis of customer feedback, market reviews and advertising response; Market research; Automated management of databases and files; Computerized database management featuring automated storage and retrieval of data

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing online, non-downloadable software for operating a control system for controlling of data transmitted via telecommunications; Providing temporary use of on-line non-downloadable software for importing and managing data; Hosting platforms on the internet for connecting brands, promotions, bloggers, consumers and communities; Computer programming services for commercial analysis and real-time reporting; Design and development of software for planning, managing, monitoring, analysing and optimizing promotional campaigns, advertising and marketing content across multimedia channels, including the internet, mobile applications and related digital applications; Design, development, maintenance and management of application software for mobile phones, tablets and portable computers to be used in connection with used in connection with customer feedback, market reviews, brand identity, digital discount coupons and promotional campaigns; Providing temporary use of on-line non-downloadable cloud computing software for database management; Computer systems integration services; Hosting of digital content on the internet in the nature of computerized data, files, applications and information

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.	5303111	Application Date	09/09/2016
Registration Date	10/03/2017	Foreign Priority Date	08/30/2016
Word Mark	NONE		




Description of Mark	The mark consists of an upside down white teardrop in a blue circle with a red crescent moon shape inside the teardrop.
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Goods/Services	<p>Class 035. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 advertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services</p> <p>Class 041. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 Providing online entertainment and realtime news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; current event news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks</p> <p>Class 042. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 providing a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information; providing a web hosting platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software</p>
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U.S. Registration No.	5166474	Application Date	09/09/2016
Registration Date	03/21/2017	Foreign Priority	08/30/2016

		Date	
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of an upside down white teardrop in a blue circle with a red crescent moon shape inside the teardrop.		
Goods/Services	<p>Class 009. First use: First Use: 2015/05/05 First Use In Commerce: 2015/05/05 downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks</p> <p>Class 038. First use: First Use: 2015/05/05 First Use In Commerce: 2015/05/05 telecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, and information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking</p> <p>Class 045. First use: First Use: 2015/05/05 First Use In Commerce: 2015/05/05 online social networking services; providing social networking services on the internet and other communication networks for entertainment purposes</p>		
U.S. Registration No.	5228598	Application Date	03/30/2015
Registration Date	06/20/2017	Foreign Priority Date	03/27/2015
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of an upside down teardrop with a crescent moon shape inside the teardrop.
Goods/Services	<p>Class 009. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 Downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the Internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks</p> <p>Class 035. First use: First Use: 2016/09/03 First Use In Commerce: 2016/09/03 Advertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services</p> <p>Class 041. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 Providing online entertainment and realtime news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks</p> <p>Class 042. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 Providing a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertain-</p>

	ment content, or information; providing a web hosting platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software; creating an online community for registered users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking
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U.S. Registration No.	5122031	Application Date	01/28/2016
Registration Date	01/17/2017	Foreign Priority Date	08/06/2015

Word Mark	NONE
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Description of Mark	The mark consists of an upside down white teardrop with a red crescent moon shape inside the teardrop. The lining surrounding the teardrop is not claimed as a feature of the mark and is for outlining purposes only
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Goods/Services	<p>Class 009. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks</p> <p>Class 038. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 telecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, or information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information,</p>
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	to form virtual communities, and to engage in social networking Class 045. First use: First Use: 2015/03/26 First Use In Commerce: 2015/03/26 Online social networking services; providing social networking services on the internet and other communication networks for entertainment purposes
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Attachments	87166954#TMSN.png(bytes) 87166953#TMSN.png(bytes) 86581720#TMSN.png(bytes) 86889923#TMSN.png(bytes) Periscope Logo -- Notice of Opposition AreTheyHappy.pdf(72451 bytes) Periscope Design Registration Certificates.pdf(147381 bytes) AreTheyHappy Design Mark TSDR Page.pdf(468963 bytes)
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Signature	/Rachel A. Rice/
Name	Rachel A. Rice
Date	11/23/2019

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

In the Matter of Application No. 79240516
Filed: April 17, 2018
Published: May 28, 2019

Mark: The logo for 'Are They Happy' features a teal speech bubble icon with a white smiley face inside, followed by the text 'Are They Happy' in a teal, sans-serif font.

