

From: Carlson, Kristin

Sent: 1/20/2015 7:59:30 PM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 79137054 - MIXRADIO - 41827 - Request for  
Reconsideration Denied - Return to TTAB - Message 1 of 3

\*\*\*\*\*

Attachment Information:

Count: 15

Files: Microsoft.jpg, microsoft-1.jpg, microsoft-2.jpg, microsoft-3.jpg, microsoft-4.jpg, microsoft-5.jpg,  
microsoft-6.jpg, microsoft2-1.jpg, microsoft2-2.jpg, microsoft2-3.jpg, microsoft2-4.jpg, A1MixRadio-  
1.jpg, A1MixRadio-2.jpg, ClubMixRad.jpg, 79137054.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 79137054

**MARK:** MIXRADIO



**CORRESPONDENT ADDRESS:**

GRACE HAN STANTON

PERKINS COIE LLP

1201 THIRD AVE SUITE 4900

SEATTLE, WA 98101

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Microsoft Mobile OY

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

41827

**CORRESPONDENT E-MAIL ADDRESS:**

pctrademarks@perkinscoie.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 1/20/2015

**INTERNATIONAL REGISTRATION NO. 1177894**

Applicant's request for reconsideration has been carefully reviewed and is denied for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement made

final in the Office action dated June 30, 2014 is maintained and continues to be final: a disclaimer of the wording MIX RADIO is required. See TMEP §§715.03(a)(ii)(B), 715.04(a).

Specifically, applicant has been required to disclaim the descriptive wording MIX RADIO apart from the mark as shown because it merely describes a feature, function, quality, characteristic, purpose, or use of applicant's goods and/or services. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005).

Although the wording MIXRADIO is intentionally misspelled in the applied-for mark, this wording must appear in its correct spelling in the disclaimer, i.e., with a space between the two words as: MIX RADIO. See *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009); TMEP §1213.08(c).

Applicant's request for reconsideration does not raise a new issue or provide any compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive.

The attached excerpts from applicant's website indicate that the wording MIX RADIO merely describes a feature, function, quality, characteristic, purpose, or use of applicant's goods and services related to the provision of music mixes. See <http://www.microsoft.com/en-us/mobile/apps/app/mixradio/>; <http://www.microsoft.com/en-us/mobile/support/product/mixradio/>; and <http://www.windowsphone.com/en-us/store/app/mixradio/f5874252-1f04-4c3f-a335-4fa3b7b85329>, attached hereto.

Applicant alleges the evidence of third-parties using the wording MIX RADIO provided in the previous Office action does not show descriptive usage of the wording. However, the evidence shows the wording MIX RADIO describes the provision of music mixes. See, e.g., "A-1 Mix Radio plays the best mix of music from the 70's, 80's, 90's, 2k and today!" available at <http://www.a-1mix.com/about.html>, and attached hereto.

Additional third-party websites are attached from the following sources showing that MIX RADIO is commonly used to describe the broadcasting of music mixes:

- <http://www.clubmixradio.net/>
- <http://tunein.com/radio/Kool-Mix-Radio-s67026/>
- <http://www.brooklynmix.com/>
- <http://www.wpkn.org/shows/wilfredo-soto-2/>
- <http://www.live365.com/stations/konpamaniax>
- <http://www.excelmixradio.ca/>
- [http://lovemixradio.rad.io/#broadcast\\_info.jsf](http://lovemixradio.rad.io/#broadcast_info.jsf)
- <http://absolutemixradio.com/player/>

Attached are also U.S. news articles showing use of the wording MIX RADIO to refer to goods and/or services related to the broadcasting or provision of music mixes.

The evidence of record establishes that no unique, incongruous, or nondescriptive meaning is created in relation to the identified goods and services through the combination of the merely descriptive terms MIX and RADIO. The combined wording MIX RADIO merely describes applicant's software and retail services for downloading and accessing music, music transmission and streaming services, and music subscription services related to the provision of music mixes.

Accordingly, the request for reconsideration is denied.

As applicant has filed a notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/Kristin Carlson/

Trademark Examiner: LO 105

800-786-9199 (trademark helpline)

571-272-2240 (direct dial)

[kristin.carlson@uspto.gov](mailto:kristin.carlson@uspto.gov)

http://www.windowsphone.com/en-us/store/app/mixradio/15874252-1f04-4c3f-a335-4fa3b7b8532

File Edit View Favorites Tools Help

Windows Phone

Search apps and how-to

Phones Features Apps+Games How-to

Overview Spotlight Apps Games Purchase history

music + video

# MixRadio



MixRadio is a streaming music service. It brings you free, personalized music with no advertising. Start listening with Play Me, an ever-changing mix based on the music you love. Use Thumbs Up and Thumbs Down to make the mix better each time you play. It's like having your own personal radio station. Also includes hundreds of handcrafted mixes, create a mix, gigs, artist notifications, mp3 store and player, and of course the ability to save your favorite mixes for offline playback so you can listen even without an internet connection.

