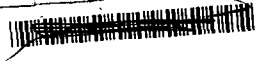


TTAB

VCI Banksmarter(sm) - VirtualCash(sm)



01-04-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #74

VirtualCash, Inc.
P.O. Box 611
Bensalem, PA 19020

Direct Line 215-361-4302
banksmarter@virtualcash.org

Trademark Trial and Appeal Board
2900 Crystal Drive
South Tower Building
Arlington, VA 22202

2/05

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

**RE: NOTICE OF OPPOSITION TO TRIAL AND APPEAL BOARD - REQUEST
FOR EXTENSION OF TIME**

VirtualCash, Inc. Mark: **BankSmarter**
VirtualCash, Inc. First Use: July 7, 1999
VirtualCash, Inc. First Use in Commerce: August 25, 1999
Applicant: Bellco Credit Union
Serial Number: 76/193023
Applicants Alleged First Use: December 11, 2000
Applicants Alleged First Use in Commerce: December 18, 2000
Filing Date: January 12, 2001
Published for Opposition: December 25, 2001
Today's Date: December 31, 2001

RECEIVED
DEC 27 2001

Per Anne H. Chasser's letter dated October 4, 2001 we intend to pursue this matter further, we are seeking the advice of an attorney who specializes in trademark and administrative law as it relates to the procedural and substantive issues raised in this matter.

We are sending a petition to Todd Dickinson, the Assistant Secretary of Commerce & Commissioner of Patents and Trademarks. Attached please find a copy of that petition.

Therefore, based on the above we respectfully request and extra 60 days to file our brief with the Trademark Trial and Appeal Board. We understand that no fee is due at this time as we are requesting an extension of time. We await a response from the Assistant Secretary of Commerce Office and currently are in the process of arranging for our legal representation.

Respectfully submitted,

Mitchell E. Chadrow, President

VCI Banksmarter(sm) – VirtualCash(sm)

VirtualCash, Inc.
P.O. Box 611
Bensalem, PA 19020

Direct Line 215-361-4302
banksmarter@virtualcash.org

Todd Dickinson
Assistant Secretary of Commerce &
Commissioner of Patents and Trademarks
United States Patent and Trademark Office
Washington, DC 20231

**NOTICE OF PETITION TO ASSISTANT SECRETARY OF COMMERCE &
COMMISSIONER OF PATENTS AND TRADEMARKS**

RE: LETTER OF PROTEST sent to (Anne H. Chasser/Sharon Marsh)
VirtualCash, Inc. Mark: **BankSmarter**
VirtualCash, Inc. First Use: July 7, 1999
VirtualCash, Inc. First Use in Commerce: August 25, 1999
Applicant: Belco Credit Union
Serial Number: 76/193023
Applicants Alleged First Use: December 11, 2000
Applicants Alleged First Use in Commerce: December 18, 2000
Filing Date: January 12, 2001
Published for Opposition: December 25, 2001
Today's Date: December 31, 2001

Notice of Opposition was sent to the Trial and Appeal Board and a Request for Extension of Time (60 days) regarding the above referenced matter. Attached please find our Petition to your office. A copy of same is being sent to the Trial and Appeal Board.

The Assistant Assistant Secretary of Commerce should decide the matter or remand the file back to the Commissioner's office to respond to the Letter of Protest filed on June 16, 2001. The Letter of Protest is best to be resolved by that office and not the Trial and Appeal Board. The Bank Smarter application should not have been published for opposition and we formally request a preliminary injunction until your office resolves this matter.

TWO MAIN ISSUES

PRIOR USE

VirtualCash, Inc. has established common-law rights to the mark banksmarter starting in July of 1999. Therefore, VirtualCash, Inc. has superior rights to the mark banksmarter.

18 U.S.C SECTION 1001

Applicant knew or had reason to know of prior use in violation of 18 U.S.C. Section 1001.

BACKGROUND

The Administrator for Classification Practice sent a non-responsive answer to our Letter of Protest. Anne H. Chasser, Commissioner for Trademarks sites a protester should carefully present all relevant arguments and evidence in the initial letter. In re BPJ Enterprises Ltd. 7 USPQ2d 1375 (Comr Pats 1988). However, relevant information and evidence can also be obtained in discussions with Trademark personnel. There were conversations with Sharon Marsh in February of 2001 faxed correspondence in March of 2001 and other materials sent by email prior to our letter of Protest in June. This information was part of our Letter of Protest and was not considered by the Administrator. Ms. Chaser indicates that she has supervisory authority 37 C.F.R. Section 2.146(a)(3) and decided not to address the substantive or procedural issues that arise when 18 U.S.C. Section 1001 is violated nor were the issues of prior use addressed.

On October 1, 2001 we sent another letter to Sharon Marsh (VIA FAX: 703-872-9282). This letter was sent within two months from the time the Administrator sent her non-responsive letter on August 17, 2001. It would be inappropriate for the Commissioner not to address a possible fraud upon the PTO:

LAW

"[W]henever any person shall deem himself injured by the registration of a trade-mark in the Patent Office he may *at any time* apply to the Commissioner of Patents to cancel the registration." Section 13 of the Trademark Act of 1905, 15 U.S.C. § 93.

"A petition to cancel a registration of a mark, ... may, ... be filed as follows by any person who believes that he is or will be damaged ... by the registration of a mark on the principal register established by this chapter ... (3) At any time ... [if] its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter." Lanham Act § 14, 15 U.S.C. § 1064

A petition to the Patent and Trademarks Office should be the primary means of securing a cancellation.

Section 14 was enacted not just to protect [VirtualCash, Inc.] but to protect the integrity of the federal register and [the Commissioners office] should not operate to frustrate that interest. See Harjo v. Pro Football, Inc., 1994 TTAB LEXIS 9, 30 U.S.P.Q.2D (BNA) 1828, 1831 (T.T.A.B. 1994) a 'public policy' interest--in addition to a private interest in removing from the register those registrations procured or maintained by fraud.

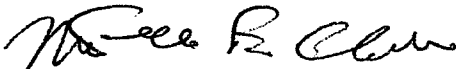
The United States Supreme Court has recognized that the predecessor of the current Section 14(3) "allows cancellation of an incontestable mark at any time . . . if it was obtained fraudulently." Park 'n Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 195, 83 L. Ed. 2d 582, 105 S. Ct. 658 (1985).

"Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof." Section 38 of the Lanham Act, 15 U.S.C. § 1120.

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (1) our mark is valid and legally protectable (2) VirtualCash, Inc. has owned the mark since 1999; (3) Belco's use of the mark to identify goods or services would likely create confusion concerning the origin of the goods or services. Fisons Horticulture, Inc. v. Vigoro Indus., Inc., 30 F.3d 466, 472 (3d Cir. 1994).

To reintegrate we have filed Notice of Opposition with the Trial and Appeals Board with an extension of time. This office and not that board should address the issue of the Letter of Protest.

Respectfully submitted,



Mitchell E. Chadrow, President
VirtualCash, Inc.