

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

In the matter of service mark application Serial No. 76,418,941
Published in the Official Gazette on January 14, 2003

| | | |
|------------------------|---|----------------|
| Sandler Systems, Inc., | * | |
| Opposer. | * | |
| v. | * | Opposition No. |
| Ari Galper, | * | |
| Applicant. | * | |
| | * | |

BOX TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Sandler Systems, Inc. ("Opposer"), a corporation organized and existing under the laws of the State of Maryland, on behalf of itself and its 144 franchisees in the United States, believes that it and its franchisees will be damaged by registration of the mark REVERSE SELLING. IT'S NOT FOR EVERYONE, shown in the application having Serial No. 76,418,941 in International Class 41 (education and entertainment), and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register the word mark REVERSE SELLING. IT'S NOT FOR EVERYONE as a service mark for "educational services, namely conducting training sessions, classes and seminars in the field of sales improvement" in International Class 41, as evidenced by the publication of said mark in the Official Gazette at page TM 563 of the January 14, 2003 issue.
2. Opposer was incorporated in the State of Maryland on November 15, 1983. Opposer's principal business address is 10411 Stevenson Road, Stevenson, Maryland 21153.

Opposer grants franchises providing the right to operate a SANDLER SALES INSTITUTE® business devoted to a distinctive style of training persons in the fields of sales and sales management, which includes management consulting, goal setting and achievement, self-awareness, motivation, personal development, relationship management and leadership development as it relates to the fields of sales and sales management; and also methods of teaching such subjects through seminars and workshops.

3. Opposer and its licensed franchisees have, since January, 1988, extensively used the mark NEGATIVE REVERSE SELLING to identify and distinguish Opposer's distinctive style of training persons in the fields of sales and sales management, in their seminars, training sessions, meetings, workshops and other programs, as well as the educational materials owned by Opposer, provided to the public by both Opposer and its licensed franchisees as part of their ongoing business. The mark NEGATIVE REVERSE SELLING is used in many of Opposer's copyrighted training materials, as exemplified in **Exhibit A** attached to this Notice and incorporated herein by reference.

4. Opposer and its licensed franchisees have sold their services, and Opposer's goods listed in Exhibit A, under the mark NEGATIVE REVERSE SELLING in the sales and sales management field channel throughout the United States and Canada (as well as worldwide). Opposer has developed an exceedingly valuable goodwill in respect to such marks by virtue of its efforts in developing and producing the services and goods identified and distinguished by its mark NEGATIVE REVERSE SELLING, and the franchise system of franchisees that market such services and goods, and by virtue of the excellence of such services and goods of Opposer and its licensed franchisees, Opposer has gained for such marks a most valuable reputation.

5. Applicant, as an employee or independent contractor of WebSideStory, Inc., 10182 Telesis Court, San Diego, CA 92121, during 2000-2001, was trained in the Opposer's Sandler Selling System, which includes the mark NEGATIVE REVERSE SELLING and the services exemplified by such mark, by Patrick Cahill, an associate of one of Opposer's licensed franchisees, Greg Nanigian and Associates, Inc., once a month for a period of at least six months, and received Opposer's training materials, including the book, *You Can't Teach A Kid To Ride A Bike At A Seminar*, selected materials from *The President's Club* program and a set of the *Best of Sandler* audiocassettes. Copies of the Packing Lists (for the *Best of Sandler* audiocassettes and the invoice for the *You Can't Teach A Kid To Ride A Bike At A Seminar* book) are attached hereto and incorporated herein by reference as **Exhibit B**. A copy of the sixty-seven page book published by Opposer's "Sandler Sales Institute," titled President's Club: Negative Reverse Selling, is attached hereto and incorporated herein by reference as **Exhibit C**. As a result of all of the above, Applicant had direct access to and knowledge of Opposer's mark NEGATIVE REVERSE SELLING prior to the date of filing his application and prior to the date of first use of his mark anywhere.

6. On December 12, 2002, Opposer filed its application to register the mark NEGATIVE REVERSE SELLING on the Federal Principal Register of the U.S. Patent and Trademark Office in International Classes 041 and 016, and Serial No. 78193954 was assigned to the application.

CLAIM ONE (CONFUSING SIMILARITY OF MARK)

7. Opposer restates the allegations of paragraphs one (1) through five (5) of this Notice as if fully restated here.

8. The service mark proposed for registration by the Applicant, namely, REVERSE SELLING. IT'S NOT FOR EVERYONE, and the dominant, non-descriptive element of "REVERSE SELLING" contained in such mark, is substantially incorporated in Opposer's mark NEGATIVE REVERSE SELLING, and is used to identify the substantially identical services as those sold by Opposer. The Applicant's mark is applied to services traveling in the same channel of trade as those sold by the Opposer (i.e., sales educational services) and so nearly resembles Opposer's marks as to be likely to be confused with and mistaken for Opposer's marks. Applicant's mark is deceptively similar to Opposer's marks so as to cause confusion and lead to deception as to the origin of Applicant's services identified by Applicant's mark.

9. Opposer's mark NEGATIVE REVERSE SELLING identifies "educational services, namely, providing training through seminars, meetings and workshops in the field of training sales people in selling skills and techniques," just as Applicant's mark REVERSE SELLING. IT'S NOT FOR EVERYONE provides "educational services, namely conducting training sessions, classes and seminars in the field of sales improvement." Opposer, through its provision of services directly and through its licensed franchisees, is recognized as a worldwide leader in the field of training sales people in selling skills and techniques in order to be a more effective sales person. If Applicant was permitted to use and register the REVERSE SELLING. IT'S NOT FOR EVERYONE for its "educational services, namely conducting training sessions, classes and seminars in the field of sales improvement," confusion in the trade resulting in damage and injury to Opposer is inevitable, because Applicant's mark is virtually identical to Opposer's mark. Persons familiar with Opposer's marks and reputation in the field of sales and sales management training, and in general, would be likely to buy Applicant's services as and for services made and sold by the Opposer and its licensed franchisees. Any such confusion in trade

inevitably would result in loss of sales and goodwill to the Opposer and its licensed franchisees. Furthermore, any defect, objection or fault found with Applicant's products or services marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its services and goods sold under the NEGATIVE REVERSE SELLING marks.

10. If the Applicant is granted the registration herein opposed, Applicant would thereby obtain a *prima facie* exclusive right to the use of his mark. Such registration would be a source of damage and injury to the Opposer and its licensed franchisees.

WHEREFORE, the Opposer prays that the application Serial No. 76,418,941 be rejected, and that the mark therein sought for the services therein specified in International Class 41 be denied and refused.

CLAIM TWO (PRIOR USES)

11. Opposer restates the allegations of paragraphs one (1) through five (5) of this Notice as if fully restated here.

12. Opposer and its licensed franchisees have used the mark NEGATIVE REVERSE SELLING since at least January 1, 1988, to identify and distinguish certain of its sales educational services and goods, in interstate commerce. A chart of the uses of such mark in Opposer's various copyrighted materials used with its training services is attached hereto and incorporated herein by reference as Exhibit A.

13. Opposer has superior rights in and to the mark NEGATIVE REVERSE SELLING because its usage of the mark predates Applicant's stated first use date and first use in commerce date of January 1, 2002 of the mark REVERSE SELLING. IT'S NOT FOR EVERYONE.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.