Twitter, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
AreTheyHappy BVBA)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Twitter, Inc., a Delaware corporation, having a place of business at 1355 Market Street, Suite 900, San Francisco, CA 94103 (hereinafter “Twitter” or “Opposer”) believes it will be damaged by the registration of the above-identified mark and hereby opposes same. The statutory opposition filing fee of \$1200 is submitted herewith.

As grounds for this opposition it is alleged that:

1. Twitter, a pioneer in the communication and social networking space, is world-renowned for its innovative microblogging and social media platform. More specifically, Twitter provides a real-time global information network that allows the public to discover what is happening in the world, share information and connect to anyone, anywhere in real-time. Twitter’s goods and services are offered through downloadable mobile applications in which users are able to interact with Twitter’s various services. To that end, Twitter provides various goods and services under its PERISCOPE and Periscope design marks, including but not limited to services related to

live video streaming and social networking.



2. On September 9, 2016, Twitter filed an application to register the mark (“Periscope Color Circle Design”), which matured into registration in connection with the following services:

“[A]dvertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services,” in International Class 35;

“Providing online entertainment and real time news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; current event news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks” in International Class 41; and

“[P]roviding a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information; providing a web hosting platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software” in International Class 42.

The U.S. Patent and Trademark Office (“USPTO”) issued such registration of the mark Periscope Color Circle Design on October 3, 2017, as U.S. Registration No. 5,303,111, with a first-use date at least as early as March 26, 2015.



3. On September 9, 2016, Twitter filed an application to register the mark (“Periscope Color Circle Design”), which matured into registration in connection with the following goods and services:

“[D]ownloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks,” in International Class 9;

“[T]elecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, and information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking,” in International Class 38; and

“[O]nline social networking services; providing social networking services on the internet and other communication networks for entertainment purposes,” in International Class 45.

The USPTO issued such registration of the mark Periscope Color Circle Design on March 21, 2017, as U.S. Registration No. 5,166,474, with a first-use date at least as early as May 5, 2015.



4. On March 30, 2015, Twitter filed an application to register the mark (“Periscope BW Design”), which matured into registration in connection with the following goods and services:

“Downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the Internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks” in International Class 9;

“Advertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services” in International Class 35;

“Providing online entertainment and real time news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks” in International Class 41; and

“Providing a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information; providing a web hosting platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software; creating an online community for registered users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking” in International Class 42.

The USPTO issued such registration of the Periscope BW Design mark on June 20, 2017, as U.S. Registration No. 5,228,598, with a first-use date in classes 9, 41, and 42 at least as early as March 26, 2015 and in class 35 at least as early as September 3, 2016.



5. On January 28, 2016, Twitter filed an application to register the mark (“Periscope Red Design”), which matured into registration in connection with the following goods and services:

“[D]ownloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks” in International Class 9;

“[T]elecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, or information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking” in International Class 38; and

“Online social networking services; providing social networking services on the internet and other communication networks for entertainment purposes” in International Class 45.

The USPTO issued such registration of the Periscope Red Design mark on January 17, 2017, as U.S. Registration No. 5,122,031, with a first-use date in classes 41 and 42 at least as early as March 26, 2015 and in class 35 at least as early as September 3, 2016.

6. The foregoing registrations are hereinafter collectively referred to as the “Periscope Design Registrations” and the marks claimed therein are hereinafter collectively referred to as the “Periscope Design Marks.” Copies of the registration certificates for the Periscope Design Registrations are attached hereto.

7. Twitter has expended substantial monies in marketing, advertising, and promoting the Periscope Design Marks and, through such sales and advertising, has generated substantial goodwill and customer recognition in such marks. Twitter has derived substantial revenues from its sales of goods and services under the Periscope Design Marks.

