

ESTTA Tracking number: **ESTTA1148206**

Filing date: **07/21/2021**

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	Curated, Inc.
Granted to Date of previous extension	07/21/2021
Address	638 4TH STREET SAN FRANCISCO, CA 94107 UNITED STATES

Attorney information	ASHLEY M. BENNETT EWALD LATHROP GPM LLP 500 IDS CENTER, 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402 UNITED STATES Primary Email: ashley.ewald@lathropgpm.com Secondary Email(s): molly.littman@lathropgpm.com, joy.petersonhubler@lathropgpm.com, trademark@lathropgpm.com, amy.brozenic@lathropgpm.com, curtis.vock@lathropgpm.com, julie.ohara@lathropgpm.com 612-632-3000
Docket Number	717833

Applicant Information

Application No.	88627746	Publication date	03/23/2021
Opposition Filing Date	07/21/2021	Opposition Period Ends	07/21/2021
Applicant	Rungle LLC PO BOX 4763 BOULDER, CO 80302 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2017/01/06 First Use In Commerce: 2017/08/19 All goods and services in the class are opposed, namely: Providing consumer product information via the Internet
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Grounds for Opposition

No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	2021 7 21 Notice of Opposition .pdf(609729 bytes)
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Signature	/Molly R. Littman/
Name	Molly R. Littman
Date	07/21/2021

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

In Re: Application Serial No. 88/627,746
For the Mark: ICURATED
Filed: Sept. 23, 2019
Published in the Official Gazette: Mar. 23, 2021

Curated, Inc.)	
)	
Opposer,)	
)	
v.)	Opp. No. _____
)	
Rungle LLC d/b/a iCurated,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Curated, Inc. (“**Opposer**”), a Delaware corporation, with a principal place of business at 638 4th Street, San Francisco, California 94107, believes it will be damaged by the registration of the application Serial No. 88/627,746 filed for ICURATED (the “**Opposed Mark**”) filed by Rungle LLC d/b/a iCurated (“**Applicant**”), and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

1. Opposer provides a marketplace on its curated.com website that seeks to build connections between experts, sellers, and consumers who are searching for one-of-a-kind experiences that can be achieved through consumers’ purchase of recommended products and services, customized experiences and excursions, and memorable opportunities.

2. Opposer provides its services under the mark CURATED (the “**CURATED Mark**”).

3. Since at least as early as February 4, 2019, Opposer has used the CURATED Mark in connection with providing an online marketplace connecting experts, consumers, and sellers in the fields of specialty goods and services and for provision of an online marketplace for buyers of goods and services in the fields of specialty goods and services (collectively, the “**CURATED Services**”).

4. On April 6, 2019, Opposer filed U.S. Application Serial No. 88/374,513 for the CURATED Mark (the “**CURATED Application**”). The CURATED Application presently includes the following services description: “Providing an online marketplace connecting experts, consumers, and sellers in the fields of specialty goods and services, customized experiences, sporting excursions, customized travel and accessories therefor; Provision of an online marketplace for buyers of goods and services in the fields of specialty goods and services, customized experiences, sporting excursions, customized travel and accessories therefor.” Attached as Exhibit A is a copy of the status report from the TSDR system, as downloaded from the USPTO database for the CURATED Application.

5. Opposer has expended substantial sums in marketing, advertising, and promoting the CURATED Mark. As a result, the CURATED Mark has gained substantial goodwill and consumer recognition with online retail services, including in the sale of specialty goods and services and expert recommendations related to the same.

6. Upon information and belief, Applicant is a Colorado limited liability company having its principal place of business at PO Box 4763, Boulder CO 80302.

7. Applicant filed application Serial No. 88/627,746 (the “**Opposed Application**”) to register the Opposed Mark on September 23, 2019, under section 1(a) of the Lanham Act. The Opposed Application seeks to register the Opposed Mark in class 35 in connection with “providing

consumer product information via the Internet” (the “**Opposed Services**”). Attached as Exhibit B is a copy of the status report from the TSDR system, as downloaded from the U.S. Patent and Trademark Office (“**USPTO**”) database for the Opposed Application.

8. The Opposed Application alleges that Applicant’s first use anywhere and first use in commerce of the Opposed Mark with the Opposed Services was January 6, 2017.

9. However, upon information and belief, Applicant had not used the Opposed Mark in commerce with the Opposed Services as of the September 23, 2019 filing date of the Opposed Application.

10. The Opposed Application was published for opposition in the *Official Gazette (Trademarks)* on March 23, 2021.

11. Opposer filed a 30-day extension of the opposition period for the Opposed Mark on April 22, 2021 and an additional 60-day request to extend the time to oppose on May 20, 2021, both of which were granted.

