

ESTTA Tracking number: **ESTTA1089296**

Filing date: **10/16/2020**

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	Information Builders, Inc.
Granted to Date of previous extension	10/25/2020
Address	TWO PENN PLAZA NEW YORK, NY 10121-2898 UNITED STATES
Attorney information	HOWARD F. MANDELBAUM MANDELBAUM SILFIN ECONOMOU LLP 222 BLOOMINGDALE ROAD SUITE 120 WHITE PLAINS, NY 10605 UNITED STATES Primary Email: hmandelbaum@msellp.com Secondary Email(s): docketing@msellp.com, uspto@dockettrak.com (914) 421-0500
Docket Number	IBI D171US

Applicant Information

Application No.	88462708	Publication date	04/28/2020
Opposition Filing Date	10/16/2020	Opposition Period Ends	10/25/2020
Applicant	Secret POS Systems, Inc. 3372 RIO CORDILLERA BORNE, TX 78006 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2000/01/00 First Use In Commerce: 2000/05/00 All goods and services in the class are opposed, namely: downloadable applications for use in management of restaurants and hospitality establishments; downloadable computer software for use in management of restaurants and hospitality establishments
Class 042. First Use: 2000/01/00 First Use In Commerce: 2000/05/00 All goods and services in the class are opposed, namely: software as a service (SAAS) services featuring software for use in management of restaurants and hospitality establishments and related analytics

Applicant Information

Application No.	88462711	Publication date	04/28/2020
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Opposition Filing Date	10/16/2020	Opposition Period Ends	
Applicant	Secret POS Systems, Inc. 3372 RIO CORDILLERA BORNE, TX 78006 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2000/01/00 First Use In Commerce: 2000/05/00 All goods and services in the class are opposed, namely: software as a service (SAAS) services featuring software for use in management of restaurants and hospitality establishments and related analytics

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.	1652265	Application Date	08/23/1990
Registration Date	07/30/1991	Foreign Priority Date	NONE
Word Mark	FOCUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1975/03/00 First Use In Commerce: 1975/03/00 computer programs for data base management		

U.S. Registration No.	2821942	Application Date	06/30/2000
Registration Date	03/16/2004	Foreign Priority Date	NONE
Word Mark	FOCUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1975/03/00 First Use In Commerce: 1975/03/00 COMPUTER SOFTWARE FOR DATABASE MANAGEMENT; COMPUTER SOFTWARE FOR USE IN DECISION SUPPORT SYSTEMS; COMPUTER SOFTWARE FOR USE IN ENTERPRISE REPORTING AND ANALYSIS SYSTEMS AND FOR BUILDING APPLICATIONS FOR THE MANAGEMENT AND TRACKING OF DATA FOR ENTERPRISE REPORTING SYSTEMS; COMPUTER DATABASE PROGRAMS FOR USE IN CONNECTION WITH DECISION SUPPORT, ANALYSIS, AND REPORTING PROGRAMS; COMPUTER SOFTWARE DEVELOPMENT TOOLS FOR USE IN DEVELOPING DECISION SUPPORT, ANALYSIS, AND REPORTING SYSTEMS AND APPLICATIONS; COMPUTER SOFTWARE, NAMELY, CLIENT/SERVER REPORTING, ANALYSIS AND DECISION SUPPORT TOOLS; COMPUTERIZED DATABASE, REPORTING, AND ANALYSIS SOFTWARE FOR USE ON CORPORATE INTRANETWEB SITES; ENTERPRISE SERVER SOFTWARE FOR USE IN WEB BASED DATA PUBLISHING, REPORTING, AND ANALYSIS SOLUTIONS; COMPUTERSOFTWARE FOR ACCESSING DATABASES BY MEANS OF		

	GLOBAL COMPUTER NETWORKS TO GENERATE REPORTS; SOFTWARE DEVELOPMENT TOOLS FOR MAKING REPORTING AND ANALYSIS AVAILABLE THROUGH GLOBAL COMPUTER NETWORK WORLDWIDE WEBSITES AND FOR EXTENDING THE FUNCTIONALITY OF ENTERPRISE REPORTING AND ANALYSIS SYSTEMS ON TO GLOBAL COMPUTER NETWORKS; AND COMPUTER SOFTWARE FOR ACCESSING AND UPDATING DATABASES THROUGH GLOBALCOMPUTER NETWORKS
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U.S. Registration No.	2248562	Application Date	03/03/1997
Registration Date	06/01/1999	Foreign Priority Date	NONE
Word Mark	WEBFOCUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 computer programs for data base management		

