

ESTTA Tracking number: **ESTTA290498**

Filing date: **06/18/2009**

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	MrJosephMMerrill
Granted to Date of previous extension	06/20/2009
Address	Heimbachweg 24 Goeppingen, BW 73035 GERMANY

Correspondence information	Joseph M. Merrill Heimbachweg 24 Goeppingen, BW 73035 GERMANY englishwithspeaktome@yahoo.com Phone:01149 7161 9569485
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Applicant Information

Application No	77469953	Publication date	04/21/2009
Opposition Filing Date	06/18/2009	Opposition Period Ends	06/20/2009
Applicant	Speak2Me, Inc. 151 Bloor Street West, Suite 703 Toronto, M5S1S4 CANADA		

Goods/Services Affected by Opposition


Class 035. All goods and services in the class are opposed, namely: Dissemination of advertising for others via the Internet

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2928996	Application Date	03/09/2004
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	SPEAK TO ME		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1989/06/21 First Use In Commerce: 1989/06/21 Prerecorded audio and video cassettes and DVDs containing English instruction

Attachments	78380779#TMSN.jpeg (1 page)(bytes) Merrill opposition.pdf (6 pages)(321535 bytes) PDF 1 Press release.pdf (4 pages)(157097 bytes) PDF 3 Speak2Me web site.pdf (2 pages)(193745 bytes) PDF 4 Toronto.pdf (1 page)(113087 bytes) PDF 5 Prarie Trader .pdf (2 pages)(249780 bytes) PDF2 Media kit.pdf (8 pages)(1593752 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	/Joseph M. Merrill/
Name	Joseph M. Merrill
Date	06/18/2009

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

In the matter of trademark application Serial number 77469953
For the mark: Speak2Me
Published in the Official Gazette on April 21, 2009

Mr. & Mrs. Joseph & Christel Merrill

v.

Speak2Me, Inc.

NOTICE OF OPPOSITION

Mr. & Mrs. Joseph Merrill
Heimbachweg 24
73035 Goeppingen
Germany

The above-identified opposers believe that they will be damaged by registration of the mark shown in the above-identified application and hereby oppose the same.

The grounds for opposition are as follows:

1) Speak2Me, Inc. is a subsidiary of Lingo Media Corporation. Speak2Me, Inc. filed for a trademark for Speak2Me on 5/13/2008 for two classes: 41 for language instruction and 035 for: "Dissemination of advertising for others via the Internet."

The application for the trademark Speak2Me in class 41 was refused on 9/7/2008 in connection with "Training services in the field of learning languages via the internet." The grounds for refusal was that it was likely to cause confusion with the opposer's trademark Speak to Me®, U.S. Registration number 2928996 in class 009 for: "Prerecorded audio and videocassettes and DVDs containing English instruction." First use in commerce: 19890621.

The opposer now contends that the following reasons which the examining attorney at the U.S. Patent and Trademark office listed for refusal for class 41 equally apply to class 035 as follows:

- A) Likelihood of confusion.
- B) Phonetic equivalents
- C) Side by side comparisons
- D) The same goods and services: ESL language instruction (now advertising for commercial insertions in the same English program or advertising the program itself).
- E) Buyer confusion

F) Protecting the existing trademark from negative commercial impact

2) Likelihood of Confusion:

Lingo Media Corp. is the parent company of Speak2Me, Inc. It is a language education company. On April 30, 2009 in their Fourth Quarter Year End Report their President & CEO Mr. Michael Kraft stated: "*We have restructured Lingo Media and focused the business on delivery of Speak2Me, our revolutionary English language learning service to the world market, ...*(see PDF 1 Press release) Indeed, the applicant's dissemination of advertising for others is devoted either entirely or almost entirely to selling commercial content to be embedded in the applicant's internet English language program Speak2Me.

The applicant's strategy is as follows: The applicant offers the public a free English language course entitled Speak2Me on the internet. What is the source of the applicant's revenue? Selling advertising to businesses and corporations whereby the corporation's products or services are advertised directly in the language program as part of the course content.

For example, students learn appropriate English for going to a coffee shop not by learning about a generic coffee shop but rather a Starbucks Coffee Shop. In short, the language learning content is simultaneously the advertising for the product or service.

Some examples follow: (All of them are attached as PDFs. PDFs 1, 2, 4 and 5 can be found on Lingo Media Corp.'s website at: www.lingomedia.com. With the applicant's own words the true intent for a Speak2Me trademark is evident.

This first example is from just last month: May 2009. Despite the fact that the U.S. Patent and Trademark Office has refused the applicant a mark for Speak2Me for language instruction, it is clear that the applicant intends to continue to use this name for their language instruction product/service:

Speak2Me Media kit (PDF 2: Media Kit, May 2009)

The applicant writes:

Overview:

Speak2Me™ is an online English Language Learning (ELL) community that incorporates learning with fun, interactive lesson modules to address the rapidly growing need for spoken English worldwide, with an initial focus on the China market. Speak2Me's groundbreaking users practice spoken English...The Speak2Me platform enables advertisers to embed their products and services into customized lesson modules available for free on the speak2me website...

Conversational Advertising™ How it works

**Advertisers can embed interactive virtual campaigns within Speak2Me English language lesson modules.*

**Custom-content is developed around the advertiser's brand and integrated into the lesson module.*

This brand-new media kit proves that the applicant's "dissemination of advertising for others via the internet" would be accomplished via their English language program Speak2Me and thus cause confusion with the opposer's registered trademark.

On Lingo Media's website (www.english.speak2me.com/advertising/) we find:

(PDF 3 speak2me website)

Welcome to Speak2Me CONVERSATIONAL ADVERTISING

Speak2Me™ Conversational Advertising™ is a groundbreaking service that embeds advertising customized around your brand into online English language lesson modules. Your target audience gets the educational content and social interaction they want, while you benefit from a highly-targeted brand affinity opportunity.

Again, the likelihood of confusion with the opposer's English language program Speak to Me® is clear. In the following example we have Mr. Kraft the CEO of Lingo Media Corp. stating that the advertising "vehicle" is Speak2Me:

Toronto Business Times (PDF 4: Toronto Business Times July 2008)

Local company has Olympic-sized ideas:

...How does it work? It's simple really, Kraft said. The advertising vehicle is Speak2Me, an online program that teaches ESL students how to speak conversational English through situational lessons and modules.

In this last article, the opposer's registered trademark Speaktome was used four times instead of the applicant's mark Speak2Me. It is a poignant example of confusion between the two marks. Nevertheless, as of today's date the applicant has kept this newspaper article listed under *media coverage* on its website and is therefore currently deceiving the public about these two marks and the goods and services associated with them.

Alberta Venture Newspaper, Prairie Trader by Fabrice Taylor an Equity Analyst writing for stock traders. (PDF 5: Prairie Trader September 2008)

China's Still-Rising Star

You can place a bet on the world's largest market without ever leaving home

...Speaktome's service is free. So how do you make money by offering your service for free?

Simple: you sell ads. "We're not really an education company; we're a media company," Kraft says. Here's how it works: Speaktome uses avatars— animated characters—and speech recognition software...

Can Kraft sell them (potential 18 million users by 2012) on the idea? Rest assured that if he pulls it off, the company's stock value will be a lot higher if that does happen. It seems like an interesting gamble.

All of the above examples are clear. The applicant is attempting to blend advertising and English instruction into one product/service under the name Speak2Me. The applicant applied for a class 035 trademark for the dissemination of advertising but it is evident that the applicant's English

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