

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86892471
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86892471/large
LITERAL ELEMENT	MATTYBRAPS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
OWNER SECTION (current)	
NAME	MATTYB, LLC
DBA/AKA/TA/Formerly	DBA MattyBRaps.Com
STREET	4865 Kettle River Pt.
CITY	Suwanee
STATE	Georgia
ZIP/POSTAL CODE	30024
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	MATTYB, LLC
INTERNAL ADDRESS	Suite 100
STREET	12600 Deerfield Parkway
CITY	Alpharetta
STATE	Georgia
ZIP/POSTAL CODE	30004
COUNTRY	United States
ARGUMENT(S)	
<p>The following remarks are provided in response to the final Office action dated July 18, 2016.</p> <p>a. <u>Refusal for Likelihood of Confusion</u></p> <p>The instant application seeks to register the MATTYBRAPS mark in class 038 in connection with:</p> <p style="padding-left: 40px;">Streaming of audio, video and audiovisual material on the Internet.</p>	

The registration cited against this application is MATT B, Reg. No. 4,866,452, which is registered in class 041 (hereinafter referred to as the "Prior Registration") for use in connection with:

Composition of music for others, entertainment services by a musical artist and producer, namely composition for others and production of musical sound recordings, entertainment services in the nature of live audio performances by a musical artist; entertainment services in the nature of live musical performances; entertainment services in the nature of live visual and audio performances by a musical artist; entertainment services in the nature of live vocal performances by a musical artist; entertainment services in the nature of presenting live musical performances; entertainment services in the nature of recording, production and post-production services in the field of music; entertainment services in the nature of live and recorded musical performances; entertainment services, namely, nondownloadable ringtones, pre-recorded music, and graphics presented to mobile communications devices via a global computer network and wireless networks; entertainment services, namely, providing non-downloadable playback of music via global communications networks; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; entertainment, namely, live performances by musical bands; live performances by a musical group; multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; music composition and transcription for others; music composition for others; music composition services; music production services; music video production; production of musical sound recording; production of musical videos; production of sound and music video recordings; providing on-line music, not downloadable. (Emphases added.)

RESPONSE TO REFUSAL

The question in a likelihood of confusion analysis is whether the reasonably prudent purchaser is likely to be confused as to the source of the goods. McCarthy, T., *Trademarks & Unfair Competition*, §24:2. The existence of a likelihood of confusion between two marks under § 2(d) is determined on a case-by-case basis, according to the application of the factors elucidated in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 177 USPQ 563 (C.C.P.A. 1973); see also *On-Line Careline, Inc. America Online, Inc.*, 229 F.3d 1080, 1084 and TMEP 1207.01. If the purchasing public would not mistakenly assume that the Applicant's goods, or in this case services, originate with or are sponsored by or in some way associated with the services provided under a cited registration, then registration should not properly be refused. *FBI v. Societe*, 172 USPQ 310; see also *Hilson Research Inc. v. SHRM*, 27 USPQ2d 1423, 1998 WL 290669 (TTAB 1993). Not all of the *DuPont* factors are relevant or of similar weight in every case, however, and any one factor may control a particular case. *In Re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In assessing likelihood of confusion, the marks must be compared in their entireties, and they must be considered in connection with the particular goods for which they are used. TMEP 1207.01(b), citing *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

The Office action states that the factors most relevant in the analysis of Applicant's mark in relation to the cited mark are (1) similarity of the marks, (2) similarity and nature of the goods and services, and (3) similarity of the trade channels of the goods and services. Applicant respectfully traverses, for the reasons stated below.

There Is No Likelihood Of Confusion Between Applicant's Mark and the Cited Registration

1. In response to the *DuPont* analysis set forth in the Office action, Applicant states the following:

The cited Prior Registration is MATT B, i.e. the name Matt separated from the letter B by a space. Applicant's mark is MATTYBRAPS, a single word of fanciful derivation which includes MATTY, a nickname for the individual MATTHEW MORRIS, the letter B and the word RAPS. The marks are not physically or phonetically identical. The examiner has opined that the word RAPS is less dominant because it describes the type of music applicant provides. Applicant responds that the word RAPS is a substantive component of the mark which contributes to its fanciful nature and further distinguishes it from the MATT B mark. The mark taken as a whole including the RAPS component conveys the childlike and whimsical nature of the streaming services offered under the mark. It is not merely descriptive.

Applicant's mark MATTYBRAPS has also acquired distinctiveness, having been used in connection with streaming entertainment services continuously since 2010. **Exhibit E.**

MATT B and MATTYBRAPS are sufficiently distinct as to create distinct commercial impressions, given the different scope of consumers for the particular goods offered by Applicant or the services offered by the owner of the MATT B mark. Evidence of this difference is presented at **Exhibit A.**

Further, with respect to other differences, evidence available from a basic search of the Internet shows the following:

- A. The MATT B mark is used in connection with entertainment services provided by Matthew Benson, the registrant of that mark, who is an adult and who provides entertainment services in the rhythm and blues (R&B) genre of music to an adult audience. In contrast MATTYBRAPS is used in connection with streaming of audio, visual and audiovisual materials to juvenile audiences.
- B. Matt B, the performer who personifies the mark in its application to entertainment services, is African American.

MATTYBRAPS is used in connection with the Internet audiovisual services of the entertainer popularly known as MATTYB, who is Caucasian American.

- C. There is a vast difference between the services provided under the MATT B and MATTYBRAPS marks. The difference is reflected in the songs performed under the respective marks. For example, a recently released MATT B song streamed on the Internet entitled Baby I. A short excerpt of that song is presented below solely for the purpose of familiarizing the examiner with the lyrics therein:

... all those curves and shit

... just let me get it

Like the way you swing [sp] them hips

I gotta have it

She love to lick her lips when I smack it

...But I ain't got no time for all that bullshit

...I'm just tryin' to take you to the crib

Put you on my bed and strip you naked...

