

09-19-2001

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70

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

STERLING SOFTWARE, INC.

Opposer,

VS.

COOL PARTNERS, L.L.C.

Applicant.

Opposition No. _____

In the matter of:

Application Serial No. 76/123,888
Mark: YOUR COOLINK TO THE
INTERNET

Filed on September 6, 2000

Published in the Official Gazette
on May 22, 2001

02 FEB 27 12 30 PM '68

NOTICE OF OPPOSITION

Opposer, STERLING SOFTWARE, INC., a Delaware corporation, ("Opposer"), having a principal place of business at One Computer Associates Plaza, Islandia, New York 11749, believes that it will be damaged by registration of the mark YOUR COOLINK TO THE INTERNET (the "Opposed Mark") shown in Application Serial No. 76/123,883, and hereby opposes that application.

As grounds for its opposition, Opposer alleges:

1. Applicant, COOL PARTNERS, L.L.C. ("Applicant"), seeks registration of the Opposed Mark, Application Serial No. 76/123,883, for use in connection with "dissemination of advertising for others via an online global computer network in conjunction with media streaming audio/video webcasting services" in International Class 35. Applicant filed this application on September 6, 2000, alleging that Applicant has a bona fide intention to use in commerce the mark YOUR COOLLINK TO THE INTERNET.

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2. Since at least as early as 1997, Opposer began using marks containing the term "cool" (the "COOL Marks") on computer software and in connection with related services.

3. Opposer owns numerous federal registrations for marks incorporating the term "cool," for use on computer software. A summary of such registrations is attached hereto as Exhibit A.

4. Opposer also owns a pending application incorporating the term "cool," for use on computer software and related services. A summary of this pending application is attached hereto as Exhibit B.

5. Since its first use of the mark, Opposer has continuously and extensively used the COOL Marks in connection with its goods in interstate commerce.

6. Opposer has expended considerable sums of money in advertising, promoting, marketing, and otherwise developing the COOL Marks.

7. The most prominent and distinctive portion of the COOL Marks is the initial term "cool."

8. Due to Opposer's extensive distribution, sales and advertising of its goods and services provided under the COOL Marks, these marks have acquired extensive goodwill and consumer recognition throughout the United States and abroad, and the COOL Marks have become known throughout the United States and abroad as an indicator of goods and services provided by Opposer.

9. Applicant's mark YOUR COOLLINK TO THE INTERNET is confusingly similar to Opposer's COOL Marks. Both the COOL Marks and the Opposed Mark are used in connection with computer-related goods or services. Therefore, Applicant's mark is likely to cause confusion, or to cause mistake, or to deceive.

10. On information and belief, Applicant's services are or will be advertised and sold in the same channels of trade or to the same customers as Opposer's goods. Consequently, Applicant's proposed use of the Opposed Mark for use in connection with

"dissemination of advertising for others via an online global computer network in conjunction with media streaming audio/video webcasting services" would be likely to cause consumers to be confused, deceived or misled into the mistaken belief that Applicant's services emanate from, are affiliated with, or are otherwise related to Opposer when in fact they are not.

11. For the foregoing reasons, the Opposed Mark is likely to cause confusion, or to cause mistake, or to deceive.

12. Thus, Opposer will be damaged and harmed by the use and registration of the Opposed Mark.

WHEREFORE, Opposer prays that Application Serial No. 76/123,883 be rejected, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is being submitted in duplicate. Please charge the \$300.00 requisite fee to Deposit Account No. 02-0384 of Baker Botts.

Respectfully submitted this the 19th day of September, 2001,

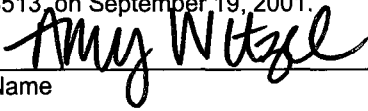
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ATTORNEYS FOR OPPOSER
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I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 in an envelope addressed to: Box TTAB-Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on September 19, 2001.


Name

EL 827020805 US

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EXHIBIT A

<u>Registration No.</u>	<u>Mark</u>	<u>Goods/Services</u>
2,243,581	COOL:DAT	Computer programs for logical and physical data design and database. (IC 9)
2,243,582	COOL:JEX	Computer programs for application modeling including design and construction of computer programs. (IC 9)
2,243,584	COOL:BIZ	Computer programs for business and workflow modeling. (IC 9)
2,243,583	COOL:STUFF	Computer programs for business and workflow modeling; for logical and physical data design and database management; for full-life cycle model-based application development; for application modeling including design and construction of computer programs; and for application modeling including design and assembly of software components. (IC 9)
2,251,862	COOL:GEN	Computer programs for full-life cycle model-based application development. (IC 9)
2,309,646	COOL:XTRAS	Utilities for computer programs for business and workflow modeling; for logical and physical data design and database management; for full life cycle model-based application development; for application modeling including design and construction of computer programs; and for application modeling including design and assembly of software components. (IC 9)

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