[show details](#)

★★★★★  
7098 reviews

Sign in to see if this app is available for your phone.

Like 3.1k

Tweet 105



7:30:48 PM 1/20/2015



## Mobile Devices

[Phones and Tablets](#) [Accessories](#) **[Apps](#)** [Experiences](#) [Support](#)

# MixRadio



[Downloads](#)

[Features](#)

## MixRadio for laptop and tablet

Your own personal radio station. Created just for you. Available for your Windows 8.1 laptop and tablet.

for your Windows 8, laptop and tablet.

➔ [Get it on your tablet or laptop](#)

## Get MixRadio for your Lumia

Find MixRadio preinstalled on your Lumia, or scan the QR code to download – just hit the search button, select the eye icon at the bottom of the screen and hold up your phone to capture the code.

➔ [Get the app](#)



# Stream music for free with MixRadio

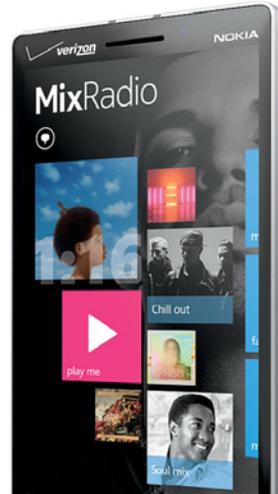
Imagine a radio station that seems to always know the music you want to hear. Enter MixRadio: a music app that personalizes mixes to suit your tastes. The more you listen, the more personal your listening experience becomes. All this for free, without the hassle of signing up or the

interruption of ads.

➔ [Stream free music now](#)

## Just press play

Play Me is where you'll find a fresh new mix of music, customized to your own music taste. Just tell us a few of your favorite artists, we'll do the rest. Personalize your Play Me mix even more by tapping the thumbs up and thumbs down icons. Not available on Asha smartphones.



## Music anywhere,



## anytime

Have a long commute or road trip? Avoid data costs while on the go by downloading your mixes onto your Lumia for offline play – no data connection required. Store up to four mixes at any time to access hundreds of tunes with the tap of a finger.

## Looking for inspiration? Try a ready-made mix

MixRadio is filled with mixes put together by our team of global music experts – as well as by some of the world's most popular stars like Rihanna, Lady Gaga and Above & Beyond. Whether you're looking for a new soundtrack for your workout or

Looking for a new soundtrack for your workout or for the perfect party playlist, our mixes have you covered.

## Share the love

When you've discovered some mixes you love, let those closest to you know by sharing them on Facebook, Twitter and more. Your friends will be able to listen to your favorite mixes.

Get more with  
MixRadio+

# MIXRADIO

Enjoying the free version of MixRadio? Then give MixRadio+ a spin. For just a small monthly fee, you get premium benefits like unlimited track-skipping, unlimited offline mixes, high-quality audio over Wi-Fi and more.

## Product sites

-  [Windows](#)
-  [Office](#)
-  [Surface](#)
-  [Windows Phone](#)
-  [Mobile devices](#)
-  [Xbox](#)
-  [Skype](#)
-  [MSN](#)
-  [Bing](#)
-  [Microsoft Store](#)

 [United States - English](#)

## Mobile devices

- [All devices](#)
- Accessories**
- [All accessories](#)
- [Speakers](#)
- [Headsets](#)
- [Car and navigation](#)
- [Cases and covers](#)
- [Power and data](#)

## Apps

- [Apps for Lumia](#)
- Support**
- [Overview](#)

## Popular resources

- [People & Planet](#)
- [Press](#)
- [Contact](#)
- [Microsoft Mobile Trademarks](#)
- [Microsoft Mobile Privacy Policy](#)
- [Microsoft Mobile Cookie Policy](#)
- [Accessibility \(Global site\)](#)

Microsoft



## Mobile Devices

Phones and Tablets Accessories Apps Experiences **Support**



## MixRadio - Support

Get more info



How can we help you?

Please enter your search terms here



The services, features, and content may not be available in all countries and may be provided only in selected languages. The service, operations, and some features may also be dependent on the network, the compatibility of the devices used, and the content formats supported.

- [Listen to MixRadio – unlimited FREE music mixes to play now or download for later.](#)
- Get personalized mixes based on your music collection.
- Listen to your music collection.

◦ Enhance your experience and upgrade to MixRadio+.

