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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 QPASS, INC.,

Case No.

11
12 Plaintiff,

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

13 v.

14 KUPASS Corporation,

DEMAND FOR JURY TRIAL

15
16 Defendant.

17 For its claims of trademark infringement and unfair competition against
18 Defendant Kupass (“Kupass” or “Defendant”), Plaintiff Qpass, Inc. (“Qpass” or
19 “Plaintiff”) alleges as follows:

20 **INTRODUCTION**

21 1. Defendant Kupass has engaged in and continues to engage in the
22 marketing and sale of on-line computer goods and services that infringe Plaintiff’s
23 QPASS Mark. Plaintiff holds incontestable federal trademark registrations for the
24 QPASS Mark under which it has offered high-quality on-line Application Service
25 Provider (“ASP”) services for almost ten years. Within the past two years, Defendant
26 Kupass began offering on-line ASP services under a mark that is confusingly similar to,
27 and infringing of, the Qpass Mark in sight, sound, and commercial impression.
28 Defendant has caused and continues to cause immediate and irreparable injury to

1 Plaintiff. Plaintiff hereby seeks to enjoin Kupass's infringement of the QPASS Mark
2 and to recover the damages caused by Kupass's unlawful actions.

3 **THE PARTIES**

4 2. Qpass is a Washington corporation with its principal place of business at
5 2211 Elliott Avenue, Suite 400, Seattle, Washington 98121.

6 3. Kupass is a Delaware corporation doing business in the state of
7 Washington. Upon information and belief, Kupass's principal place of business is
8 1111 Brickell Avenue, Suite 1100, Miami, Florida 33131.

9 **NATURE OF THE CASE**

10 4. This is an action for infringement of a registered trademark in violation of
11 Section 32(1) of the Lanham Act, 15 U.S.C. Section 1114 and for unfair competition in
12 violation of Section 43(c) of the Lanham Act, 15 U.S.C. Section 1125(c).

13 **JURISDICTION AND VENUE**

14 5. This Court has original jurisdiction over the subject matter of the claims
15 pursuant to 15 U.S.C. Section 1121 and 28 U.S.C. Sections 1331 and 1338(a). Venue
16 in this district is proper under the provisions of 28 U.S.C. Section 1391.

17 6. Personal jurisdiction is proper over Defendant in this District in light of
18 Defendant's business activities within the District which have caused harm to Plaintiff
19 in this District, including the solicitation of and entering into contracts for the sale of
20 advertising with companies based in this District and, upon information and belief, the
21 solicitation of and entering into agreements with subscribers to Defendant's on-line
22 ASP services in this District.

23 **FACTUAL BACKGROUND**

24 7. In or before September 1998, Plaintiff Qpass began using the QPASS
25 Mark in connection with a wide variety of computer-related goods and services
26 including, without limitation, ASP services. Plaintiff provides an array of ASP
27 services, making software available to end-users to facilitate on-line membership
28 services, payment services, and sale of goods and services over computer networks.

1 8. Plaintiff owns two incontestable registrations for the QPASS Mark,
2 including United States Registration No. 2,325,386 (March 7, 2000) and United States
3 Registration No. 2,359,412 (June 20, 2000). Plaintiff's use of the QPASS Mark has
4 been valid and continuous, and Plaintiff has not abandoned the mark. True and correct
5 copies of the certificates of registration are attached hereto as Exhibits A and B.

6 9. Qpass has sold its goods and services throughout the United States and
7 abroad, developing valuable goodwill with respect to the QPASS Mark. Qpass has
8 expended significant resources to promote and advertise its goods and services, which,
9 along with the exceptional quality of its goods and services, have developed Qpass's
10 valuable reputation with the consuming public and created an exclusive association
11 between the QPASS Mark and Plaintiff's goods and services.

12 10. On or about July 17, 2006, Defendant Kupass filed an application (Serial
13 Number 78/930,826) in the United States Patent and Trademark Office to register the
14 mark KUPASS for use in connection with its business activities, including the
15 provision of ASP services, i.e. hosting computer software applications for use by
16 others. A true and correct copy of the KUPASS Application is attached hereto as
17 Exhibit C.

