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

Proceeding no.	91291950
Party	Defendant EVERSERVICE HOLDINGS, LLC
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Date	09/17/2024
Attachments	EverService - Answer to Opposition.pdf(141512 bytes)

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

In re Application Serial No. 97/474,038)	
EVERCOMMERCE SOLUTIONS INC.)	
Opposer,)	Opposition No. 91291950
v.)	
EVERSERVICE HOLDINGS, LLC)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

In response to the Notice of Opposition filed by Opposer, EverCommerce Solutions Inc. (“EverCommerce”), Applicant EverService Holdings, LLC (“EverService”) answers as follows:

EverCommerce Solutions Inc., a Delaware corporation with its principal place of business at 3601 Walnut Street, Suite 400, Denver, Colorado 80205 (“EverCommerce”), believes that it will be damaged by registration of the EVERSERVICE mark (“Applicant’s Mark”) shown in Application Serial No. 97474038 (the “Application”), owned by EverService Holdings, LLC (“Applicant”). The Application was published in the *Official Gazette* on February 13, 2024. EverCommerce timely obtained extensions of time to oppose the Application and now states the following grounds for its opposition to the Application:

Answer: Admitted that Applicant’s trademark application was published in the *Official Gazette* on February 13, 2024. EverService denies that EverCommerce will be damages by the registration of EVERSERVICE. EverService lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies them.

1. EverCommerce is the owner of all rights in and to the EVERCOMMERCE mark, both standing alone and in combination with other terms and/or design elements (the “EVERCOMMERCE Mark”), which EverCommerce has used continuously in United States commerce since at least as early as 2017 in connection with various business management, consulting, advisory, marketing, operations, accounting, human resources, sales management, and related services in the service sector software and solutions industry.

Answer: EverService lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore denies them.

2. EverCommerce is also the owner of all rights in and to several additional EVER-formative marks, including but not limited to the marks EVERCONNECT, EVERPRO, EVERWELL, and EVERHEALTH, both standing alone and in combination with other terms and/or design elements (collectively with the EVERCOMMERCE Mark, the “EVER Marks”). EverCommerce has used its EVER Marks continuously in United States commerce since at least as early as 2017 with respect to the EVERCOMMERCE Mark and as early as 2020 and 2021 with respect to the other EVER Marks, each in connection with the services set forth in the EverCommerce Registrations (as defined below), as well as in connection with related services.

Answer: EverService lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies them.

3. As a result of EverCommerce’s continuous use of its EVER Marks in connection with its various services, and as a result of EverCommerce’s advertising and promotion of its services under the EVER Marks, the consuming public has come to recognize each of the EVER Marks as belonging to EverCommerce and associates and identifies the services offered under the EVER Marks with EverCommerce. EverCommerce consequently derives invaluable goodwill from this recognition, association, and identification by the consuming public.

Answer: Denied.

4. In addition to its strong common law rights in its EVER Marks, EverCommerce is the owner of several United States federal registrations of the EVER Marks, including but not limited to the following registrations (collectively, the “EverCommerce Registrations”):

Mark	Reg. No.	Reg. Date	Services
EVERCOMMERCE	5501757	06/26/2018	<u>Class 35:</u> Business operation of service sector software and solution companies of others; Business management for service sector software and solution companies; Accounting services for service sector software and solution companies; Human resources services, namely, personnel selection for service sector software and solution companies; Marketing services in the field of service sector software; Sales management services for service sector software and solution companies; Business management consulting and advisory services for the service sector software and solution industry
Evercommerce	5733708	04/23/2019	<u>Class 35:</u> Business operation of service sector software and solution companies of others; Business management for service sector software and solution companies; Accounting services for service sector software and solution companies; Human resources services, namely, personnel selection for service sector software and solution companies; Marketing services in the field of service sector software; Sales management services for service sector software and solution companies; Business management consulting and advisory services for the service sector software and solution industry
EVERHEALTH	6202145	11/17/2020	<u>Class 42:</u> Software as a service (SAAS) services featuring software for use in practice management in the healthcare field
EVERPRO	6421844	07/13/2021	<u>Class 42:</u> Platform as a service (PAAS) featuring computer software platforms for project management and customer relationship management (CRM) in the field of remodeling and home improvement; Providing on-line non-downloadable software for project management and customer relationship management (CRM) in the field of remodeling and home improvement; Software as a service (SAAS) services featuring software for project management and customer relationship management (CRM) in the field of remodeling and home improvement.

Mark	Reg. No.	Reg. Date	Services
EVERCONNECT	6556632	11/09/2021	Class 35: Advertising, promotion, and marketing services in the nature of lead generation, direct mail, digital marketing, and social media marketing for local home service contractors and other service professionals; On-line advertising and marketing services; Providing demand creation and lead generation activities and services.
EVERWELL	6591608	12/14/2021	Class 42: Platform as a service (PAAS) featuring computer software platforms for managing fitness and wellness businesses, namely, for use in lead management, customer relationship management (CRM), marketing, email campaigns and informational messaging, and hosting client portals for gyms, instructional fitness studios, salons, and spas in the fitness and wellness industry; Providing on-line non- downloadable software for use in lead management, customer relationship management (CRM), marketing, email campaigns and informational messaging, and hosting client portals for gyms, instructional fitness studios, salons, and spas in the fitness and wellness industry; Software as a service (SAAS) services featuring software for use in lead management, customer relationship management (CRM), marketing, email campaigns and informational messaging, and hosting client portals for gyms, instructional fitness studios, salons, and spas in the fitness and wellness industry

Answer: EverService lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies them.