Source: Baby I, by Matt B and \$kilz, YouTube video at <http://www.youtube.com/watch?v=gnczNsJIF8Y>, published 06/19/2016, webpage image attached as **Exhibit B**.

In contrast, the MATTYBRAPS brand offers and provides its services to juveniles that are of a family friendly nature, and which deliberately avoid the more ribald and sexually explicit nature of adult contemporary entertainment. An example of MattyBRaps' lyrics is,

Dear Matt, I know we've never really met each other

But you've helped me out so much I felt I had to write this letter

You might not know it when you're making your beats

But every lyric and syllable's like you're speaking to me

Cause where I'm from they don't encourage a kid with a dream

And every time I have an idea that I believe in

It gets stomped or squashed and then I feel lost

Like it wanna go dig a hole feeling so low

Don't get me wrong, I believe but get real Matt

Sometimes it's difficult to achieve when people don't believe back

I'm not complaining but it's hard to go after my goals....

Source: Turned Out The Lights, by MattyB featuring Maddi Jane, <http://www.azlyrics.com/lyrics/mattyb/turnedoutthelights.html>; copy attached as **Exhibit D**.

The differences between these lyrics reflect the difference in musical genres, audiences and the typical consumer markets for the services offered under the mark of this application and the mark of the cited registration, and show that there is no likelihood of confusion as to the source of the services.

The differences set forth above, when taken together, contribute to a different and dissimilar commercial impression from the use of the respective marks.

2. In addition, there is a significant distinction between the type of goods to be identified with Applicant's mark and the services listed in connection with the cited registration. The services sought to be protected by the registration are primarily related to music composition, music video production, live performances by various entities and providing non-downloadable music and non-downloadable ringtones in Class 041. In contrast, Applicant seeks registration of the mark for use in connection streaming of digital music, visual media and audiovisual materials. Live entertainment and production and composition services are not within the scope of Class 038.

3. There is a difference in the trade channels for the services provided under the applied for mark and the cited registration. The trade channels are not identical or similar, as evidenced by their separate classification, i.e. class 038 as opposed to class 041. Additionally, as discussed above, Applicant's mark is used in connection with downloadable music of a G-rated, family-friendly nature that is targeted to a market of pre-adolescent children and teenagers. See **Exhibit A**. In contrast, the Prior Registration reads, on its face, as being used in connection with live nor on-downloadable performances. The content is directed to adult contemporary music that appears to be targeted to an adult or more mature audience. **Exhibit A**.

4. Based on the arguments above with respect to the *DuPont* factors cited in the Office action, Applicant believes and submits that the refusal may and should be withdrawn. In a further examination of the *DuPont* factors in relation to the comparison between the applied-for mark and the Prior Registration:

Applicability of Other DuPont Factors to the Comparison of the Marks

The Prior Registration is Not Famous

1. Unlike Applicant's mark, the Prior Registration is not famous within the meaning of the Lanham Act. The prior registrant submitted no evidence that its mark is viewed by relevant purchasers in the United States (or elsewhere) as a famous mark, as required by TMEP 120.01. In contrast, Applicant's mark is famous, as shown for example by Applicant's social media subscriptions which utilize the mark. As of the date of this filing, Applicant's subscriptions include 8,482,713 Facebook page followers; approximately 766,000 Twitter followers; and approximately 822,000 InstaGram followers. **Exhibit B**. Applicant's mark is also used on a variety of goods including downloadable music, as presently claimed, apparel, entertainment services, a YouTube channel and music sales outlets including Amazon and iTunes (see specimens of record). Applicant has filed multiple applications to secure this family of marks. The prior registrant owns no registrations that would similarly apply to a broad scope of goods and services, nor does the mark as registered in class 041 appear to be in use on downloadable music or other goods and services.

Applicant's Mark Is Used In Connection With A Different Category of Services

2. Applicant's mark is used in connection with a different category of services and should therefore be registrable. The Prior Registration cannot properly apply to streaming of audio, visual and audiovisual materials on the Internet because the registration issued in class 041 does not extend to such products. Therefore there can *per se* be no similar use of the MATT B mark on similar goods.

It is not logical or reasonable that the United States Patent and Trademark Office (USPTO) should establish different categories of goods and/or services, to each of which a fee for application, search and evaluation apply, and then refuse registration on the grounds that applications in different categories represent similar goods and services so as to be undistinguishable. Applicant notes that the USPTO has taken no action to consolidate these categories to avoid such results. Applicant reserves the right to seek further administrative remedy on this basis.

Applicant Owns A Prior Registration of the Mark

Further, a party cannot be harmed by the issuance to, or existence of a registration of, a second party if the second party already owns a registration for essentially the same mark for essentially the same goods or services. *Morehouse Mfg. Corp. v. J. Strickland Co.*, 160 USPQ 715, 717 (CCPA 1969). Applicant is the owner of an earlier registration, Reg. No. 3980646, which was issued on June 21, 2011, for use of MATTYBRAPS according to class 041.

The USPTO has taken the position that "the services of the parties [in class 038 and 041] are closely related," and that these "...services need not be identical or even competitive to find a likelihood of confusion," and has further concluded that such a likelihood of confusion exists. Assuming, *arguendo*, that this position is well founded, then the USPTO cannot therefore also at the same time refuse registration in the case where Applicant has a prior registration of the claimed mark, MATTYBRAPS, in class 041, which has now become incontestable. *Morehouse Mfg. Corp. v. J. Strickland Co.*, 160 USPQ 715, 717 (CCPA 1969). If the USPTO maintains that class 038 includes essentially the same services as class 041 with respect to the marks at issue, then applying *Morehouse* the USPTO cannot at the same time bar Applicant's mark in this application from registration because Applicant is already the owner of an registration for the same mark registered in connection with essentially the same services. *Id.*

3. Considering another *DuPont* factor, Applicant notes it has encountered no instances of actual confusion between the marks.