18 11. Defendant Kupass began using the KUPASS Mark after July 17, 2006 in
19 connection with its ASP services and has continued to do so. The KUPASS Mark is
20 confusingly similar to the QPASS Mark in sight, sound, and commercial impression.
21 Defendant's use of the KUPASS Mark in business activities that are closely related to
22 Plaintiff's business activities, namely, in connection with the provision of ASP
23 services, is likely to cause confusion in the trade to Plaintiff's detriment.

24 12. In May 2007, Plaintiff demanded Defendant withdraw its trademark
25 application and cease its use of the KUPASS Mark in connection with software or
26 computer goods and services, including ASP services. A true and correct copy of
27 Qpass's May 2007 demand letter is attached hereto as Exhibit D.

1 13. On July 5, 2007, Plaintiff filed a timely opposition to Defendant's
2 KUPASS Application. A true and correct copy of Plaintiff's opposition is attached
3 hereto as Exhibit E.

4 14. To date, Kupass has refused to cease its use of the KUPASS Mark.

5 **FIRST CLAIM FOR RELIEF**
6 **(Infringement of Registered Mark)**
7 **(15 U.S.C. § 1114(a))**

8 15. Plaintiff incorporates the allegations set forth in paragraphs 1-14 above as
9 though fully set forth herein.

10 16. Qpass owns the federally registered and incontestable QPASS Mark. *See*
11 Exhibits A and B.

12 17. Customers associate the distinctive QPASS Mark only with Qpass's
13 products and services. As a result of extensive advertising and sales throughout the
14 United States and abroad of computer-related goods and services bearing the QPASS
15 Mark, the QPASS Mark has become strong and distinctive.

16 18. Defendant has used in commerce the KUPASS Mark in connection with
17 the advertisement and sale of goods and services closely related to Qpass's goods and
18 services, and continues to use a mark confusingly similar to the QPASS Mark in a
19 manner that is likely to cause confusion, mistake or deception.

20 19. By committing the acts alleged herein, Defendant has intentionally,
21 knowingly and willfully infringed the registered QPASS Mark and Defendant
22 continues to do so.

23 20. Plaintiff has never consented to Defendant's use of its mark, and, to the
24 contrary, repeatedly has demanded in writing that Defendant cease its use of the
25 infringing mark and has opposed the registration of Defendant's mark.

26 21. Defendant's unauthorized use of a mark confusingly similar to Plaintiff's
27 mark constitutes an infringement of Plaintiff's registered mark, in violation of 15
28 U.S.C. Section 1114. As a direct and proximate result of Defendant's willful and

1 deliberate conduct, Qpass has suffered, and will continue to suffer, substantial injuries,
2 loss, and damage to its business and goodwill in an amount to be proven at the time of
3 trial.

4 22. Without injunctive relief, Qpass has no means by which to prevent
5 Defendant's infringing conduct, and Qpass will continue to be harmed irreparably by
6 the confusion and deception of the public. Thus, Qpass is entitled to injunctive relief
7 prohibiting Defendant from using a mark confusingly similar to the QPASS Mark in
8 any promotion, advertisement, endorsement, offer, or sale of its goods and services.

9 23. Plaintiff is entitled to recover all profits heretofore realized by Defendant
10 during its infringement of the QPASS Mark, as well as Plaintiff's costs in this action
11 pursuant to 15 U.S.C. Section 1117(a).

12 24. Defendant's actions have been willful, malicious and fraudulent with
13 knowledge of the likelihood of confusion and deception and with intent to confuse and
14 deceive, as alleged above. Therefore, Plaintiff is entitled to recover three times the
15 amount of Defendant's profits plus Plaintiff's reasonable attorneys' fees pursuant to 15
16 U.S.C. Section 1117(b).

17 **SECOND CLAIM FOR RELIEF**

18 **(Unfair Competition and False Designation of Origin)**

19 **(15 U.S.C. §1125(a))**

20 25. Plaintiff incorporates the allegations of paragraphs 1-24 as though fully
21 set forth herein.