---

## FAQs

[How do I give feedback, report a bug or suggest a new feature for MixRadio?](#)

[Why is my favourites list empty in MixRadio?](#)

[How can I check what software version of the MixRadio application I have on my Lumia?](#)

[What is MixRadio+?](#)

[Why are some artists not available for create a mix?](#)

[☺ Show more](#)

---

## Useful links

[Interacted in](#)

[More apps in](#)

[Lumia for](#)

## Interested in new phones?

View all our newest devices.

## More apps in the Store

Browse more Lumia apps in the Windows Phone Store.

## Lumia for business

Business Mobility Center provides in-depth technical info for IT and mobility support organizations.

---

### This app is compatible with:

Lumia 830, Lumia 635, Lumia 1520, Lumia 530, Lumia 1320, Lumia 630, Lumia Icon, Lumia 1020, Lumia 925, Lumia 928, Lumia 521, Lumia 520, Lumia 822, Lumia 810, Lumia 920, Lumia 820

---

## Get in touch

### Support Discussions

[Re: Problem downloading music from Nokia Music Mix](#)  
Last updated on 17/01/2015 01:53:46

[How i can recharge or purchase voucher code nokia mix radio subscription?? please suggest me](#)  
Last updated on 14/01/2015 23:14:59

[Re: Nokia Music Voucher - Lumia 520](#)

### Recent tweets

Create megacities and play online with your friends using your #Lumia with Minecraft Pocket Edition:  
<http://t.co/vvFslL5...>

 1/20/2015 7:59:56 PM  
Lumia Help @LumiaHelp

Last updated on 11/01/2015 06:05:01

Re: Can't download songs from Nokia Music  
Last updated on 09/01/2015 05:24:03

[Find latest updates on Twitter](#)

[View more on community pages](#)

Product sites

-  Windows
-  Office
-  Surface
-  Windows Phone
-  Mobile devices
-  Xbox
-  Skype
-  MSN
-  Bing
-  Microsoft Store

 United States - English

Mobile devices

- All devices
- Accessories
- All accessories
- Speakers
- Headsets
- Car and navigation
- Cases and covers
- Power and data

Apps

- Apps for Lumia
- Support
- Overview

Popular resources

- People & Planet
- Press
- Contact
- Microsoft Mobile Trademarks
- Microsoft Mobile Privacy Policy
- Microsoft Mobile Cookie Policy
- Accessibility (Global site)

Microsoft

Vermont's First, Legal, Internet Only Station!



= MORE VARIETY!  
MORE MUSIC EVERY HOUR!  
HITS YOU KNOW & LOVE!

**A-1 Mix Radio plays the best mix of music from the 70's, 80's, 90's, 2k and today!** We've got you covered, not only through your work week, but the weekends as well. Our play list consist of all the artist you know and love, like: Daughtry, Maroon 5, One Direction, Steve Miller Band, Huey Lewis & The News and many, many more! Our format is considered to be a hybrid of Hot AC, Adult Contemporary and Rock. No matter what what you call it, we make your work day better with upbeat hits you actually remember.

A-1 Mix Radio is independently owned and operated by Todd M., and me, Thomas E. We fullv manace and operate this station without anv cooperate

Thomas C. we fully manage and operate this station without any cooperate influence. Running A-1 Mix Radio this way, gives us complete control of our station and allows us to play what you really want to hear, great music!

Thank you for listening !

**FIRST TIME STUDENT OFFER**  
mindthemat.com  
\$39 New Client Package  
Available Now - Call or Stop  
By Today!

 **MONTHLY PACKAGES FROM \$22.50**      
Get \$15 OFF Your First Month - Use Code BW-15 [www.STREAMLICENSING.COM](http://www.STREAMLICENSING.COM)

© 2014 A-1 Mix Radio



CLUB MIX RADIO SHOWS SCHEDULE MUSIC DOWNLOAD LISTED



Vonyc Sessions 388

**CLUB MIX RADIO** CLUB MIX RADIO is a free electronic dance music internet radio 24/7 live. Broadcasting from northern California, USA with the newest and best of Trance, Progressive, Electro, Techno, Tech-House, Dubstep, Deep & Minimal, House and Electronic Dance.

**Now Playing:**  
Connection timed out or the server is offline

Please vote clicking the heart

Please update your Embed code

Club Mix Radio IV

© 2009-2014 Club Mix Radio. All Rights Reserved

**Shows**  
Enjoy the weekly radio shows of the best DJs around of the world.  
[Read more...](#)

**Schedule**  
Find out more about our broadcasting and non-stop programming music.  
[See schedule...](#)

**Music**  
We're playing the best mixes of electronic dance music, featuring all names.  
[Check our play list...](#)

**Download**  
Enjoy the exclusive mixes of "Arthurus - Club Mix Series".  
[Download here...](#)

**Listen Now**  
People all over the world are listening CLUB MIX RADIO.  
[Listen now here...](#)

**Contact Us**  
Contact and find us on social networking websites.  
[Find us on...](#)