4. If the date of first use in commerce cited by the registrant of the MATT B mark is accurate, then there appears to have been almost five years of concurrent use of the marks without any evidence of actual confusion.

5. The Prior Registration is in Class 041, relating to entertainment services. Applicant is unaware of any use of the mark in

connection with goods or services outside of class 041. In contrast, Applicant's MATTY B mark is in used in connection with a variety of goods and services, as stated above.

6. Applicant has a right to exclude others from using the MATTY B mark, because the mark is based on the name of a living individual.

7. Based on the difference between Applicant's goods and the prior registrant's services, the difference in markets for goods or services under the respective registrations and the long history of concurrent use without actual confusion, any potential confusion is de minimis.

The Examining Attorney has provided samples of document to show that there are commonly owned registrations in which services in Class 038 and Class 041 "often emanate from a single source." It is not clear how these examples are relevant to Applicant's situation in which the application is directed to one category of services and the cited registration is directed to another, and the two are not commonly owned.

Conclusion

Therefore, in a full analysis of the factors affecting likelihood of confusion, Applicant submits that there is no likelihood of confusion between the applied-for mark and the Prior Registration with respect to Class 009. Therefore, the refusal of Applicant's mark for registration in connection with the identified goods and services based on likelihood of confusion can and should properly be withdrawn.

This submission is believed to be fully responsive to the grounds for refusal and remarks made of record in the Office action, and have prepared the application for approval for publication or appeal.

Should the examining attorney believe that any issues remain for resolution, she is invited to contact Applicant's representative.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_9915967166-20160922021409381669_.. Exhibits_RFOA.pdf
CONVERTED PDF FILE(S) (26 pages)	\\TICRS\EXPORT17\IMAGEOUT17\868\924\86892471\xml2\RFR0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\868\924\86892471\xml2\RFR0003.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\868\924\86892471\xml2\RFR0004.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\868\924\86892471\xml2\RFR0005.JPG
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DESCRIPTION OF EVIDENCE FILE	Exhibit A - evidence regarding commercial impression and trade channels Exhibit B - web page and video source information referencing the cited registration Exhibit C - applicant's song lyrics Exhibit D - evidence re the famous nature of applicant's mark Exhibit E - evidence of acquired distinctiveness based on prior registration of applicant's mark
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	DEANNA L. BAXAM BAXAM LAW GROUP, LLC 2180 SATELLITE BOULEVARDSUITE 400-410 DULUTH Georgia US 30097
NEW CORRESPONDENCE SECTION	
NAME	DEANNA L. BAXAM
FIRM NAME	BAXAM LAW GROUP, LLC
DOCKET/REFERENCE NUMBER	0010.0111.36
INTERNAL ADDRESS	Suite 400-410
STREET	2180 SATELLITE BOULEVARD
CITY	DULUTH
STATE	Georgia
ZIP/POSTAL CODE	30097
COUNTRY	United States
PHONE	(678) 462-0041
EMAIL	dbaxam@baxamlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Deanna Baxam/
SIGNATORY'S NAME	Deanna L. Baxam
SIGNATORY'S POSITION	Attorney of Record, Georgia Bar Member
SIGNATORY'S PHONE NUMBER	(678) 896-1986
DATE SIGNED	09/22/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

FILING INFORMATION SECTION

SUBMIT DATE

Thu Sep 22 02:27:57 EDT 2016

TEAS STAMP

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action**To the Commissioner for Trademarks:**

Application serial no. **86892471** MATTYBRAPS(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86892471/large>) has been amended as follows:

ARGUMENT(S)**In response to the substantive refusal(s), please note the following:**

The following remarks are provided in response to the final Office action dated July 18, 2016.

Refusal for Likelihood of Confusion

The instant application seeks to register the MATTYBRAPS mark in class 038 in connection with:

Streaming of audio, video and audiovisual material on the Internet.

The registration cited against this application is MATT B, Reg. No. 4,866,452, which is registered in class 041 (hereinafter referred to as the "Prior Registration") for use in connection with:

Composition of music for others, entertainment services by a musical artist and producer, namely composition for others and production of musical sound recordings, entertainment services in the nature of live audio performances by a musical artist; entertainment services in the nature of live musical performances; entertainment services in the nature of live visual and audio performances by a musical artist; entertainment services in the nature of live vocal performances by a musical artist; entertainment services in the nature of presenting live musical performances; entertainment services in the nature of recording, production and post-production services in the field of music; entertainment services in the nature of live and recorded musical performances; entertainment services, namely, nondownloadable ringtones, pre-recorded music, and graphics presented to mobile communications devices via a global computer network and wireless networks; entertainment services, namely, providing non-downloadable playback of music via global communications networks; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; entertainment, namely, live performances by musical bands; live performances by a musical group; multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; music composition and transcription for others; music composition for others; music composition services; music production services; music video production; production of musical sound recording; production of musical videos; production of sound and music video recordings; providing on-line music, not downloadable. (Emphases added.)

RESPONSE TO REFUSAL

The question in a likelihood of confusion analysis is whether the reasonably prudent purchaser is likely to be confused as to the source of the goods. McCarthy, T., *Trademarks & Unfair Competition*, §24:2. The existence of a likelihood of confusion between two marks under § 2(d) is determined on a case-by-case basis, according to the application of the factors elucidated in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 177 USPQ 563 (C.C.P.A. 1973); see also *On-Line Careline, Inc. America Online, Inc.*, 229 F.3d 1080, 1084 and TMEP 1207.01. If the purchasing public would not mistakenly assume that the Applicant's goods, or in this case services, originate with or are sponsored by or in some way associated with the services provided under a cited registration, then registration should not properly be refused.