22 26. By reason of Defendant's acts complained of herein, Defendant has
23 intentionally engaged in conduct that constitutes a false designation of origin and a
24 false or misleading description of fact tending wrongfully and falsely to describe or
25 represent a connection or affiliation between Plaintiff's goods and services and
26 Defendant's goods and services in violation of 15 U.S.C. Section 1125(a). Customers
27 are likely to be confused by Defendant's use of this false designation of origin and false
28 description or representation regarding Qpass's goods and services and Defendant's

1 goods and services.

2 27. Throughout the United States and abroad, Plaintiff Qpass has gained a
3 reputation for offering high quality on-line ASP services. By using a mark that is
4 substantially similar to the QPASS Mark in a related service, Defendant is unfairly
5 seeking to trade on Plaintiff's success and goodwill.

6 28. Without injunctive relief, Qpass has no means by which to prevent
7 Defendant's unfair competition, and Qpass will continue to be harmed irreparably by
8 the confusion and deception of the public. Thus, Qpass is entitled to injunctive relief
9 prohibiting Defendant from using marks confusingly similar to the QPASS Mark in any
10 promotion, advertisement or sale of goods or services and thereby creating confusion as
11 to the origin of Defendant's goods and services.

12 29. Qpass is entitled to recover all profits heretofore realized by Defendant
13 because of its conduct, as well as Qpass's costs in this action pursuant to 15 U.S.C.
14 Section 1117(a).

15 30. Defendant's actions have been willful, malicious and fraudulent with
16 knowledge of the likelihood of confusion and deception and with intent to confuse and
17 deceive, as alleged above. Therefore, Qpass is entitled to recover three times the
18 amount of Defendant's profits plus Qpass's reasonable attorneys' fees pursuant to 15
19 U.S.C. Section 1117(b).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Qpass prays that this Court enter judgment in its favor on each
22 and every claim set forth above and award it relief including, but not limited to, the
23 following:

24 A. That Defendant be adjudged to have willfully and deliberately advertised
25 and sold goods and services infringing the registered QPASS Mark in violation of
26 federal law;

27 B. That Defendant and its officers, agents, owners, employees, confederates,
28 attorneys and any persons in active concert or participation with them be temporarily,

1 preliminarily and permanently enjoined and restrained from:

2 1. Using a name confusingly similar to the QPASS Mark, including,
3 without limitation, Kupass, in connection with the advertising and sale of goods or
4 services that are not authorized by Qpass;

5 2. Using a name confusingly similar to the QPASS Mark, including,
6 without limitation, Kupass, in any manner likely to cause others to believe that any of
7 Defendant's goods or services are made by, distributed by, associated with, or
8 connected with Qpass's goods and services; and

9 3. Committing any other acts calculated to cause actual or potential
10 purchasers to believe that Qpass is the source or sponsor of Defendant's goods or
11 services.

12 C. For an award of the greater of all profits heretofore realized by Defendant
13 during its use of the infringing mark pursuant to 15 U.S.C. Section 1117(a) and
14 Plaintiff's actual damages or statutory damages pursuant to 15 U.S.C. Section 1117(c);

15 D. For an award of three times the amount of Defendant's profits pursuant to
16 15 U.S.C. Sections 1117(a) and (b);

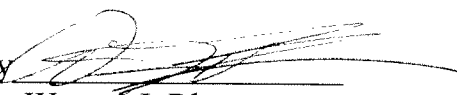
17 E. For an award of Qpass's reasonable attorneys' fees pursuant to 15 U.S.C.
18 Section 1117(a);

19 F. For an award of costs; and

20 G. For all other relief the Court deems just and proper.

21 February 6, 2008

22 Respectfully submitted,
23 HELLER EHRMAN LLP

24 By 
25 Warren J. Rheame

26 701 Fifth Avenue, Suite 6100
27 Seattle, Washington 98104
28 Attorneys for Plaintiff
Qpass, Inc.

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Of Counsel

Annette L. Hurst (*pro hac vice* application to be filed)

Elisabeth R. Brown (*pro hac vice* application to be filed)

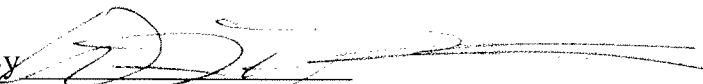
333 Bush Street
San Francisco, CA 94104

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff
3 demands trial by jury of all issues properly triable of right by jury.

