

ESTTA Tracking number: **ESTTA1147613**

Filing date: **07/19/2021**

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	HILLER, LLC
Granted to Date of previous extension	07/17/2021
Address	915 MURFREESBORO PIKE NASHVILLE, TN 37217-1501 UNITED STATES
Attorney information	TIMOTHY L. CAPRIA BRADLEY ARANT BOULT CUMMINGS LLP 1600 DIVISION STREET, SUITE 700 NASHVILLE, TN 37203 UNITED STATES Primary Email: nashvilleipdocketing@bradley.com Secondary Email(s): pwalker@bradley.com, tcapria@bradley.com, rswor@bradley.com 615-252-3811
Docket Number	210011401012

Applicant Information

Application No.	88946386	Publication date	05/18/2021
Opposition Filing Date	07/19/2021	Opposition Period Ends	07/17/2021
Applicant	Service Champions, LLC 3150 EAST BIRCH ST. BREA, CA 92821 UNITED STATES		


Goods/Services Affected by Opposition

Class 037. First Use: 2019/00/00 First Use In Commerce: 2019/00/00 All goods and services in the class are opposed, namely: HVAC contractor services; heating contractor services; Heating equipment installation and repair; installation, repair and maintenance of heating equipment; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioningsystems; air duct cleaning services; plumbing; plumbing contractor services; plumbing services; Electrical repairs and installation of heating and air conditioning equipment

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5362969	Application Date	01/10/2017
Registration Date	12/26/2017	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a yellow smiley face with black eyes and a black upturned mouth.		
Goods/Services	Class 037. First use: First Use: 2016/01/09 First Use In Commerce: 2016/01/09 Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems		

Attachments	87295138#TMSN.png(bytes) Notice_of_Opposition.pdf(238171 bytes) Notice_of_Opposition_Ex_A.pdf(166406 bytes)
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Signature	/Timothy L. Capria/
Name	TIMOTHY L. CAPRIA
Date	07/19/2021

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

In the Matter of Application Serial No. 88/946,386



For the Trademark: (“HAPPY MONEY PROMISE IF YOU’RE NOT HAPPY, YOU DON’T PAY and Design”)

Published in the *Trademark Official Gazette* on May 18, 2021

HILLER, LLC,)	
)	
Opposer,)	
)	
v.)	OPPOSITION NO. _____
)	
SERVICE CHAMPIONS, LLC,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Hiller, LLC (“Opposer”), having its principal place of business at 915 Murfreesboro Pike, Nashville, Tennessee, 37217, believes it would be damaged by the registration of the HAPPY MONEY PROMISE IF YOU’RE NOT HAPPY, YOU DON’T PAY and Design mark in International Class 37 for “HVAC contractor services; heating contractor services; Heating equipment installation and repair; installation, repair and maintenance of heating equipment; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems; air duct cleaning services; plumbing; plumbing contractor services; plumbing services; Electrical repairs and installation of heating and air conditioning equipment” (“Applicant’s Mark”). Service Champions, LLC (“Applicant”) filed for registration of Applicant’s Mark on a use basis under § 1(a) on June

3, 2020, subject of U.S. Application Serial No. 88/946,386 (the “Application”). The Application published on May 18, 2021. On June 2, 2021, Opposer filed a 30-Day Request for Extension of Time to Oppose, which the Trademark Trial and Appeal Board granted on June 3, 2021. Opposer timely files this Notice of Opposition to oppose registration of Applicant’s Mark.

Opposer hereby opposes registration of Applicant’s Mark based on the following grounds:

1. Opposer believes that it would be damaged, and avers that it actually would be damaged, by the registration on the Principal Register of Applicant’s Mark, which is the subject of the Application.

2. Applicant seeks to register HAPPY MONEY PROMISE IF YOU’RE NOT HAPPY, YOU DON’T PAY and Design in International Class 37 for “HVAC contractor services; heating contractor services; Heating equipment installation and repair; installation, repair and maintenance of heating equipment; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems; air duct cleaning services; plumbing; plumbing contractor services; plumbing services; Electrical repairs and installation of heating and air conditioning equipment,” (“Applicant’s Services”) as evidenced by the publication of the Application in the *Trademark Official Gazette* and Applicant’s Mark shown therein on or about May 18, 2021.

3. Opposer promotes, offers, and/or renders “Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for

heating, ventilating and air conditioning systems and/or sells installation, repair, maintenance, and contractor services of air conditioning apparatus, electrical wiring, outlets, light fixtures, electrical panels, HVAC, plumbing, heating, and ventilating and air conditioning equipment and systems” (“Opposer’s Services”) through a variety of channels using its registered trademarks for



(“Opposer’s Mark”).

4. Opposer’s Mark is subject of U.S. Reg. No. 5,362,969 and has a date of first use in commerce of at least as early as January 9, 2016 and was filed for on January 10, 2017. Opposer’s Mark is registered on the Principal Register and is for, in International Class 37, Opposer’s Services. A copy of U.S. Reg. No. 5,362,969 is attached hereto as **Exhibit A**.

5. Opposer has priority and superior rights in Opposer’s Mark vis-à-vis Applicant and Applicant’s Mark.

6. Opposer’s Mark has been associated in the mind of the relevant public with Opposer, and the Opposer’s Mark continues to be used both on its own and in conjunction with other of Opposer’s marks containing the words “happy” and “happiness” and is understood as a reference to Opposer and Opposer’s services.