FBI v. Societe, 172 USPQ 310; *see also Hilson Research Inc. v. SHRM*, 27 USPQ2d 1423, 1998 WL 290669 (TTAB 1993). Not all of the *DuPont* factors are relevant or of similar weight in every case, however, and any one factor may control a particular case. *In Re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In assessing likelihood of confusion, the marks must be compared in their entireties, and they must be considered in connection with the particular goods for which they are used. TMEP 1207.01(b), citing *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

The Office action states that the factors most relevant in the analysis of Applicant's mark in relation to the cited mark are (1) similarity of the marks, (2) similarity and nature of the goods and services, and (3) similarity of the trade channels of the goods and services. Applicant respectfully traverses, for the reasons stated below.

There Is No Likelihood Of Confusion Between Applicant's Mark and the Cited Registration

1. In response to the *DuPont* analysis set forth in the Office action, Applicant states the following:

The cited Prior Registration is MATT B, i.e. the name Matt separated from the letter B by a space. Applicant's mark is MATTYBRAPS, a single word of fanciful derivation which includes MATTY, a nickname for the individual MATTHEW MORRIS, the letter B and the word RAPS. The marks are not physically or phonetically identical. The examiner has opined that the word RAPS is less dominant because it describes the type of music applicant provides. Applicant responds that the word RAPS is a substantive component of the mark which contributes to its fanciful nature and further distinguishes it from the MATT B mark. The mark taken as a whole including the RAPS component conveys the childlike and whimsical nature of the streaming services offered under the mark. It is not merely descriptive.

Applicant's mark MATTYBRAPS has also acquired distinctiveness, having been used in connection with streaming entertainment services continuously since 2010. **Exhibit E**.

MATT B and MATTYBRAPS are sufficiently distinct as to create distinct commercial impressions, given the different scope of consumers for the particular goods offered by Applicant or the services offered by the owner of the MATT B mark. Evidence of this difference is presented at **Exhibit A**.

Further, with respect to other differences, evidence available from a basic search of the Internet shows the following:

- A. The MATT B mark is used in connection with entertainment services provided by Matthew Benson, the registrant of that mark, who is an adult and who provides entertainment services in the rhythm and blues (R&B) genre of music to an adult audience. In contrast MATTYBRAPS is used in connection with streaming of audio, visual and audiovisual materials to juvenile audiences.
- B. Matt B, the performer who personifies the mark in its application to entertainment services, is African American. MATTYBRAPS is used in connection with the Internet audiovisual services of the entertainer popularly known as MATTYB, who is Caucasian American.
- C. There is a vast difference between the services provided under the MATT B and MATTYBRAPS marks. The difference is reflected in the songs performed under the respective marks. For example, a recently released MATT B song streamed on the Internet entitled Baby I. A short excerpt of that song is presented below solely for the purpose of familiarizing the examiner with the lyrics therein:

... all those curves and shit

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But you've helped me out so much I felt I had to write this letter
You might not know it when you're making your beats
But every lyric and syllable's like you're speaking to me
Cause where I'm from they don't encourage a kid with a dream
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Don't get me wrong, I believe but get real Matt
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The differences between these lyrics reflect the difference in musical genres, audiences and the typical consumer markets for the services offered under the mark of this application and the mark of the cited registration, and show that there is no likelihood of confusion as to the source of the services.

The differences set forth above, when taken together, contribute to a different and dissimilar commercial impression from the use of the respective marks.

2. In addition, there is a significant distinction between the type of goods to be identified with Applicant's mark and the services listed in connection with the cited registration. The services sought to be protected by the registration are primarily related to music composition, music video production, live performances by various entities and providing non-downloadable music and non-downloadable ringtones in Class 041. In contrast, Applicant seeks registration of the mark for use in connection streaming of digital music, visual media and audiovisual materials. Live entertainment and production and composition services are not within the scope of Class 038.

3. There is a difference in the trade channels for the services provided under the applied for mark and the cited registration. The trade channels are not identical or similar, as evidenced by their separate classification, i.e. class 038 as opposed to class 041. Additionally, as discussed above, Applicant's mark is used in connection with downloadable music of a G-rated, family-friendly nature that is targeted to a market of pre-adolescent children and teenagers. See **Exhibit A**. In contrast, the Prior Registration reads, on its face, as being used in connection with live nor on-downloadable performances. The content is directed to adult contemporary music that appears to be targeted to an adult or more mature audience. **Exhibit A**.

4. Based on the arguments above with respect to the *DuPont* factors cited in the Office action, Applicant believes and submits that the refusal may and should be withdrawn. In a further examination of the *DuPont* factors in relation to the comparison between the applied-for mark and the Prior Registration:

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The Prior Registration is Not Famous

1. Unlike Applicant's mark, the Prior Registration is not famous within the meaning of the Lanham Act. The prior registrant submitted no evidence that its mark is viewed by relevant purchasers in the United States (or elsewhere) as a famous mark, as required by TMEP 120.01. In contrast, Applicant's mark is famous, as shown for example by Applicant's social media subscriptions which utilize the mark. As of the date of this filing, Applicant's subscriptions include 8,482,713 Facebook page followers; approximately 766,000 Twitter followers; and approximately 822,000 InstaGram followers. **Exhibit B**. Applicant's mark is also used on a variety of goods including downloadable music, as presently claimed, apparel, entertainment services, a YouTube channel and music sales outlets including

Amazon and iTunes (see specimens of record). Applicant has filed multiple applications to secure this family of marks. The prior registrant owns no registrations that would similarly apply to a broad scope of goods and services, nor does the mark as registered in class 041 appear to be in use on downloadable music or other goods and services.

Applicant's Mark Is Used In Connection With A Different Category of Services

2. Applicant's mark is used in connection with a different category of services and should therefore be registrable. The Prior Registration cannot properly apply to streaming of audio, visual and audiovisual materials on the Internet because the registration issued in class 041 does not extend to such products. Therefore there can *per se* be no similar use of the MATT B mark on similar goods.

It is not logical or reasonable that the United States Patent and Trademark Office (USPTO) should establish different categories of goods and/or services, to each of which a fee for application, search and evaluation apply, and then refuse registration on the grounds that applications in different categories represent similar goods and services so as to be undistinguishable. Applicant notes that the USPTO has taken no action to consolidate these categories to avoid such results. Applicant reserves the right to seek further administrative remedy on this basis.