4 February 6, 2008

5 Respectfully submitted,
6 HELLER EHRMAN LLP

7 By 
8 Warren J. Rheaume

9 701 Fifth Avenue, Suite 6100
10 Seattle, Washington 98104
11 Attorneys for Plaintiff
12 Qpass, Inc.

13 *Of Counsel*

14 Annette L. Hurst (*pro hac vice* application to be
15 filed)
16 Elisabeth R. Brown (*pro hac vice* application
17 to be filed)
18 333 Bush Street
19 San Francisco, CA 94104

20 SE 2241154 v1
21 2/6/08 3:37 PM (99999.5101)

EXHIBIT A

Int. Cls.: 9, 35, 36 and 42

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 102

Reg. No. 2,325,386

United States Patent and Trademark Office

Registered Mar. 7, 2000

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

QPASS

QPASS INC. (WASHINGTON CORPORATION)
83 SOUTH KING STREET, SUITE 500
SEATTLE, WA 98104 , BY CHANGE OF NAME
PROSCENIUM CORPORATION (WASHINGTON CORPORATION) SEATTLE, WA 98144

FOR: COMPUTER SOFTWARE FOR USER IDENTIFICATION, MEMBERSHIP SERVICES, PAYMENT SERVICES, AUTHORIZING TOOLS, NAMELY, FACILITATING THE MERCHANDISING OF GOODS AND SERVICES ONLINE; STATUS REPORTING, NAMELY, REPORTING STATUS OF ONLINE SALES TRANSACTIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: FACILITATING THE MERCHANDISING OF GOODS AND SERVICES OF OTHERS ONLINE VIA GLOBAL COMPUTER NETWORKS THROUGH THE COMPLETION OF ONLINE RETAIL TRANSACTIONS; STATUS REPORTING, NAMELY, REPORTING THE STATUS OF ONLINE SALES TRANSACTIONS; PROVIDING A WEB SITE VIA A GLOBAL TRANSACTION NETWORK FOR THE MERCHANDISING OF GOODS AND SERVICES OF OTHERS; AND PROVIDING PROMOTIONAL SERVICES TO MERCHANTS WHO PARTICIPATE IN A GLOBAL TRANSACTION NETWORK, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: ELECTRONIC PAYMENT, NAMELY, ELECTRONIC PROCESSING AND TRANSMISSION OF BILL PAYMENT DATA, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: COMPUTER SERVICES IN THE NATURE OF USER IDENTIFICATION, MEMBERSHIP SERVICES, AUTHORIZING TOOLS, NAMELY FACILITATING THE MERCHANDISING OF GOODS AND SERVICES ONLINE; STATUS REPORTING, NAMELY REPORTING THE STATUS OF ONLINE SALES TRANSACTIONS; AND PROVIDING ACCESS TO A GLOBAL TRANSACTION NETWORK FOR THE EXCHANGE AND DISSEMINATION OF A WIDE RANGE OF GOODS AND SERVICES; AND PROVIDING PROMOTIONAL SERVICES TO MERCHANTS WHO PARTICIPATE IN A GLOBAL TRANSACTION NETWORK , IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

SER. NO. 75-490,371, FILED 5-22-1998.

CATHERINE FAINT, EXAMINING ATTORNEY

EXHIBIT B

Int. Cls.: 9, 35, 36 and 42

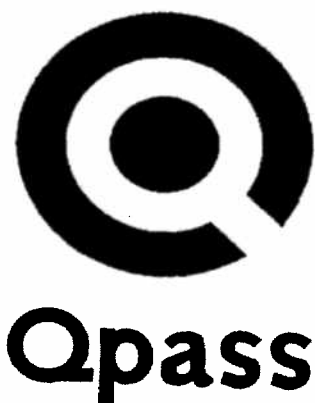
Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 102