U.S. Registration No.	2685249	Application Date	06/30/2000
Registration Date	02/11/2003	Foreign Priority Date	NONE
Word Mark	WEBFOCUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 COMPUTER SOFTWARE FOR DATABASE MANAGEMENT; COMPUTER SOFTWARE FOR ACCESSING DATABASES BY MEANS OF GLOBAL COMPUTER NETWORKS TO GENERATE REPORTS; SOFTWARE DEVELOPMENT TOOLS FOR MAKING REPORTING AND ANALYSIS AVAILABLE THROUGH GLOBAL COMPUTER NETWORK WORLDWIDE WEBSITES AND FOR EXTENDING THE FUNCTIONALITY OF ENTERPRISE REPORTING AND ANALYSIS SYSTEMS ON TO GLOBAL COMPUTER NETWORKS; AND COMPUTER SOFTWAREFOR ACCESSING AND UPDATING DATABASES THROUGH GLOBAL COMPUTER NETWORKS		

Attachments	IBI D170US Notice of Opposition.pdf(375688 bytes)
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Signature	/Howard F. Mandelbaum/
Name	HOWARD F. MANDELBAUM
Date	10/16/2020

recording, processing, analyzing and displaying data and information in a wide variety of industries and other fields, and provides to its customers support services including education in the use of software, and technical support and consultation in connection with implementation and installation of the software.

2. Since 1975, Plaintiff has been marketing its software under the trademark FOCUS to computer users in a wide variety of industries and providing consulting services in connection with its FOCUS software for use in the management of business, and Plaintiff has registered its trademark in the Patent and Trademark Office under Nos. 1,652,265 and 2,821,942.

3. In the early 1980's, Plaintiff began marketing its software under various additional trademarks which include the trademark FOCUS. Plaintiff is also the owner of the following Patent and Trademark Office registrations:

<u>Registration No.</u>	<u>Trademark</u>
2,248,562	WEBFOCUS
2,685,249	WEBFOCUS

4. Plaintiff sells computerized instruction and training courses, accompanied by related printed materials, for teaching the use of FOCUS software.

5. Plaintiff renders consulting services in connection with its FOCUS software for use in the management of business.

6. Plaintiff has published a magazine entitled FOCUS SYSTEMS JOURNAL, and newsletters entitled FOCUS NEWS and FOCUS FLASH, distributed to computer users, as well as an online magazine entitled "The FOCUS Quarterly", and currently publishes WebFOCUS Journal.

7. Plaintiff established "The Focus Users Group" (FUSE) for its customers, and now holds annual conferences at which representatives of those who use FOCUS software attend educational workshops, see product demonstrations, and otherwise exchange information about FOCUS software.

8. Defendant filed U.S. Trademark Application Serial No. 88462701 to register FOCUS for "downloadable applications for use in management of restaurants and hospitality establishments; downloadable computer software for use in management of restaurants and hospitality establishments" in Class 9; and "software as a service (SAAS) services featuring software for use in management of restaurants and hospitality establishments and related analytics" in Class 42.

9. Defendant filed U.S. Trademark Application Serial No. 88462711 to register FOCUS POS SYSTEMS and Design for the same services as in U.S. Trademark Application Serial No. 88462701, namely, "software as a service (SAAS) services featuring software for use in management of restaurants and hospitality establishments and related analytics" in Class 42.

10. Upon information and belief, Defendant's goods and services are so closely related to Plaintiff's software, the printed and online materials distributed by Plaintiff, and Plaintiff's services, that use of similar marks on the respective goods and services of the parties is likely to cause confusion or mistake, or to deceive purchasers as to the origin of the goods and services.

11. Upon information and belief, the registration by Defendant of FOCUS and FOCUS POS SYSTEMS and Design for goods and services closely related to Plaintiff's goods and services will impair Plaintiff's free use of its trademarks and will result in injury to the good will Plaintiff has acquired with respect to its trademarks, all to Plaintiff's damage.

WHEREFORE, Plaintiff prays that application serial no. 88462708 for registration of FOCUS and application serial

no. 88462711 for registration of FOCUS POS SYSTEMS and
Design be disallowed.

/Howard F. Mandelbaum/
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