8. As a result of the marketing, sales, and success of Twitter’s goods and services under the Periscope Design Marks, and of the public’s widespread use of Twitter’s goods and services, such goods and services have come to be, and now are, well and favorably known under

the Periscope Design Marks as products and services of high quality and reliability.

9. The Periscope Design Marks are distinctive of Twitter’s goods and services and are well-known, and valuable goodwill has been built up in the Periscope Design Marks. Such goodwill has been built up long before the filing date of the AreTheyHappy design mark set forth in Application Serial No. 79240516.

10. On April 17, 2018, AreTheyHappy BVBA (“Applicant”) filed an application to



register the mark (the “AreTheyHappy Design Mark”), which was assigned Application Serial No. 79240516 (the “AreTheyHappy Application”). The AreTheyHappy Application was published on May 28, 2019, and covers the following goods and services:

“Software for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content across multimedia channels, including the internet, mobile applications and related digital applications; Software for calculating sales conversion and return on investment; Software for integrating promotional campaigns, digital discount coupons, advertising, interactive advertising and marketing content in other media channels and social media; Downloadable cloud-based software for accessing the internet; Application software for mobile phones, tablets and portable computers for managing customer feedback, market reviews, brand identity, promotional campaigns, digital discount coupons and promotional campaigns” in International Class 9;

“Consultancy in the field of advertising, marketing and sales promotions; Business surveys; Business services, namely, consultancy for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content; Organisation of promotions using digital discount coupons; Business administration of consumer loyalty programs involving discounts or incentives; Business management of reimbursement programs for others; Brand positioning services; Dissemination of advertising for others via an online communications network on the Internet; Promotion of goods and services of others through online communications; Business analysis of customer feedback, market reviews and advertising response; Market research; Automated management of databases and files; Computerized database management featuring automated storage and retrieval of data” in International Class 35; and

“Providing online, non-downloadable software for operating a control system for controlling of data transmitted via telecommunications; Providing temporary use of on-line non-downloadable software for importing and managing data; Hosting platforms on the internet for connecting brands, promotions, bloggers, consumers and communities; Computer programming services for commercial analysis and real-time reporting; Design and development of software for planning, managing, monitoring, analysing and optimizing promotional campaigns, advertising and marketing content across multimedia channels, including the internet, mobile applications and related digital applications; Design, development, maintenance and management of application software for mobile phones, tablets and portable computers to be used in connection with used in connection with customer feedback, market reviews, brand identity, digital discount coupons and promotional campaigns; Providing temporary use of on-line non-downloadable cloud computing software for database management; Computer systems integration services; Hosting of digital content on the internet in the nature of computerized data, files, applications and information” in International Class 42.

11. A copy of the TSDR status page for the AreTheyHappy Application is attached hereto.

12. On June 25, 2019, Twitter timely filed an extension of time to oppose the AreTheyHappy Application. On September 23, 2019, Twitter timely filed a further 60-day extension request with the consent of Applicant.

13. If Applicant is permitted to register the mark shown in the AreTheyHappy Application, Applicant’s corresponding right to use the AreTheyHappy Design Mark in nationwide commerce will conflict with Twitter’s lawful and exclusive right to use the Periscope Design Marks nationwide in connection with Twitter’s goods and services.

14. Applicant’s AreTheyHappy Design Mark incorporates numerous design elements that are either identical, or highly similar, to those present in Twitter’s Periscope Design Marks and does so in a manner that is confusingly similar to Twitter’s Periscope Design Marks in appearance and overall commercial impression.

15. Applicant’s goods, as recited in the AreTheyHappy Application, are identical or closely related to Twitter’s goods and services.

16. Applicant's goods, as recited in the AreTheyHappy Application, would be sold in identical or similar channels of trade as Twitter's goods and services and would be purchased by the same or similar consumers.

17. As a result of the similarity between the AreTheyHappy Design Mark and the Periscope Design Marks, and the parties' respective goods and services, Applicant's AreTheyHappy Design Mark is likely to cause consumer confusion, mistake or deception in the trade and among consumers as to the source, origin or sponsorship of such respective goods and services.