Applicant Owns A Prior Registration of the Mark

Further, a party cannot be harmed by the issuance to, or existence of a registration of, a second party if the second party already owns a registration for essentially the same mark for essentially the same goods or services. *Morehouse Mfg. Corp. v. J. Strickland Co.*, 160 USPQ 715, 717 (CCPA 1969). Applicant is the owner of an earlier registration, Reg. No. 3980646, which was issued on June 21, 2011, for use of MATTYBRAPS according to class 041.

The USPTO has taken the position that "the services of the parties [in class 038 and 041] are closely related," and that these "...services need not be identical or even competitive to find a likelihood of confusion," and has further concluded that such a likelihood of confusion exists. Assuming, *arguendo*, that this position is well founded, then the USPTO cannot therefore also at the same time refuse registration in the case where Applicant has a prior registration of the claimed mark, MATTYBRAPS, in class 041, which has now become incontestable. *Morehouse Mfg. Corp. v. J. Strickland Co.*, 160 USPQ 715, 717 (CCPA 1969). If the USPTO maintains that class 038 includes essentially the same services as class 041 with respect to the marks at issue, then applying *Morehouse* the USPTO cannot at the same time bar Applicant's mark in this application from registration because Applicant is already the owner of an registration for the same mark registered in connection with essentially the same services. *Id.*

3. Considering another *DuPont* factor, Applicant notes it has encountered no instances of actual confusion between the marks.

4. If the date of first use in commerce cited by the registrant of the MATT B mark is accurate, then there appears to have been almost five years of concurrent use of the marks without any evidence of actual confusion.

5. The Prior Registration is in Class 041, relating to entertainment services. Applicant is unaware of any use of the mark in connection with goods or services outside of class 041. In contrast, Applicant's MATTY B mark is in used in connection with a variety of goods and services, as stated above.

6. Applicant has a right to exclude others from using the MATTY B mark, because the mark is based on the name of a living individual.

7. Based on the difference between Applicant's goods and the prior registrant's services, the difference in markets for goods or services under the respective registrations and the long history of concurrent use without actual confusion, any potential confusion is *de minimis*.

The Examining Attorney has provided samples of document to show that there are commonly owned registrations in which services in Class 038 and Class 041 "often emanate from a single source." It is not clear how these examples are relevant to Applicant's situation in which the application is directed to one category of services and the cited registration is directed to another, and the two are not commonly owned.

Conclusion

Therefore, in a full analysis of the factors affecting likelihood of confusion, Applicant submits that there is no likelihood of confusion between the applied-for mark and the Prior Registration with respect to Class 009. Therefore, the refusal of Applicant's mark for registration in connection with the identified goods and services based on likelihood of confusion can and should properly be withdrawn.

This submission is believed to be fully responsive to the grounds for refusal and remarks made of record in the Office action, and have prepared the application for approval for publication or appeal.

Should the examining attorney believe that any issues remain for resolution, she is invited to contact Applicant's representative.

EVIDENCE

Evidence in the nature of Exhibit A - evidence regarding commercial impression and trade channels Exhibit B - web page and video source

information referencing the cited registration Exhibit C - applicant's song lyrics Exhibit D - evidence re the famous nature of applicant's mark Exhibit E - evidence of acquired distinctiveness based on prior registration of applicant's mark has been attached.

Original PDF file:

[evi_9915967166-20160922021409381669_.Exhibits_RFOA.pdf](#)

Converted PDF file(s) (26 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

[Evidence-15](#)

[Evidence-16](#)

[Evidence-17](#)

[Evidence-18](#)

[Evidence-19](#)

[Evidence-20](#)

[Evidence-21](#)

[Evidence-22](#)

[Evidence-23](#)

[Evidence-24](#)

[Evidence-25](#)

[Evidence-26](#)

APPLICANT AND/OR ENTITY INFORMATION

Applicant proposes to amend the following:

Current: MATTYB, LLC, DBA MattyBRaps.Com, a limited liability company legally organized under the laws of Georgia, having an address of

4865 Kettle River Pt.
Suwanee, Georgia 30024
United States

Proposed: MATTYB, LLC, a limited liability company legally organized under the laws of Georgia, having an address of

Suite 100
12600 Deerfield Parkway
Alpharetta, Georgia 30004
United States

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

DEANNA L. BAXAM
BAXAM LAW GROUP, LLC
2180 SATELLITE BOULEVARDSUITE 400-410
DULUTH
Georgia
US
30097

Proposed:

DEANNA L. BAXAM of BAXAM LAW GROUP, LLC, having an address of
Suite 400-410 2180 SATELLITE BOULEVARD DULUTH, Georgia 30097

United States
dbaxam@baxamlaw.com
(678) 462-0041
The docket/reference number is 0010.0111.36 .

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Deanna Baxam/ Date: 09/22/2016

Signatory's Name: Deanna L. Baxam

Signatory's Position: Attorney of Record, Georgia Bar Member

Signatory's Phone Number: (678) 896-1986

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: DEANNA L. BAXAM
BAXAM LAW GROUP, LLC
Suite 400-410
2180 SATELLITE BOULEVARD
DULUTH, Georgia 30097

Serial Number: 86892471

Internet Transmission Date: Thu Sep 22 02:27:57 EDT 2016

TEAS Stamp: USPTO/RFR-XX.XXX.XX.XXX-2016092202275762

7419-86892471-550d2adb9664f9eabea5dc95e5

a59c277f1ea7a49d701332328d421f16f36a3aa-

N/A-N/A-20160922021409381669

Exhibit A

Evidence Re Commercial Impression and Trade Channels

Applied For Mark: MattyBRaps

MattyBRaps

Home | [About](#) | Music | Store | Vids | Gallery | Events | Contact

Last Tweets

RT @MattyBCatalonia: @MattyBRaps LOW KEY on repeat right now! Is arriving to 100 K with just two hours! PROUD!:) <https://t.co/AGu0LRi1LO> ht...

