

ESTTA Tracking number: **ESTTA1036219**

Filing date: **02/14/2020**

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	Wheelz Labs LLC
Granted to Date of previous extension	02/16/2020
Address	8305 Sunset Blvd. 5th Floor Los Angeles, CA 90069 UNITED STATES

Attorney information	GAIL M. HASHIMOTO HOPKINS & CARLEY 70 SO. FIRST ST. THE LETITIA BLDG. SAN JOSE, CA 95113 UNITED STATES trademark@hopkinscarley.com, GHashimoto@hopkinscarley.com, mpa-tel@hopkinscarley.com 4082869800
----------------------	--

Applicant Information

Application No	88394308	Publication date	08/20/2019
Opposition Filing Date	02/14/2020	Opposition Period Ends	02/16/2020
Applicant	Lyft, Inc. 185 Berry St., Suite 5000 San Francisco, CA 94107 UNITED STATES		

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: downloadable computer software for use in locating, reserving and renting motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable computer software for coordinating, managing, and accessing sharing and rental programs for motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable software for arranging, management and communication of payments and payment information for rental and use of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable software featuring data collection and management during operation of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles by end users and for display, viewing, and comparison of transportation journeys; downloadable computer software permitting users to access information for operation of locks and to access and use physical assets with locks; downloadable software for use in geolocation, management,</p>
--

and use of physical assets via smartphones; time recording apparatus; Global Positioning System apparatus; cameras for photography; electronic key fobs being remote control apparatus; Locks, electric; anti-theft warning apparatus otherthan for vehicles; bicycle helmets

Class 012. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: motorized scooters; electric vehicles, namely, scooters, bicycles and mopeds; mopeds; bicycles; mini-bikes; motorized bicycles; motor-driven cycles

Class 038. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: telecommunications services, namely, transmission of SMS messages and email push-notifications to users of rental and sharing services for motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles using mobile phones

Class 039. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: transportation of passengers via motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; rental of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; driving directions for tours, namely, providing driving directions for travel purposes

Grounds for Opposition

The mark is primarily geographically descriptive

Trademark Act Section 2(e)(2)

Attachments	HC_DOCS-3465219-v2-Notice_of_Opposition_Lyft__Inc__baywheels_-_88394308.pdf(142346 bytes)
Signature	/mitesh patel/
Name	Mitesh Patel
Date	02/14/2020

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

In the matter of:

Application Serial No.: 88/394,308
For the mark: **baywheels**
Date of Publication: August 20, 2019

Wheelz Labs LLC

Opposer,

v.

Lyft, Inc.

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Opposer, Wheelz Labs LLC, a limited liability company organized and existing under the laws of Delaware, with a principal place of business at 8305 Sunset Blvd., 5th Floor, Los Angeles, CA 90069 (“**Opposer**”), believes that it will be damaged by the issuance of a registration for the alleged trademark “baywheels” shown in Application Serial No. 88/394,308 (the “**Application**”). Opposer bases its opposition on Sections 2(e)(1) and 13(a) of the Lanham Trademark Act of 1946 (“**Lanham Act**”), on the grounds that “bay wheels” is a merely geographically descriptive designation for the goods and services in the Application, 15 U.S.C. §§ 1052(e)(2), 1063(a). Opposer alternatively seeks relief under Section 18 of the Lanham Act, 15 U.S.C. § 1068, requiring Applicant to disclaim “bay” in the Application. As grounds for opposition, Opposer alleges as follows:

1. Opposer is and has been in the business of personal mobility transportation since January 2019. In connection with this business, Opposer provides software for personal mobility transportation rentals and personal mobility devices.

2. Since at least 2019, Opposer has been developing plans to provide its services nationwide. Because the designation “bay” is the most appropriate geographically descriptive designation to identify geographic locations such as the Santa Monica Bay, San Francisco Bay Area, San Diego Bay, Chesapeake Bay etc., Opposer and others need to be able to use the designation in connection with the promotion and provision of their goods and services in such geographic locations.