7. Opposer promotes and encourages the connection between Opposer and Opposer’s Mark by prominently using Opposer’s Mark on the internet, television advertisements, billboard advertisements, vehicle advertisements, and newspaper advertisements, among other uses.

8. The public generally (and particularly that portion consuming Opposer’s Services) recognizes that Opposer’s Mark refer to Opposer and Opposer’s services.

9. Applicant has filed the Application for federal trademark registration with no geographical or other restrictions.

10. If Applicant's Mark is allowed to register, there would be a likelihood of confusion with Opposer, Opposer's Mark, and Opposer's services.

11. Applicant's Mark is confusingly similar to Opposer's Mark.

12. Applicant's Mark consists of a shaded rectangular carrier holding the stylized wording "HAPPY MONEY PROMISE" above the stylized wording "IF YOU'RE NOT HAPPY, YOU DON'T PAY". A stylized smiley face design overlays the left side of the rectangular carrier.

13. The stylized smiley face design is a prominent visual feature of Applicant's Mark.

14. The stylized smiley face design in Applicant's Mark consists of a smiley face with darkened oval eyes, no nose, and an upturned U-shaped smile with dimple lines.

15. The stylized smiley face design in Opposer's Mark consists of a smiley face with darkened oval eyes, no nose, and an upturned U-shaped smile with dimple lines.

16. The stylized smiley face design in Applicant's Mark and Opposer's Mark are highly similar.

17. Applicant's Mark contains the word "happy" near the stylized smiley face design.

18. Opposer frequently uses Opposer's Mark proximate to, in conjunction with, or in relation to Opposer's Marks containing the words "happy" or "happiness." The parties' respective uses of the word "happy" proximate to a stylized smiley face design further weighs toward a finding of a likelihood of confusion between Opposer's Mark and Applicant's Mark.

19. The services to be associated with Applicant's Mark—"HVAC contractor services; heating contractor services; Heating equipment installation and repair; installation, repair and maintenance of heating equipment; Installation and repair of heating, ventilating and air

conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems; air duct cleaning services; plumbing; plumbing contractor services; plumbing services; Electrical repairs and installation of heating and air conditioning equipment”—at least partially overlap with Opposer’s Services.

20. For example, both Applicant’s Mark is applied-for, and Opposer’s Mark is registered for, “HVAC contractor services”, “Installation and repair of heating, ventilating and air conditioning equipment”, “Installation and replacement service for heating, ventilating and air conditioning systems”, “Plumbing”, “Plumbing contractor services”, and “Plumbing Services”.

21. Consumers would likely encounter Applicant’s Services and Opposer’s Services through similar trade channels under similar conditions.

22. Given these similarities, Opposer will be damaged by registration and use of Applicant’s Mark at least in part because Applicant’s Mark and Applicant’s Services, as listed in the Application, are likely to cause confusion, mistake, and deception with Opposer, with Opposer’s Mark, and with the services offered by Opposer. Therefore, registration of Applicant’s Mark on the Principal Register, and the presumptions that would arise thereby, would be inconsistent with Opposer’s rights. Accordingly, the Application should be refused pursuant to 15 U.S.C. § 1052(d).

23. The registration of Applicant’s Mark is inconsistent with Opposer’s prior and/or superior rights in Opposer’s Marks, is inconsistent with Opposer’s statutory grant of exclusivity of use of Opposer’s Marks, and would destroy or harm Opposer’s investment and goodwill in Opposer’s Marks.

24. The fee in the amount of \$600.00 is being submitted simultaneously herewith in accordance with 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to debit the deposit

account of Bradley Arant Boult Cummings LLP (Deposit Account No. 504293) for any deficiency in the required fee.

25. Opposer reserves the right to amend the Notice of Opposition upon further investigation and discovery.

WHEREFORE, Opposer respectfully requests that Application Serial No. 88/946,386 be refused registration and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: /Timothy L. Capria/

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Attorneys for Opposer

AUTHORIZATION TO CHARGE
DEPOSIT ACCOUNT

If, after processing the enclosed correspondence, any charges, fees, or sums due remain unpaid in connection with this correspondence, I hereby authorize the Commissioner of Patents and Trademarks to charge all such remaining fees, charges, and other sums due to Deposit Account Number 504293.

/Timothy L. Capria/

Timothy L. Capria, Attorney for Opposer

EXHIBIT A

United States of America

United States Patent and Trademark Office



Reg. No. 5,362,969

Registered Dec. 26, 2017

Int. Cl.: 37

Service Mark

Principal Register

Hiller, LLC (TENNESSEE LIMITED LIABILITY COMPANY)
915 Murfreesboro Rd
Nashville, TENNESSEE 37217

CLASS 37: Air conditioning apparatus installation and repair; Air conditioning contractor services; Electrical contracting; Electrical contractor services; Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; HVAC contractor services; Plumbing; Plumbing contractor services; Plumbing services; Installation and repair of air conditioning apparatus; Installation and repair of heating, ventilating and air conditioning equipment; Installation and replacement service for heating, ventilating and air conditioning systems

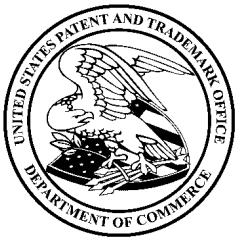
FIRST USE 1-9-2016; IN COMMERCE 1-9-2016

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

The mark consists of a yellow smiley face with black eyes and a black upturned mouth.

SEC.2(F)

SER. NO. 87-295,138, FILED 01-10-2017



Joseph Matol

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

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.