9 hours ago

RT @13mattyb_: @MattyBRaps I just saw #LowKey ! I love this fabulous Like my edit? <https://t.co/SArCUTzuSn>

9 hours ago

I still can't believe I got played by this #LowKey girl! Watch the New Music Video HERE: <https://t.co/lhh9NZOhDZ> <https://t.co/poeyQKltra>

9 hours ago

RT @iFlirtMorris: EVERYONE STOP SCROLLING DOWN and go check out @MattyBRaps new music video #LowKey! It's amazing! <https://t.co/1DqMho...>

11 hours ago

RT @Louiisymb: @MattyBRaps GOOOOOO WATCH THIS SONG EVERYONE <https://t.co/ZIKP2vGRz4>

11 hours ago

RT @ViolettaSarkis1: @MattyBRaps NEW VIDEO Look check It out MATTYBRAPS -Low Key ! I Love You ! <https://t.co/8jOZAfnRxx> http...

11 hours ago

RT @bfansforeverMB: @MattyBRaps LOVE YOUR NEW MUSIC VIDEO #LowKey GO WATCH EVERYONE LINK HERE <https://t.co/WJbmhTePYZ> <https://t.co/LA...>

11 hours ago

RT @Jojolovesgerman: Everyone must check out #LowKey from @MattyBRaps ! It is amazing Love it Watch here:<https://t.co/13e031jYf8> <https://t.co/13e031jYf8>

11 hours ago

RT @MattyBae_Bgirl: @MattyBRaps AMAZING music video! Everyone should check this out! <https://t.co/qB5LWkrPT> #LowKey <https://t.co/E4lz0o...>

11 hours ago

RT @CatarinaB333: STOP WHAT ARE YOU DOING AND GO CHECK THE NEW

ABOUT MATTYBRAPS



Matthew David Morris aka "MattyB" is a 13-year-old pop singer/rapper from Atlanta, GA. He was born on January 6, 2003. Since beginning his music career at age 7, he has quickly become an Internet superstar with more than 2.6 Billion video views and 6.3 million YouTube subscribers. His social media consists of over 8.6 million followers on Facebook & Twitter combined. His music videos and songs have been seen and played all over the world. Although MattyB originated on YouTube, many TV shows, radio stations, websites, magazines and blogs have featured him and his music. MattyB's audience has grown exponentially over the last six months, racking up over 90+ million monthly views and quickly elevating his YouTube channel

into the top 75 most viewed YouTube channels YTD 2015. MattyB is currently in the top 50 most viewed all time YouTube / Vevo musicians. This explosive growth places MattyB #1 in the "tween" demographic. MattyB has a large portfolio of music, which consists of original music and cover songs and was recently selected in the 2013 Top 21 Under 21 by Billboard Magazine. MattyB has performed and appeared on a variety of TV shows including two episodes of Lifetime TV's #1 Show "Dance Moms", "Free Birds" Soundtrack (2013), Good Morning America, The TODAY Show, CNN, HLN, The Queen Latifah Show, Wendy Williams Show, Dr. Phil Show, EXTRA TV, FOX and more. He has performed in many locations such as Phillips Arena, Gwinnett Arena, Georgia World Congress Center, Highline Ballroom (NYC), Turner Field (Home of the Atlanta Braves), Six Flags, Centennial Olympic Park (Atlanta, GA) and Atlanta Motor Speedway and many venues all over the USA. In Summer 2013, MattyB announced his first headline tour and sold out two back to back shows at Gramercy Theatre in New York City. Since that event, MattyB is continuing to sell out headline shows around the country at the tender age of 12. Aside from his music endeavors, MattyB is a normal middle school student. He is one of five children in his family and enjoys lacrosse, baseball, art, fishing, video games and spending time with his friends and family. *Updated January 6, 2016*

Guess Who Inspires MattyBRaps And His Music?

A few artists you might know helped change his music.

[Isaac Saul @ike_saul](#)

Jul 17, 2015

0 comments

The first memory [MattyBRaps](#) has of doing music came when he was 7 years old and hanging out with his friend Carson.

"We went downstairs and we begged my cousin Marshall to listen to our song," he told A Plus. "He said, 'well, I think you have potential' just to make us feel good... but then he put us on YouTube and we got a million views overnight."

That YouTube video was the start of something much, much bigger. Today, MattyB — now 12 years old — is one of the most popular tween artists in the world, boasting [billions of views](#) on YouTube.

7 Year Old Raps Justin Bieber - Eenie Meenie by MattyBRaps (Cover)



Matty's inspirations come from various places: From Justin Bieber and One Direction to Eminem and Jay-Z, though he emphasizes that he just listens to the clean versions.

"I've always really liked hip-hop cause I just love the beats in it," MattyB told A Plus. "It just gets me happy and I love to dance to it."

Now that he's maturing into his teen years, you can expect MattyB's music to evolve with him.

"We're definitely going to keep it clean music but just change what I rap about," he said. "We're probably not going to rap about my favorite toys or whatever."

MattyBRaps - To The Top



Regardless of where Matty's music go, you can expect his BBoys and BGirls to follow. After five years of making music, Matty has found his way into the hearts of his fans, and he plans to stay there. When asked about where he hopes his music is down the road, he thought of the King of Pop, Michael Jackson.

"As a kid he did music and it's still being listened to today," Matty said. "He was doing greater things as an adult but his kid music is still really big and popular and I hope that can happen to me."

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MattyBRaps



[MattyB](#) is on Wikipedia! Check it out.

Matthew David Morris (born January 6, 2003), known as **MattyB** or **MattyBRaps** is a twelve year old American YouTube sensation, well known for his cover videos on popular music.

MattyB has released numerous covers and remixes of mainstream music since 2010, when he released his first cover "Eenie Meenie", which gain 500,000 views the week of its release. Since, he has released 90 additional covers and 20 original songs with the help of his producer [MarsRaps](#).

