

ESTTA Tracking number: **ESTTA42092**

Filing date: **08/12/2005**

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	Javacool Software, LLC
Granted to Date of previous extension	08/13/2005
Address	P.O. Box 112573 Pittsburgh, PA 15241 UNITED STATES

Attorney information	Christine W. Trebilcock Cohen & Grigsby, P.C. 11 Stanwix Street 15th Floor Pittsburgh, PA 15222 UNITED STATES iptrademark@cohenlaw.com Phone:(412) 297-4842
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Applicant Information

Application No	78368017	Publication date	06/14/2005
Opposition Filing Date	08/12/2005	Opposition Period Ends	08/13/2005
Applicant	Webroot Software, Inc. 2990 Center Green Court Boulder, CO 80301		

UNITED STATES

Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: Computer software, namely, computer software for providing security features to detect, identify, block and delete trojan horse programs, adware programs, system monitor and other spyware programs

Attachments	WebrootOppNotice.pdf (5 pages)
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Signature	/Christine W. Trebilcock/
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Name	Christine W. Trebilcock
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Date	08/12/2005
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No: 78/368,017
For the Trademark Spyware Guard
Published in the Official Gazette on June 14, 2005
Our Ref: 04-032 OPP

JAVACOOOL SOFTWARE LLC)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
WEBROOT SOFTWARE, INC.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Javacool Software LLC ("Opposer"), a Pennsylvania Limited Liability Company, having a principal business address of P.O. Box 112523, Pittsburgh, Pennsylvania, 15241-0123, and sole licensee of the SPYWAREGUARD™ name and mark, believes that it will be damaged by the issuance of a registration for the mark SPYWARE GUARD (the "Applicant's Mark"), as applied for in Application Serial No. 78/368,017 filed on February 13, 2004, by Webroot Software, Inc. ("Applicant"), and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is the licensee of common law rights and the federal trademark Application Serial No. 76/780,005 filed on February 26, 2004, for the mark SPYWAREGUARD.
2. Since as early as January 11, 2003, Opposer has continuously provided goods under and used the SPYWAREGUARD name and mark on various items of computer software for locating, removing, disabling and/or preventing the installation of targeted data, programs, code and

software, including spyware, adware, dialers and browser hijackers, on a computing device; and computer software for locating, removing, disabling and/or preventing the installation of targeted data, programs, code and software, namely spyware, adware, dialers and browser hijackers.

3. Opposer's software bearing the SPYWAREGUARD mark is a popular anti-spyware product in the anti-spyware, computer security and privacy industries and is regularly recommended and reviewed by popular technical media, for example please see:

<http://netsecurity.about.com/od/popupsandspyware/tp/aatp082804.htm> (undated),

<http://www.bleepingcomputer.com/forums/index.php?showtutorial=50> (dated April 8, 2004), and

<http://www.pcworld.com/news/article/0,aid,118215,00.asp> (dated November 3, 2004).

4. Reviews of Opposer's related SPYWAREBLASTER product may also recommend use of the SPYWAREGUARD product in conjunction with Opposer's SPYWAREBLASTER product, for example please see:

<http://www.techsupportalert.com/issues/issue106.htm> (dated February 11, 2004),

http://www.spywarewarrior.com/rogue_anti-spyware.htm#trustworthy (dated June 26, 2005), and

<http://www.watchguard.com/infocenter/editorial/15860.asp> (undated). Considering the relationship of Opposer's SPYWAREGUARD product with its SPYWAREBLASTER product in the field and in the media, the granting of a registered mark for Applicant's virtually identical mark would likely further confuse and damage the SPYWAREBLASTER product.

5. Opposer's software bearing the SPYWAREGUARD mark is provided and distributed through the internet and may be downloaded from a global computer network.

6. Opposer has expended considerable time, effort and expense in promoting its SPYWAREGUARD name and mark, and goods offered in connection with the SPYWAREGUARD mark, with the result that the public has come to know, rely upon and

recognize Opposer's SPYWAREGUARD mark as an indicator of the source of the goods so marked. By virtue of these efforts, Opposer has gained a valuable reputation and amount of goodwill for its SPYWAREGUARD mark.

7. Opposer's use of SPYWAREGUARD as a trade name and mark on its goods, including computer software, has been valid and continuous since 2003, and has not been abandoned.

8. Upon information and belief, Applicant filed an intent to use application to register SPYWARE GUARD on February 13, 2004. Therein, Applicant seeks registration of Applicant's Mark in connection with "computer software, namely, computer software for providing security features to detect, identify, block and delete trojan horse programs, adware programs, system monitor and other spyware programs."

9. Upon information and belief, Applicant has not filed a Statement of Use declaring it has used the Applicant's Mark.

10. Upon information and belief, Applicant has not used Applicant's Mark in commerce.

11. The goods proposed by Applicant are closely related to the goods offered by Opposer and as described in Paragraphs 2-4 herein.

12. There is no issue of priority of use. Even if Applicant has used Applicant's Mark in commerce, the earliest date would not predate Applicant's application, which was filed more than 13 months after Opposer first used its SPYWAREGUARD mark in interstate commerce.

13. Opposer's continuous use of the SPYWAREGUARD name and mark on its goods predates any use of the Applicant's Mark by Applicant.

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