Count I: No Use of the Mark In Commerce Before Filing Use-Based Application

12. Opposer hereby incorporates by reference the allegations in Paragraphs 1-11 as if fully set forth herein.

13. Applicant represented to the USPTO that it was using the Opposed Mark in commerce with the Opposed Services before Applicant filed the Opposed Application on September 23, 2019.

14. On information and belief, Applicant was not using the Opposed Mark in commerce at the time it filed the Opposed Application.

15. On April 22, 2021, counsel for Opposer wrote to counsel for Applicant requesting evidence demonstrating that Applicant had bona fide use of its mark in commerce as of the filing date of its application. Applicant's counsel did not respond to Opposer's counsel's request.

16. On information and belief, Applicant did not have bona fide use in commerce of the Opposed Mark with the Opposed Services and therefore did not meet the requirements of Trademark Act Section 1(a), 15 U.S.C. § 1051(a).

17. Opposer's filing date of the CURATED Application has priority over Applicant's filing date for the Opposed Application.

18. On information and belief, Opposer's first use of the CURATED Mark predates and has priority over Applicant's first use of the Opposed Mark.

Count II: Fraud on the Trademark Office

19. Opposer hereby incorporates by reference the allegations in Paragraphs 1-18 as if fully set forth herein.

20. On information and belief, Applicant made representations to the USPTO at the time of its application and in response to the trademark examiner's Office Action regarding Applicant's alleged first use date.

21. Specifically, Applicant represented to the USPTO that it was using the Opposed Mark in commerce in connection with the Opposed Services at least as early as August 19, 2017. However, the attached Exhibit C, a true and correct copy of the Internet Archive Wayback Machine's archived screenshots of Applicant's website, icurated.com, demonstrates that Applicant had only a holding page for its website as of August 7, 2018—approximately a year and a half after its claimed first use date.

22. Applicant also represented to the USPTO that it had use of the Opposed Mark with the Opposed Services as of the filing date of its application, September 23, 2019.

23. On information and belief, Applicant was not using the Opposer Mark in commerce with the Opposed Services at this time.

24. On information and belief, Applicant submitted a false specimen to the USPTO with its application on September 23, 2019 for the purpose of obtaining a registration for the Opposed Mark.

25. On information and belief, Applicant submitted a second false specimen to the USPTO with its response to the trademark examiner's Office Action on April 27, 2020 for the purpose of obtaining a registration for the Opposed Mark.

26. On information and belief, Applicant knowingly made these false representations to the USPTO.

27. On information and belief, the false representations to the USPTO were material because, but for the false representations, the USPTO would not have approved the Opposed Application for publication.

28. On information and belief, after receiving Opposer's demand for evidence of Applicant's first use of the Opposed Mark with the Opposed Services, Applicant modified its website to show backdated posts in an attempt to create evidence of use in commerce when no such evidence exists.

29. Based on the foregoing, Applicant committed fraud in connection with the filing of the Opposed Application, which is grounds for denial of the Opposed Application in its entirety

30. Opposer would be damaged by the registration of the Opposed Mark.

WHEREFORE, Opposer respectfully prays that the Trademark Trial and Appeal Board sustain this opposition and refuse registration of U.S. Application Serial No. 90/014,184 in its entirety with prejudice.

Dated: July 21, 2021

Respectfully submitted,

LATHROP GPM LLP

By: /Ashley M. Bennett Ewald/

Ashley M. Bennett Ewald
Molly R. Littman
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500 IDS Center
Minneapolis, MN 55402
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ashley.ewald@lathropgpm.com
molly.littman@lathropgpm.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this NOTICE OF OPPOSITION was filed online with the Trademark Trial and Appeal Board using the ESTTA on July 21, 2021.

By: /Ashley M. Bennett Ewald/
Ashley M. Bennett Ewald

EXHIBIT A

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS **DOCUMENTS**

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Generated on: This page was generated by TSDR on 2021-07-21 16:17:01 EDT

Mark: CURATED

CURATED

US Serial Number: 88374513

Application Filing Date: Apr. 06, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status

LIVE/APPLICATION/Under Examination

Descriptor:



The trademark application has been accepted by the Office (minimum filing requirements) and that this application has been accepted by the examiner.

Status: Suspension check completed. Application remains suspended.

