

ESTTA Tracking number: **ESTTA757605**

Filing date: **07/11/2016**

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	AliphCom
Granted to Date of previous extension	07/10/2016
Address	99 Rhode Island Street, 3rd Floor San Francisco, CA 94103 UNITED STATES

Attorney information	Jennifer D. Arkowitz Kilpatrick Townsend & Stockton LLP Two Embarcadero Center, Suite 1900 San Francisco, CA 94111 UNITED STATES lamiller@kilpatricktownsend.com, jarkowitz@kilpatricktownsend.com, dvargas@ktslaw.com, awells@ktslaw.com, tadmin@kilpatricktownsend.com Phone: 415-576-0200
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Applicant Information

Application No	86646720	Publication date	01/12/2016
Opposition Filing Date	07/11/2016	Opposition Period Ends	07/10/2016
Applicant	UpRight Technologies Ltd. 3rd Floor Tel Aviv, 6653201 ISRAEL		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Wearable digital electronic and wireless device for non-medical purposes, namely, a system comprised of operating software, display screens, sensors and monitors for tracking, sending, displaying, measuring, monitoring, recording and storing information relating to a person's posture, and providing a personalized training program for posture improvement and defined posture goals; Computer software and computer interfaces for wireless data communication for tracking, receiving, processing, transmitting and displaying information relating to a person's posture for non-medical purposes; Computer software for tracking, sending, viewing and storing information about a person's posture, posture improvement and goals and for providing motivation and training for posture improvement for non-medical purposes; Application software for mobile phones, portable media players, handheld computers, and other electronic devices, namely, software for tracking, sending, viewing, and storing information about a person's posture and for providing information and guidance on posture improvement, personal posture motivation, and providing a personalized posture training program for non-medical purposes; Downloadable electronic programs and computer software platforms that may be accessed via the internet, mobile phones, smart phones, tablet computers, computers and other wireless devices for tracking, sending, viewing,

and storing information about a person's posture, posture improvement and goals, and providing a personalized training program for posture improvement for non-medical purposes


Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Posture correction device, namely, a wearable device attached to the body with adhesives, to track, monitor and correct a person's posture for sports or other physical training purposes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4309613	Application Date	03/24/2011
Registration Date	03/26/2013	Foreign Priority Date	NONE
Word Mark	UP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2011/10/00 First Use In Commerce: 2011/10/00 personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files; personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files relating to health and wellness; computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files; computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files relating to health and wellness Class 042. First use: First Use: 2011/10/00 First Use In Commerce: 2011/10/00 Online management services for personal electronic devices, namely, configuration management relating to the usage of personal electronic devices; technical support services, namely, troubleshooting in the nature of diagnosing personal electronic device problems		

Attachments	85275857#TMSN.png(bytes) Notice of Opposition - UPRIGHT - 86646720 .pdf(35330 bytes) Exhibit A - Notice of Opposition - UPRIGHT 86646720.pdf(59395 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer D. Arkowitz/
Name	Jennifer D. Arkowitz
Date	07/11/2016

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

ALIPHCOM,

Opposer,

v.

UPRIGHT TECHNOLOGIES LTD.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Serial No. 86/646,720

Mark: UPRIGHT

Opposer AliphCom d/b/a Jawbone (“Opposer”), a California corporation having its headquarters at 99 Rhode Island St., 3rd Floor, San Francisco, California 94103, believes it will be damaged by the issuance of registration of the trademark shown in the following application, for goods in International Classes 9 and 28, and, therefore, opposes registration of the mark.

Serial No.	Mark	Filing Date	Publication Date
86/646,720	UPRIGHT	May 31, 2015	January 12, 2016

As grounds for its opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

1. Opposer, a world-leader in consumer and wearable technology products, is the owner of the distinctive and famous UP® trademark (the “UP Mark”) for, among other things, wearable technology and personal electronic devices and computer software related to health and wellness. Opposer has extensively promoted, marketed, advertised, distributed, and sold a variety of goods and services under its UP Mark, which it has used since at least as early as October 2011.

2. Opposer owns, among others, United States Registration No. 4309613 for the

UP Mark on the Principal Register for the following goods and services (the “UP Registration”):

- “personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files; personal electronic devices for recording, organizing, transmitting, manipulating, reviewing, and receiving text, data, images and audio files relating to health and wellness; computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files; computer software used for recording, organizing, transmitting, receiving, and reviewing text, data, images and audio files relating to health and wellness” in Class 9 and
- “online management services for personal electronic devices, namely, configuration management relating to the usage of personal electronic devices; technical support services, namely, troubleshooting in the nature of diagnosing personal electronic device problems” in Class 42.

A true and correct copy of a Trademark Status Document Retrieval (TSDR) status report for the UP Registration is attached as **Exhibit A**.

3. The UP Registration is valid and in full force and effect.
4. Opposer’s UP Mark has become well-known and famous and has achieved substantial consumer recognition. As a result of Opposer’s extensive advertising, promotion, and use of the UP Mark, the UP Mark has acquired significant goodwill, and has come to be identified with Opposer as the source of Opposer’s popular wearable technology products.
5. Notwithstanding Opposer’s prior registered and common law rights in the UP Mark, and after Opposer’s UP Mark became well-known and famous, Applicant Upright Technologies Ltd. (“Applicant”) filed Application Serial No. 86/646,720 (the “Application”)

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