5. The EverCommerce Registrations are valid and subsisting and Registration Nos. 5501757 and 5733708 have been registered on the Principal Register for more than five years.

Answer: EverService lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies them.

6. In accordance with 37 C.F.R. § 2.122(d)(1), certificates of registration and electronic copies of records from the U.S. Patent and Trademark Office’s (“USPTO”) online TSDR database, demonstrating the current status and title of each of the EverCommerce Registrations, are attached as **Exhibits 1-6**.

Answer: EverService admits that Exhibits 1-6 appear to be trademark registration certificates for registration numbers 5,501,757; 5,733,708; 6,202,145; 6,421,844; 6,556,632; and 6,591,608; respectively. EverService lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6, and therefore denies them.

7. Because of the distinctiveness of each of the EVER Marks, the length of time and extent to which EverCommerce has used the EVER Marks, the advertising and publicity the EVER Marks have received, the substantial trading area in which the EVER Marks are used, and the high degree of consumer recognition of the EVER Marks, the EVER Marks are well-known and strong marks, deserving of a broad scope of legal protection.

Answer: Denied.

8. On June 24, 2022, Applicant filed an intent-to-use application with the USPTO to register the mark EVERSERVICE in standard character format for the following services in Classes 35 and 42 (App. Serial No. 97474038):

- **Class 35:** Business consulting services; sales promotion services; marketing services; marketing consulting; appointment scheduling services; providing sales leads in the home services and professional services industries; search engine optimization for promoting the websites of others; providing and arranging virtual online office receptionist services in the nature of telephone answering services in offices, patient intake in the nature of scheduling appointments and reaching on-call service providers, and legal intake services in the nature of scheduling appointments, onboarding clients, and maintaining legal records and files
- **Class 42:** Computer technical support services, namely, service desk or help desk services; IT consulting services; website design; website development for others; hosting of web sites

Answer: Admitted, with the clarification that the identification of services was amended after the filing of the application to identify the services above.

9. The services recited in the Application are identical to, and/or directly overlapping with, the services that EverCommerce currently provides in commerce in connection with its EVERCOMMERCE Mark and its other EVER Marks.

Answer: Denied.

10. The services recited in the Application are likewise are identical to, and/or directly overlapping with, the services that EverCommerce has provided for years in commerce in connection with its EVERCOMMERCE Mark and its other EVER Marks, and prior to any constructive use date of Applicant's Mark.

Answer: Denied.

11. Moreover, the services recited in the Application are identical to, and/or directly overlapping with, the services identified in the EverCommerce registrations.

Answer: Denied.

12. Applicant's Mark is highly similar in sight, sound, appearance, and commercial impression to EverCommerce's EVER Marks.

Answer: Denied.

13. Indeed, Applicant's EVERSERVICE mark incorporates the same naming convention as EverCommerce's family of EVER Marks, combining the dominant term EVER with a second term of broad suggestive applicability to the services in connection with which the EVERSERVICE mark is sought to be used (e.g., EVER + COMMERCE, EVER + HEALTH, EVER + PRO vs. EVER + SERVICE).

Answer: Denied.

14. Applicant had constructive knowledge of EverCommerce's EVER Marks prior to selecting Applicant's Mark.

Answer: Denied.

15. Applicant had constructive knowledge of EverCommerce's EVER Marks prior to filing the Application.

Answer: Denied.

16. On information and belief, Applicant had actual knowledge of one or more of EverCommerce's EVER Marks prior to selecting Applicant's Mark.

Answer: Denied.

17. On information and belief, Applicant had actual knowledge of one or more of EverCommerce's EVER Marks prior to filing the Application.

Answer: Denied.

18. EverCommerce's rights in each of its EVER Marks predate Applicant's use, actual or constructive, of Applicant's Mark.

Answer: EverService lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and therefore denies them.

19. EverCommerce is entitled to a statutory cause of action and will be damaged by registration of Applicant's Mark because the mark so resembles the EVERCOMMERCE Mark, the other EVER Marks, and the marks shown in the EverCommerce Registrations as to be likely to cause confusion, mistake, and/or deception.

Answer: Denied.

20. Persons familiar with the EVER Marks and the services offered in connection with the EVER Marks would be likely to believe, erroneously, that Applicant's services are the services of EverCommerce or are authorized, endorsed, sponsored, or licensed by EverCommerce.

Answer: Denied.

21. Thus, registration of Applicant's Mark on the Principal Register would be inconsistent with EverCommerce's strong rights in its EVER Marks and would be in violation of 15 U.S.C. §§ 1052(d) and 1063.

Answer: Denied.

22. EverCommerce therefore requests that Application Serial No. 97474038 be refused in its entirety and that no registration issue to Applicant, and, further, that this Opposition be sustained in favor of EverCommerce.

Answer: Denied.

PRAYER FOR RELIEF

Applicant respectfully requests that the Board dismiss Opposer's opposition with prejudice.

Dated: September 16, 2024

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 16, 2024, I caused a true and correct copy of the foregoing document to be served by email to the following:

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