He grew in fame and acknowledgement through 2014 because of collaborations with well-known artists like [James Maslow](#) in MattyB's original song *Never Too Young*, and [Maddi Jane](#) in *Love Somebody*, and has developed a wider and more professional promotion of himself with an official website ([MattyBRaps.com](#)), the release of several original songs, and numerous live concerts across the United States.

Contents [\[show\]](#)

Biography

Matthew David Morris^{[1][2]} was born on January 6, 2003,^{[3][2]} in the state of Georgia, to [Tawny](#) and [Blake Morris](#). Raised as a Christian,^[4] he resides in Duluth, Georgia,^[5] and attends [Wesleyan School](#).^{[6] [7]}

MattyB first became interested in hip hop music at the age of five. He said that he was drawn to the beats and right away wanted to take dance lessons. When his cousin Mars moved in with his family, he listened to Mars' music and rapped his lyrics to him.^[1] Mars also helps write and produce MattyB's songs and videos.^[8]

Matty's first song with original lyrics was a cover of "I Believe in You", produced by [MarsRaps](#) and released on June 22, 2010. Matty's first song available for purchase was a cover of "Just the Way You Are", released on August 11, 2010 featuring [Tyler Ward](#). His first original songs were "Forever and Always" and "Be Right There". In late 2012 he peaked at 11th on the *Billboard* Social 50 Chart with the music video for "That's the Way", which doubled his fanbase in Facebook, Twitter and YouTube.^[9]

Through 2012, MattyB performed on the *TODAY Show*, *The Wendy Williams Show*, *Dr. Phil Show*, *Turner Field* (Home of the Atlanta Braves baseball team), Six Flags Over Georgia for [GirLaPabooza](#), Centennial Olympic Park for the [Buddy Walk](#), [Perez Hilton's birthday party](#) in Los Angeles, and at a [Nascar Event](#) at Atlanta Motor Speedway. MattyB has also made several appearances on television, and has been featured on [multiple commercials](#) aired on Disney, Nickelodeon, Cartoon Network and other channels.

MattyB grew in popularity through 2014 releasing original songs such as "Goliath" and "You Make My Heart Skip", and covered various hit songs such as "Boom Boom Pow," "I Would," and "Feel This Moment." MattyB also collaborated with well known artist [James Maslow](#), and gained moderate success with their collaborative single "Never Too Young."

Relationships

MattyB's manager, [Blake](#)^[10] is also his father, married to [Tawny Morris](#). MattyB has four siblings having three brothers (Blake, John Michael, and Joshua

[T](#) Entertainment [T](#) Video Games [T](#) Lifestyle



MattyB live at Gramercy Theatre, New York City, on June 15, 2013.

Information

Birth name	Matthew David Morris
Also known as	MattyBRaps, MattyB, Matty, Matt
Born	January 6, 2003 Georgia, USA
Origin	Atlanta, Georgia
Genres	Hip hop, rap, pop
Occupations	Rapper, singer, songwriter, actor, dancer
Years active	2010—present
Labels	MattyB, LLC
Website	www.mattybraps.com

Want [Star Wars](#), [Game of Thrones](#), and all things pop culture? Sign up to get your favorite fandoms in your inbox!

THE HOME OF FANDOM

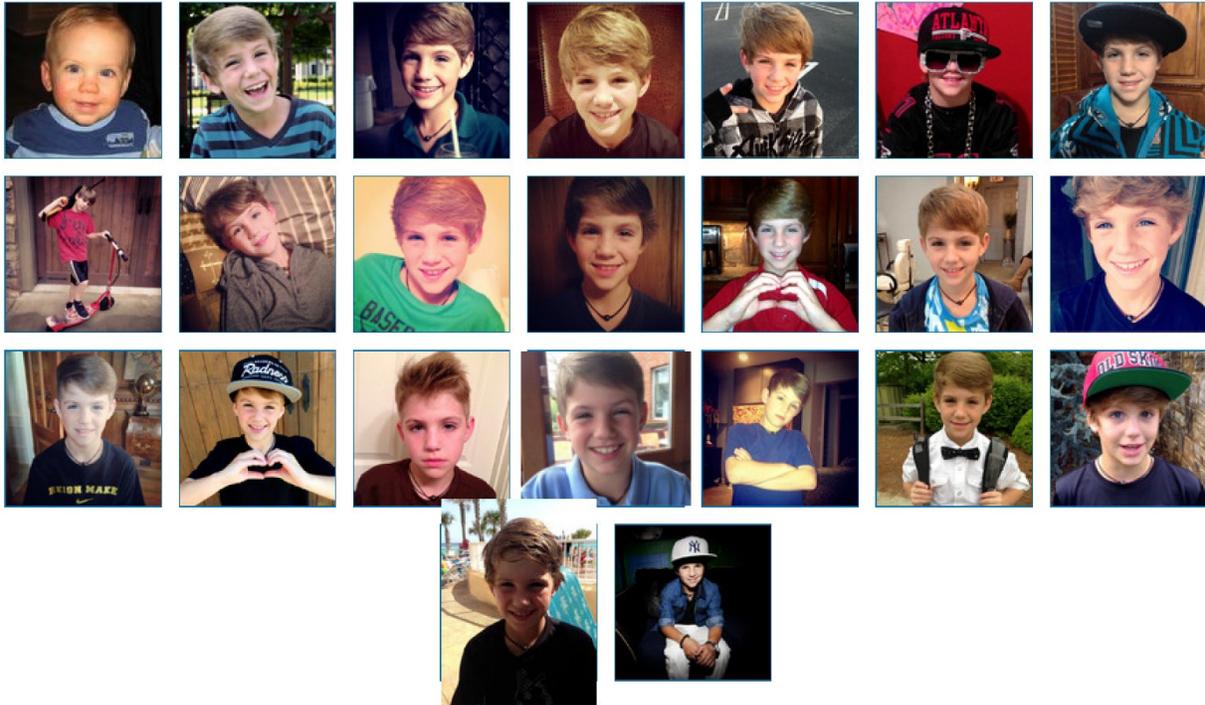
Games Movies TV Explore Wikia

Sign In or

Discography

Main article: [Discography](#)