Status Date: Jul. 11, 2021

Mark Information

Mark Literal Elements: CURATED

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

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: Providing an online marketplace connecting experts, consumers, and sellers in the fields of specialty goods and services, customized experiences, sporting excursions, customized travel and accessories therefor; Provision of an online marketplace and services in the fields of specialty goods and services, customized experiences, sporting excursions, customized travel and accessories therefor

International Class(es): 035 - Primary Class

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

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

[Privacy](#) - [Terms](#)

Filed Use: Yes	Currently Use: No
Filed ITU: No	Currently ITU: Yes
Filed 44D: No	Currently 44E: No
Filed 44E: No	Currently 66A: No
Filed 66A: No	Currently No Basis: No
Filed No Basis: No	

Current Owner(s) Information

Owner Name: CURATED, INC.	
Owner Address: 1 BLUXOME STREET #312 SAN FRANCISCO, CALIFORNIA UNITED STATES 94107	
Legal Entity Type: CORPORATION	State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Curtis A. Vock	Docket Number: 616453
Attorney Primary Email Address: ipdocketing@lathropgage.com	Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Curtis A. Vock Lathrop GPM LLP 2440 Junction Place, Suite 300 Boulder, COLORADO UNITED STATES 80301	
Phone: 7209313000	Fax: 7209313001
Correspondent e-mail: ipdocketing@lathropgage.com cvock@lathropgage.com johara@lathropgage.com	Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 11, 2021	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
May 05, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 04, 2021	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Jul. 23, 2020	REVIEW OF CORRESPONDENCE COMPLETE - ADDRESS UPDATED	
Jun. 05, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jun. 21, 2020	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Dec. 21, 2019	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 21, 2019	LETTER OF SUSPENSION E-MAILED	6332

Dec. 21, 2019	SUSPENSION LETTER WRITTEN	78199
Dec. 11, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	73797
Dec. 11, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	73797
Dec. 08, 2019	ASSIGNED TO LIE	73797
Nov. 27, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 16, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Sep. 16, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jun. 20, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 20, 2019	NON-FINAL ACTION E-MAILED	6325
Jun. 20, 2019	NON-FINAL ACTION WRITTEN	78199
Jun. 17, 2019	ASSIGNED TO EXAMINER	78199
Apr. 23, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 10, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: LOTT, MAUREEN DALL

Law Office Assigned: LAW OFFICE 105

File Location

Current Location: TMEG LAW OFFICE 105 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Dec. 21, 2019

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)

EXHIBIT B

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS **DOCUMENTS**

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Mark: ICURATED

iCurated

US Serial Number: 88627746

Application Filing Date: Sep. 23, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the been published in a way that provides an opportunity for the registration.

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. See TTABVUE on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 23, 2021

Publication Date: Mar. 23, 2021

Mark Information

Mark Literal Elements: ICURATED

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

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: Providing consumer product information via the Internet

International Class(es): 035 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 06, 2017

Use in Commerce: Aug. 19,

[Privacy](#) - [Terms](#)

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes
Filed ITU: No	Currently ITU: No
Filed 44D: No	Currently 44E: No
Filed 44E: No	Currently 66A: No
Filed 66A: No	Currently No Basis: No
Filed No Basis: No	

Current Owner(s) Information

Owner Name: Rungle LLC	
DBA, AKA, Formerly: DBA iCurated	
Owner Address: PO Box 4763 Boulder, COLORADO UNITED STATES 80302	
Legal Entity Type: LIMITED LIABILITY COMPANY	State or Country Where Organized: COLORADO

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Francis John Ciaramella, Esquire	
Attorney Primary Email Address: frank@fjcpllc.com	Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Francis John Ciaramella, Esquire 110 Front Street, Suite 300 Jupiter, FLORIDA UNITED STATES 33477	
Phone: 5612957325	
Correspondent e-mail: frank@fjcpllc.com	Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 23, 2021	EXTENSION OF TIME TO OPPOSE RECEIVED	
Mar. 23, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 23, 2021	PUBLISHED FOR OPPOSITION	
Mar. 03, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 17, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 17, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	73296

Feb. 17, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	73296
Feb. 16, 2021	ASSIGNED TO LIE	73296
Nov. 12, 2020	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
May 19, 2020	NOTIFICATION OF FINAL REFUSAL EMAILED	
May 19, 2020	FINAL REFUSAL E-MAILED	
May 19, 2020	FINAL REFUSAL WRITTEN	93987
Apr. 28, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 27, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 27, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 22, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 22, 2019	NON-FINAL ACTION E-MAILED	6325
Dec. 22, 2019	NON-FINAL ACTION WRITTEN	93987
Dec. 22, 2019	ASSIGNED TO EXAMINER	93987
Sep. 27, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 26, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: VAN DEN ABEELLEN, DEREK

Law Office Assigned: LAW OFFICE 126

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 17, 2021

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EXHIBIT C

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About this capture

3 captures

7 Aug 2018 - 16 Aug 2019



Want to be part of the iCurated community? Huzzah! Sign up here to stay in the loop. We'll send you links to our beta platform so you can kick the tires, give us feedback and share in the awesome process of building a community of like-minded, intelligent, and fiercely-savvy internet warriors from the ground up. (And, we promise to NEVER share your information with others.)

First Name

Last Name

Email address:

YOUR EMAIL ADDRESS

SIGN UP