

IN THE WORLD INTELLECTUAL PROPERTY ORGANISATION ARBITRATION AND
MEDIATION CENTRE

BETWEEN

GOOGLE INC.

Complainant

and

DMITRI RYTSK
ABN 88 842 732 240

Respondent

Annexure Q

TRADE MARKS ACT 1995

NOTICE OF OPPOSITION

IN THE MATTER of Australian
Trade Mark Application No
1118972 GOOGLEBAY in the
name of Dmitri Rytsk

and

IN THE MATTER of Opposition by
Google Inc.

Google Inc. (the **Opponent**) gives notice of opposition to registration of Australian Trade Mark Application No. 1118972 (the **Trade Mark**) in the name of Dmitri Rytsk (the **Applicant**).

The grounds of opposition are as follows:

1. the Trade Mark is not capable of distinguishing the Applicant's goods and/or services in respect of which the Trade Mark is sought to be registered from the goods or services of other persons, in particular the Opponent's goods and services;
2. the use of the Trade Mark in respect of the goods and/or services for which the Trade Mark is sought to be registered would be likely to lead to passing off or and/or be likely to deceive or cause confusion because of some connotation that the Trade Mark or a sign contained within the Trade Mark has;
3. the Applicant's use of the Trade Mark in relation to the goods and/or services would be contrary to the provisions of sections 52 and 53 of the *Trade Practices Act 1974 (Cth)* or section 31 of the *Copyright Act 1968 (Cth)*;
4. the Applicant is not the owner of the Trade Mark;
5. by reason of its use of the Trade Mark in Australia, the Opponent is the proprietor of the Trade Mark in relation to goods that are the same or of the same description as the goods and/or services closely related to the goods;
6. the Trade Mark contains or consists of scandalous matter;
7. the use of the Trade Mark would be contrary to law;
8. the Trade Mark is substantially identical with or deceptively similar to a trade mark that, before the priority date of the Trade Mark, had acquired a reputation in Australia such that the use of the Trade Mark in respect of the goods and/or services for which the Trade Mark is sought to be registered would be likely to deceive or cause confusion;
9. the Applicant is not entitled to registration of the Trade Mark on the basis of honest concurrent use or prior continuous use;
10. the Trade Mark is not inherently adapted to distinguish the designated goods or services from the goods or services of other persons and the Applicant has not used the Trade Mark before the filing date of the application, such that it does not distinguish the designated goods or services as those of the Applicant;

11. the Trade Mark is substantially identical with, or deceptively similar to, one or more trade mark registrations and/or applications having an earlier priority date in respect of similar goods/services or closely related goods/services being:

Australian Trade Mark No.	Trade Mark	Class(es)	Priority Date
788234	GOOGLE	9: Computer hardware; computer software including computer software for searching, compiling, indexing and organizing information within individual workstations, personal computers or computer networks; computer software for electronic mail and facilitating workgroup communications over computer networks; computer software for creating indexes of information, web sites or other resources 38: Providing electronic mail and workgroup communication services 42: Computer services in this class, including on-line personalized information services; information extraction and data mining; providing access to proprietary collections of information; creating indexes of information, web sites and other information sources; providing information concerning a wide range of text, electronic documents, databases, graphics and audiovisual information	16/09/1998
1049124	GOOGLE	16: Books; manuals; notebooks; notepads; pens; greeting cards; stickers; decals; sticky notes 25: Clothing; footwear; headgear 35: Dissemination of advertising for others via the Internet	04/04/2005

12. the Trade Mark is substantially identical with, or deceptively similar to, a trade mark that is well known in Australia (the **well known mark**) in relation to:

- (a) goods (**unrelated goods**) that are not of the same description as that of the goods in respect of which the well known mark is registered (**registered goods**) or are not closely related to services in respect of which the well known mark is registered (**registered services**); or
- (b) services (**unrelated services**) that are not of the same description as that of the registered services or are not closely related to registered goods; and

because the well known mark is well known, the Trade Mark would be likely to be taken as indicating a connection between the unrelated goods or unrelated services and the registered owner of the well known mark and, for that reason, the registered owner of the well known mark is likely to be adversely affected.

13. the Applicant has not in good faith used, or authorised the use of, the Trade Mark in Australia and at the date of the application for registration of the Trade Mark the Applicant did not in good faith intend:

- (a) to use, or authorise the use of, the Trade Mark; or

(b) to assign the Trade Mark to a body corporate for use by the body corporate, in Australia,

in relation to the goods and/or services for which the Trade Mark is sought to be registered.

14. the Trade Mark contains or consists of a sign that is a geographical indication for goods originating in a country other than the country in which the relevant goods originated;
15. the registration of the Trade Marks would prejudice the Opponent and/or its licensees in the conduct of its business;
16. the Registrar accepted the applications for registration of the Trade Mark on the basis of evidence or representations that were false in material particulars;
17. by reason of the matters set forth in any one or more of the foregoing paragraphs, the Trade Mark was accepted by reason of an error or omission in the course of the examination; and
18. by reason of the matters set forth in any one or more of the foregoing paragraphs or otherwise in the special circumstances of the case, the Trade Mark should not be registered in relation to all or any of the goods or services.

A copy of this notice is being served on the Applicant, by registered mail, at his address for service:

Mr Dmitri Rytsk
16 Jocelyn Street
NORTH CURL CURL NSW 2099

The Opponent's address for service is:

Middletons
Level 25, Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000
Ref: ABW.JAF.1781284

DATED this 10th day of January 2007.



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Middletons
Solicitors for the Opponent

To: The Registrar of Trade Marks
Fee: \$250.00