Reg. No. 2,359,412

United States Patent and Trademark Office

Registered June 20, 2000

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



**QPASS, INC. (WASHINGTON CORPORATION)
83 SOUTH KING STREET, SUITE 500
SEATTLE, WA 98104**

FOR: COMPUTER SOFTWARE FOR USER IDENTIFICATION, MEMBERSHIP IDENTIFICATION, PAYMENT SERVICES, AUTHORIZING TOOLS, NAMELY, FACILITATING THE MERCHANDISING OF GOODS AND SERVICES ONLINE, AND STATUS REPORTING, NAMELY, REPORTING STATUS OF ONLINE SALES TRANSACTIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: FACILITATING THE MERCHANDISING OF GOODS AND SERVICES OF OTHERS ONLINE VIA GLOBAL COMPUTER NETWORKS THROUGH THE COMPLETION OF ONLINE RETAIL TRANSACTIONS; STATUS REPORTING, NAMELY, REPORTING THE STATUS OF ONLINE SALES TRANSACTIONS; PROVIDING A WEB SITE VIA A GLOBAL TRANSACTION NETWORK FOR THE MER-

CHANDISING OF GOODS AND SERVICES OF OTHERS; AND PROVIDING PROMOTIONAL SERVICES TO MERCHANTS WHO PARTICIPATE IN A GLOBAL TRANSACTION NETWORK, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: ELECTRONIC PAYMENT, NAMELY, ELECTRONIC PROCESSING AND TRANSMISSION OF BILL PAYMENT DATA, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

FOR: COMPUTER SERVICES FOR OTHERS IN THE NATURE OF USER IDENTIFICATION AND MEMBERSHIP IDENTIFICATION, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.

SER. NO. 75-563,702, FILED 10-5-1998.

CATHERINE FAINT, EXAMINING ATTORNEY

EXHIBIT C

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 78930826
Filing Date: 07/17/2006

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	KUPASS
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	KUPASS
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	KUPASS CORP.
*STREET	1111 BRICKELL AVE
INTERNAL ADDRESS	SUITE 1100
*CITY	MIAMI
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	33131
PHONE	305-913-7155
EMAIL ADDRESS	robertomasiero@msn.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
*STATE/COUNTRY OF INCORPORATION	Delaware

GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	042
*DESCRIPTION	Application service provider (ASP), namely, hosting computer software applications of others
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	KUPASS CORP.
FIRM NAME	KUPASS CORP.
*STREET	1111 BRICKELL AVE
INTERNAL ADDRESS	SUITE 1100
* CITY	MIAMI
* STATE (Required for U.S. applicants)	Florida
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	33131
PHONE	305-913-7155
* EMAIL ADDRESS	robertomasiero@msn.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275
SIGNATURE INFORMATION	
* SIGNATURE	/ROBERTO MASIERO/

* SIGNATORY NAME	ROBERTO MASIERO
SIGNATORY POSITION	PRESIDENT
* SIGNATURE DATE	07/17/2006
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jul 17 13:34:06 EDT 2006
TEAS STAMP	USPTO/FTK-69.153.62.211-2 0060717133406201740-78930 826-33235c4eaa26da8f3124a cd91549bb8836-CC-1879-200 60717130758804489

PHO Form 1072a (Rev. 12/05)

PHO Form 1072a (Rev. 12/05)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 78930826

Filing Date: 07/17/2006

To the Commissioner for Trademarks:

MARK: KUPASS (Standard Characters, see mark)

The literal element of the mark consists of KUPASS. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, KUPASS CORP., a corporation of Delaware, residing at SUITE 1100, 1111 BRICKELL AVE, MIAMI, Florida, United States, 33131, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 042: Application service provider (ASP), namely, hosting computer software applications of others

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: robertomasiero@msn.com.

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ROBERTO MASIERO/ Date: 07/17/2006

Signatory's Name: ROBERTO MASIERO

Signatory's Position: PRESIDENT

Mailing Address:

KUPASS CORP.