3. Opposer has never sought to register “bay” as a trademark and has not claimed or sought exclusive rights in the geographical designation in connection with any goods or services.

4. The geographically descriptive designation “bay” has been used by outdoor activity and tour and mobility device rental companies to identify geographic locations such as the Santa Monica Bay, San Francisco Bay Area, San Diego Bay, and Chesapeake Bay.

5. The geographically descriptive designation “bay” has also been used by members of the public to identify geographic locations, specifically, the San Francisco Bay Area, commonly referred to as the “Bay Area,” where Applicant originates and offers its goods and services.

6. On April 19, 2019, Lyft, Inc. (“Applicant”) filed Application Serial No. 88/394,308 to register “bay wheels” as a trademark with the United States Patent and Trademark Office in stylized form as shown below, in connection with the goods and services listed below, without disclaiming any portion of the alleged mark, wherein the term “bay” appears in different fill or color than “wheels” such that while displayed as a unitary design mark, is perceived as two distinct terms “bay” and “wheels”:



baywheels

Class 009: Downloadable computer software for use in locating, reserving and renting motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable computer software for coordinating, managing, and accessing sharing and rental programs for motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable software for arranging, management and communication of payments and payment information for rental and use of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; downloadable software featuring data collection and management during operation of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles by end users and for display, viewing, and comparison of transportation journeys; downloadable computer software permitting users to access information for operation of locks and to access and use physical assets with locks; downloadable software for use in geolocation, management, and use of physical assets via smartphones; time recording apparatus; Global Positioning System apparatus; cameras for photography; electronic key fobs being remote control apparatus; Locks, electric; anti-theft warning apparatus other than for vehicles; bicycle helmets

Class 012: motorized scooters; electric vehicles, namely, scooters, bicycles and mopeds; mopeds; bicycles; mini-bikes; motorized bicycles; motor-driven cycles

Class 038: telecommunications services, namely, transmission of SMS messages and email push-notifications to users of rental and sharing services for motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles using mobile phones

Class 039: transportation of passengers via motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; rental of motorized scooters, electric vehicles, mopeds, bicycles, mini-bikes, motorized bicycles, and motor-driven cycles; driving directions for tours, namely, providing driving directions for travel purposes

7. On August 20, 2019, the USPTO approved Application Serial No. 88/394,308 for publication.

8. On October 3, 2019, Applicant filed a Post-Publication Amendment disclaiming exclusive right to use WHEELS apart from the mark as shown.

GROUND FOR OPPOSITION –GEOGRAPHICAL DESCRIPTIVENESS

9. The designation “bay” is geographically descriptive and Applicant has not shown and cannot show that the designation has acquired distinctiveness.

10. As a geographically descriptive designation without secondary meaning, “bay” does not distinguish Applicant’s goods and services from those provided by others in such geographical locations.

11. By claiming exclusive rights in the designation “bay,” Applicant seeks to prevent Opposer and others from using the descriptive designation, which is necessary to accurately promote their goods and services in such geographical locations.

12. Therefore, Opposer would be injured by the registration sought by Applicant for the descriptive designation “bay wheels” without a disclaimer of “bay”, which would give Applicant the right to exclude Opposer and others in the industry from using an ordinary geographical designator to promote their goods and services.

13. Based on the foregoing, registration of “bay wheels” exceeds the scope of permissible registration under 15 U.S.C. § 1052(e)(2), which prohibits registration of geographically descriptive terms.

WHEREFORE, Opposer respectfully prays that its opposition be sustained and that registration to Applicant of the Application be denied. Alternatively, pursuant to 15 U.S.C. § 1068, Opposer requests that Applicant be required to disclaim the geographically descriptive designation “bay” in Application Serial No. 88/394,308.

Respectfully submitted,

Dated: February 14, 2020

By: /s/ Mitesh Patel

Mitesh Patel

Gail M. Hashimoto

HOPKINS & CARLEY

The Letitia Building

70 S First Street

San Jose, CA 95113-2406

Telephone: (408) 286-9800

Facsimile: (408) 998-4790

Attorneys for Opposer

Wheelz Labs LLC