18. If Applicant is permitted to use and register the AreTheyHappy Design Mark in connection with Applicant's goods, confusion in trade resulting in irreparable damage and injury to Twitter would be caused by reason of the similarity between Applicant's AreTheyHappy Design Mark and Twitter's Periscope Design Marks. Persons familiar with Twitter's Periscope Design Marks would be likely to buy Applicant's goods or use Applicant's services believing that such products or services are provided by, endorsed by, or associated with Twitter, which is not the case. Furthermore, any defect, objection or fault found with Applicant's goods or services marketed under the AreTheyHappy Design Mark would necessarily reflect upon and seriously injure the reputation that Twitter has established for the goods and services sold and provided under its Periscope Design Marks.

19. Upon information and belief, Applicant did not use the AreTheyHappy Design Mark in commerce before Twitter began using the Periscope Design Marks in commerce.

20. Twitter's Periscope Design Registrations all have filing dates prior to Applicant's filing date for the AreTheyHappy Application.

21. Applicant's application to register the AreTheyHappy Design Mark is without Twitter's consent or permission.

22. In view of Twitter's prior rights in the Periscope Design Marks, Applicant is not entitled to registration of the AreTheyHappy Application.

23. By reason of the foregoing, Twitter will be damaged by the registration of the mark shown in the AreTheyHappy Application.

WHEREFORE, Twitter prays that this Notice of Opposition be sustained and that Applicant's AreTheyHappy Application be denied registration.

Dated: November 23, 2019

Respectfully Submitted,

/Adam S. Weiss /

Adam S. Weiss

Daniel P. Mullarkey

Rachel A. Rice

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Attorneys for Opposer,
Twitter, Inc.

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION was electronically filed using the ESTTA system on November 23, 2019.

/Rachel A. Rice/
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Daniel P. Mullarkey
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Attorneys for Opposer,
Twitter, Inc.

United States of America

United States Patent and Trademark Office



Reg. No. 5,303,111

Registered Oct. 03, 2017

Int. Cl.: 35, 41, 42

Service Mark

Principal Register

Twitter, Inc. (DELAWARE CORPORATION)
1355 Market Street, Suite 900
San Francisco, CALIFORNIA 94103

CLASS 35: advertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 41: Providing online entertainment and real time news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; current event news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 42: providing a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information; providing a web hosting platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

The color(s) red, white and blue is/are claimed as a feature of the mark.

The mark consists of an upside down white teardrop in a blue circle with a red crescent moon



Joseph Matal

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

shape inside the teardrop.

SER. NO. 87-166,954, FILED 09-09-2016

United States of America

United States Patent and Trademark Office



Reg. No. 5,166,474

Registered Mar. 21, 2017

Int. Cl.: 9, 38, 45

Service Mark

Trademark

Principal Register

Twitter, Inc. (DELAWARE CORPORATION)
1355 Market Street, Suite 900
San Francisco, CA 94103

CLASS 9: downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, and information over the internet and other communications networks

FIRST USE 5-5-2015; IN COMMERCE 5-5-2015

CLASS 38: telecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, and information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking

FIRST USE 5-5-2015; IN COMMERCE 5-5-2015

CLASS 45: online social networking services; providing social networking services on the internet and other communication networks for entertainment purposes

FIRST USE 5-5-2015; IN COMMERCE 5-5-2015

The color(s) red, white and blue is/are claimed as a feature of the mark.

The mark consists of an upside down white teardrop in a blue circle with a red crescent moon shape inside the teardrop.