SUITE 1100

1111 BRICKELL AVE

MIAMI, Florida 33131

RAM Sale Number: 1879

RAM Accounting Date: 07/17/2006

Serial Number: 78930826

Internet Transmission Date: Mon Jul 17 13:34:06 EDT 2006

TEAS Stamp: USPTO/FTK-69.153.62.211-2006071713340620

1740-78930826-33235c4eaa26da8f3124acd915

49bb8836-CC-1879-20060717130758804489

KUPASS

EXHIBIT D

HellerEhrman_{LLP}

May 10, 2007

Via Federal Express

Beth M. Goldman
Beth.Goldman@hellerehrman.com
Direct +1.415.772.6881
Main +1.415.772.6000
Fax +1.415.772.6268

05947-0901

Kupass Corporation
1111 Brickell Avenue, Suite 1100
Miami, FL 33131-3122
ATTN: Legal

Re: Application for KUPASS Trademark

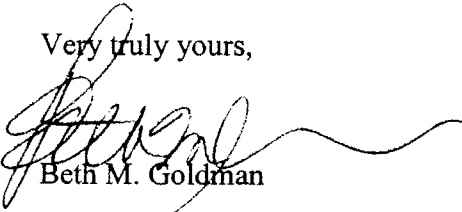
Dear Sir or Madam:

We represent Qpass, Inc. ("Qpass") in connection with trademark matters. Qpass owns the mark QPASS in connection with a wide variety of software and computer-related goods and services including software and application service provider ("ASP") services as well as several federal and international registrations for QPASS including, without limitation, U.S. Registration Nos. 2,325,386 and 2,359,412, which are incontestable. Qpass has continuously offered software and computer-related services under the QPASS mark since at least as early as 1998 in the United States and abroad and has expended significant time and money to build consumer recognition and goodwill in its QPASS mark.

We recently learned that Kupass Corporation ("Kupass") has filed an intent-to-use trademark application at the U.S. Patent and Trademark Office ("PTO") for KUPASS for use in connection with "Application service provider (ASP), namely, hosting computer software applications of others." Because the marks are highly similar in sight, sound and commercial impression and both are for use in connection with software or computer services including, specifically, ASP services, consumers are highly likely to be confused as to the source of goods and services.

Accordingly, we are writing to request that Kupass immediately withdraw Application Serial No. 78/930,826 and cease all use of the KUPASS mark in connection with software and ASP-related goods and services. Please confirm by May 24, 2007, that Kupass will comply, and we will prepare an agreement.

Very truly yours,



Beth M. Goldman

cc: Amit Keinan, Esq.

SF 1373202 v3
5/10/07 3:19 PM (05947.0901)

Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104-2878 www.hellerehrman.com

Anchorage Beijing Hong Kong Los Angeles Madison, WI New York San Diego **San Francisco** Seattle
Silicon Valley Singapore Washington, D.C.

EXHIBIT E

ESTTA Tracking number: **ESTTA149564**

Filing date: **07/05/2007**

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	Qpass, Inc.
Granted to Date of previous extension	07/04/2007
Address	2211 Elliott Avenue, Suite 400 Seattle, WA 98121 UNITED STATES

Attorney information	Beth M. Goldman Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104 UNITED STATES sf-trademark@hellerehrman.com, shannon.scott@hellerehrman.com Phone:415-772-6000
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Applicant Information

Application No	78930826	Publication date	03/06/2007
Opposition Filing Date	07/05/2007	Opposition Period Ends	07/04/2007
Applicant	KUPASS CORP. 1111 BRICKELL AVE SUITE 1100 MIAMI, FL 33131 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. All goods and services in the class are opposed, namely: Application service provider (ASP), namely, hosting computer software applications of others

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2325386	Application Date	05/22/1998
Registration Date	03/07/2000	Foreign Priority Date	NONE
Word Mark	QPASS		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Computer software for user identification, membership services, payment services, authoring tools, namely, facilitating the merchandising of goods and services online; status reporting, namely, reporting status of online sales transactions</p> <p>Class 035. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Facilitating the merchandising of goods and services of others online via global computer networks through the completion of online retail transactions; status reporting, namely, reporting the status of online sales transactions; providing a web site via a global transaction network for the merchandising of goods and services of others; and providing promotional services to merchants who participate in a global transaction network</p> <p>Class 036. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Electronic payment, namely, electronic processing and transmission of bill payment data</p> <p>Class 042. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Computer services in the nature of user identification, membership services, authoring tools, namely facilitating the merchandising of goods and services online; status reporting, namely reporting the status of online sales transactions; and providing access to a global transaction network for the exchange and dissemination of a wide range of goods and services; and providing promotional services to merchants who participate in a global transaction network</p>