Michelle K. Lee

Director of the United States
Patent and Trademark Office

SER. NO. 87-166,953, FILED 09-09-2016
KIM TERESA MONINGHOFF, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 5,228,598

Registered Jun. 20, 2017

Int. Cl.: 9, 35, 41, 42

Service Mark

Trademark

Principal Register

Twitter, Inc. (DELAWARE CORPORATION)
1355 Market Street, Suite 900
San Francisco, CA 94103

CLASS 9: Downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the Internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 35: Advertising and marketing; advertising services; online advertising and marketing services; business data analysis; online service for connecting social network users with businesses for the purpose of matching consumers with providers of goods and services; business consulting services

FIRST USE 9-3-2016; IN COMMERCE 9-3-2016

CLASS 41: Providing online entertainment and real time news information, namely, providing news, information and commentary in the fields of entertainment, sports, fashion, education, recreation, training, blogging, celebrity, culture, namely, entertainment, sports and popular culture, and current events via the internet and other communications networks; news reporting services; entertainment services, namely, providing audio and audiovisual programs featuring entertainment, namely, news, information and commentary in the field of entertainment, and real time news content delivered by streaming via the internet and other communications networks

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 42: Providing a website featuring non-downloadable software to enable recording, transmitting, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news and entertainment content and other information; providing temporary use of online non-downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information; providing a web hosting



Joseph Matal

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

platform featuring temporary use of non-downloadable software allowing users to upload, post, display, stream, and share videos and digital content; creating an online community for registered users to engage in social networking; application service provider featuring application programming interface (API) software for the integration of video content into websites, applications, and third-party software; creating an online community for registered users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

The mark consists of an upside down teardrop with a crescent moon shape inside the teardrop.

SER. NO. 86-581,720, FILED 03-30-2015

DAVID AARON HOFFMAN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 5,122,031

Registered Jan. 17, 2017

Int. Cl.: 9, 38, 45

Service Mark

Trademark

Principal Register

Twitter, Inc. (DELAWARE CORPORATION)
1355 Market Street, Suite 900
San Francisco, CA 94103

CLASS 9: downloadable software and mobile applications for social networking; downloadable software in the nature of a mobile application to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks; downloadable software to enable uploading, creating, posting, editing, showing, displaying, blogging, sharing, streaming, and transmitting of electronic media, video, real-time news, entertainment content, or information over the internet and other communications networks

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 38: telecommunication services, namely, transmission and streaming of voice, data, images, audio, video, real-time news, entertainment content, or information by means of telecommunications networks, wireless communication networks, and the internet; providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, or information, to form virtual communities, and to engage in social networking

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

CLASS 45: Online social networking services; providing social networking services on the internet and other communication networks for entertainment purposes

FIRST USE 3-26-2015; IN COMMERCE 3-26-2015

The color(s) red and white is/are claimed as a feature of the mark.

The mark consists of an upside down white teardrop with a red crescent moon shape inside the teardrop. The lining surrounding the teardrop is not claimed as a feature of the mark and is for outlining purposes only

SER. NO. 86-889,923, FILED 01-28-2016
DOMINIC FATHY, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

Generated on: This page was generated by TSDR on 2019-11-23 22:01:54 EST

Mark: ARETHEYHAPPY



US Serial Number: 79240516

Application Filing Date: Apr. 17, 2018

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/PUBLISHED FOR OPPOSITION

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jun. 25, 2019

Publication Date: May 28, 2019

Mark Information Collapse All

Mark Literal Elements: ARETHEYHAPPY

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the stylized turquoise wording "ARETHEYHAPPY" to the right of a stylized turquoise text box containing a white, stylized pin.

Color Drawing: Yes

Color(s) Claimed: The color(s) turquoise and white is/are claimed as a feature of the mark.

Design Search Code(s): 01.15.17 - Balloons, thought or speech; Thought or speech clouds; Clouds, thought or speech

Related Properties Information

International Registration Number: [1422280](#)

International Registration Date: Apr. 17, 2018

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Software for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content across multimedia channels, including the internet, mobile applications and related digital applications; Software for calculating sales conversion and return on investment; Software for integrating promotional campaigns, digital discount coupons, advertising, interactive advertising and marketing content in other media channels and social media, Downloadable cloud-based software for accessing the internet, Application software for mobile phones, tablets and portable computers for managing customer feedback, market reviews, brand identity, promotional campaigns, digital discount coupons and promotional campaigns