U.S. Registration No.	2359412	Application Date	10/05/1998
Registration Date	06/20/2000	Foreign Priority Date	NONE
Word Mark	QPASS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Computer software for user identification, membership identification, payment services, authoring tools, namely, facilitating the merchandising of goods and services online, and status reporting, namely, reporting status of online sales transactions</p> <p>Class 035. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 facilitating the merchandising of goods and services of others online via global computer networks through the completion of online retail transactions; status reporting, namely, reporting the status of online sales transactions; providing a web site via a global transaction network for the merchandising of goods and services of others; and providing promotional services to merchants who participate in a global transaction network</p> <p>Class 036. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Electronic payment, namely, electronic processing and transmission of bill payment data</p> <p>Class 042. First use: First Use: 1998/09/15 First Use In Commerce: 1998/09/15 Computer services for others in the nature of user identification and membership identification</p>		

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Signature	/Shannon Scott/
Name	Shannon Scott
Date	07/05/2007

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

In the Matter of Application Serial No. 78/930,826
Published in the *Official Gazette* on March 6, 2007
Trademark: KUPASS

Qpass, Inc.,
Opposer
v.
Kupass Corporation,
Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

NOTICE OF OPPOSITION

Qpass, Inc. (“Qpass” or “Opposer”), a Washington corporation having a principal place of business at 2211 Elliott Avenue, Suite 400, Seattle, Washington 98121, believes it will be damaged by registration of the mark KUPASS shown in Application Serial No. 78/930,826 in International Class 42 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer has obtained all necessary extensions of time in which to oppose the challenged trademark following its publication on March 6, 2007, in the *Official Gazette*.
2. Kupass Corporation (“Applicant”) filed an application on July 17, 2006, to register the mark KUPASS for “Application service provider (ASP), namely, hosting computer software applications of others” in International Class 42, as evidenced by the publication of such application in the *Official Gazette* on March 6, 2007.

3. Upon information and belief, Applicant is a Delaware corporation having a place of business at 1111 Brickell Avenue, Suite 1100, Miami, Florida 33131.

4. Opposer has used the mark QPASS in connection with a wide variety of computer-related goods and services including, without limitation, application service provider (ASP) services since at least as early as September 15, 1998. Such use has been valid and continuous, and such mark has not been abandoned.

5. Opposer is the owner of an incontestable registration for QPASS (United States Registration No. 2,325,386 for QPASS, registered March 7, 2000) and an incontestable registration for QPASS and Design (United States Registration No. 2,359,412, registered June 20, 2000).

6. There is no issue as to priority. Upon information and belief, Applicant has not used the mark KUPASS on the services listed in its application prior to July 17, 2006, as evidenced by Applicant's filing of its subject application on an intent-to-use basis on that date. The dates of registration of the QPASS mark are thus well before use by Applicant of the KUPASS mark, if any, and Opposer's QPASS mark therefore has priority over Applicant's KUPASS application.

7. Opposer has sold its goods and services under the mark QPASS throughout the United States and has developed exceedingly valuable goodwill with respect to the mark QPASS.

8. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods and

services, Opposer has gained for its mark QPASS a most valuable reputation and has created, in the minds of the buying public, an exclusive association between the QPASS mark and Opposer's goods and services.

9. The trademark proposed for registration by Applicant, namely, KUPASS, is likely to be confused with Opposer's mark, QPASS, because the marks are similar in appearance, sound, and overall commercial impression.

10. Applicant seeks to register KUPASS as a mark in connection with services that are identical or related to the goods and services of Opposer, and such use so nearly resembles Opposer's use as to be likely to cause confusion, to cause mistake, or to deceive within the meaning of 15 U.S.C. Section 1052(d).

11. If Applicant is permitted to use and to register the KUPASS mark for its services as specified in the opposed application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark is similar to Opposer's mark. Persons familiar with Opposer's QPASS mark would be likely to buy Applicant's services as services offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's services marketed under its KUPASS mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods and services offered under its QPASS mark.

12. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,

HELLER EHRMAN LLP

Dated: July 5, 2007

By: /Beth M. Goldman/
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Shannon Scott

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Please refer to Our File No.: 05947-0901