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 66(a)

For: Consultancy in the field of advertising, marketing and sales promotions; Business surveys; Business services, namely, consultancy for planning, managing, monitoring, analysing and optimizing social media, customer feedback, market reviews, brand identity, promotional campaigns, advertising, and marketing content; Organisation of promotions using digital discount coupons; Business administration of consumer loyalty programs involving discounts or incentives; Business management of reimbursement programs for others; Brand positioning services; Dissemination of advertising for others via an online communications network on the Internet; Promotion of goods and services of others through online communications; Business analysis of customer feedback, market reviews and advertising response; Market research; Automated management of databases and files; Computerized database management featuring automated storage and retrieval of data

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 66(a)

For: Providing online, non-downloadable software for operating a control system for controlling of data transmitted via telecommunications; Providing temporary use of on-line non-downloadable software for importing and managing data; Hosting platforms on the internet for connecting brands, promotions, bloggers, consumers and communities, Computer programming services for commercial analysis and real-time reporting; Design and development of software for planning, managing, monitoring, analysing and optimizing promotional campaigns, advertising and marketing content across multimedia channels, including the internet, mobile applications and related digital applications; Design, development, maintenance and management of application software for mobile phones, tablets and portable computers to be used in connection with used in connection with customer feedback, market reviews, brand identity, digital discount coupons and promotional campaigns; Providing temporary use of on-line non-downloadable cloud computing software for database management, Computer systems integration services; Hosting of digital content on the internet in the nature of computerized data, files, applications and information

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: Yes

Filed 66A: Yes

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: AreTheyHappy BVBA

Owner Address: Jakob Heremansstraat 4 bus 402
B-9000 Gent
BELGIUM

Legal Entity Type: BVBA (Besloten vennootschap met beperkte aansprakelijkheid)

State or Country Where Organized: BELGIUM

Attorney/Correspondence Information

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Docket Number: 7116-274

Attorney Primary Email Address: chyra@symbus.com

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Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 30, 2019	ASSIGNED TO EXAMINER	90341
Jun. 25, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
May 28, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 28, 2019	PUBLISHED FOR OPPOSITION	
May 25, 2019	NOTIFICATION PROCESSED BY IB	
May 08, 2019	NOTIFICATION OF POSSIBLE OPPOSITION SENT TO IB	
May 08, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 08, 2019	NOTICE OF START OF OPPOSITION PERIOD CREATED, TO BE SENT TO IB	
Apr. 22, 2019	ASSIGNED TO LIE	76568
Apr. 09, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 01, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 01, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 01, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 19, 2018	REFUSAL PROCESSED BY IB	
Oct. 04, 2018	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	

Oct. 04, 2018	REFUSAL PROCESSED BY MPU	70029
Oct. 02, 2018	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Oct. 01, 2018	NON-FINAL ACTION WRITTEN	89011
Sep. 21, 2018	APPLICATION FILING RECEIPT MAILED	
Sep. 17, 2018	ASSIGNED TO EXAMINER	89011
Sep. 17, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 13, 2018	SN ASSIGNED FOR SECT 66A APPL FROM IB	

International Registration Information (Section 66a)		
International Registration Number: 1422290	International Registration Date: Apr. 17, 2018	
Priority Claimed Flag: Yes	Date of Section 67 Priority Claim: Oct. 20, 2017	
Intl. Registration Status: REQUEST FOR EXTENSION OF PROTECTION PROCESSED	Date of International Registration Status: Sep. 13, 2018	
Notification of Designation Date: Sep. 13, 2018	Date of Automatic Protection: Mar. 13, 2020	
International Registration Renewal Date: Apr. 17, 2028		
First Refusal Flag: Yes		

TM Staff and Location Information		
TM Staff Information		
TM Attorney: OAKES, ANNA JENNIE	Law Office Assigned: LAW OFFICE 103	
File Location		
Current Location: PUBLICATION AND ISSUE SECTION	Date in Location: Apr. 25, 2019	
Assignment Abstract Of Title Information - Click to Load		
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