Gallery



Trivia

- He is 4.5 feet tall (1.35 meters).^[1]
- His favorites sports are baseball, football, lacrosse and soccer.^[11]
- His favorite color is blue.^[12]
- His big cousin [MarsRaps](#) produces his music and videos.^{[1][8]}
- He wore braces in early 2012.^[1]
- He has 3.4 million subscribers, and over 1.3 billion views on his YouTube channel.
- He was ranked number 19th on the *Billboard* 2013 edition of "21 Under 21."^[13]

References

1. ↑ [1.0 1.1 1.2 1.3 1.4 Biography for MattyB](#) Retrieved February 15, 2013.
2. ↑ [2.0 2.1 About - MattyBRaps](#) Retrieved March 2, 2013.
3. ↑ [MattyB @MattyBRaps: BBoys and BGirls have made today an awesome 10th birthday! :\) #ThankYou #LoveYa](#) 5:10 pm - 6 ene 13
4. ↑ [MattyB @MattyBRaps: Whatever your dream - make sure you don't settle for less than God's best!](#) 9:23 pm - 11 jun 12
5. ↑ [fuse: There Is a 9-Year-Old Rapper on the Billboard Charts](#) Retrieved March 2, 2013.
6. ↑ [Picture of MattyB's school uniform \(similar to the Wesleyan School uniform\)](#) March 2, 2013.
7. ↑ [Back 2 School - MattyBRaps](#) Retrieved February 15, 2013.
8. ↑ [8.0 8.1 MarsRaps \(Facebook info\)](#) Retrieved February 15, 2013.
9. ↑ [9-Year Old Rapper MattyB Rounds Onto Billboard Social 50 Chart](#) Retrieved July 11, 2013.

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👕 Lifestyle

Prior Registration: Matt B

Home Moments

Search Twitter

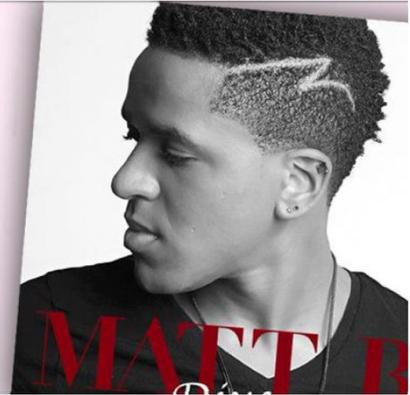


Have an account? Log in

MATT B

Matt B 待望の2nd Album「Dive」

2016年1月29日(金) iTunes 限定発売



TWEETS 2,963 FOLLOWING 776 FOLLOWERS 10.2K LIKES 1,010

Follow

Matt B

@mattbworld

Official Twitter of singer Matt B™ | #1 R&B album 'Dive' available on iTunes goo.gl/nwaBpH & TSUTAYA | Signed to @STAR_BASE Records in Japan

Chicago, IL

mattbworld.com

Joined December 2012

514 Photos and videos



Tweets Tweets & replies Media

Matt B Retweeted



ARI @ari0727 · May 13

MATT Bを聴いて 疲れた身体を癒すの巻

1 Like



Matt B @mattbworld · 1d

Full lineup for @CGMusicFest! bit.ly/1TizhKV 4 tix to see me open for @jasonderulo & @theofficialdaya 7.10!

MILLER LITE PRESENTS

common ground

MUSIC FESTIVAL

JULY 5 AWOLNATION MILKY CHANGE, DEATH FROM ABOVE 1979, FINISH TICKET, GRIZBOLK, CIVIL TWILIGHT, BRONTOM, MICHIGANDER, KIM VI AND THE SIBLINGS, ELLIS	JULY 8 A\$AP ROCKY FRENCH MONTANA, DJ QUIK, MIK JEMINS, BLACK MILK, ICEWEAR VEZZO, LADY ACE, BOOGIE ROSCO P, THE SEVENTH, DIAMOND JONES
JULY 6 RISE AGAINST THE BOUNCING SOULS, RED SUN RISING, JAMDYNAMITE, '68, HEARTSICK, JASON ALARM, COLDVILLE, STORIES UNTOLD	JULY 9 DIERKS BENTLEY CANAAN SMITH, AUBRIE SELLERS, ADAM SANDERS, BRENT JAMES AND THE VINTAGE YOUTH, JOEY HYDE, BRANDON LAY, CARTER WINTER, AILEEN COLGAN, AUDREY RAY, DREW HALE, PHILIP FOX BAND
JULY 7 TIM MCGRAW CASSADEE POPE, MAGGIE ROSE, BILLY STRINGS, JERICHO WOODS, MATT AUSTIN, CRYSTAL BAY, FAUXGRASS, DREW HALE	JULY 10 JASON DERULO DAYA, JACOB WHITESIDES, BRYCE VINE, MATT B, KID QUILL, KARLOS FARRAR, REDD, TAYLOR TAYLOR

ADADO RIVERFRONT PARK LANSING, MICHIGAN

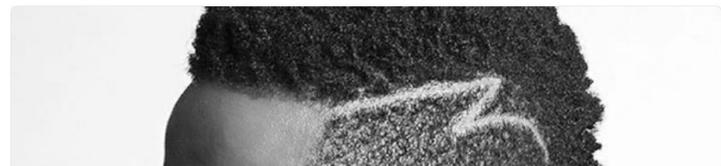
1 Like

Matt B Retweeted



littleHONEYmilk @littleHONEYmilk · May 12

#Nowplaying My Dreams - Matt B (Dive) BoAちゃんに似合いそうな曲



Prior Registration: Matt B**Matt B**

📍 Chicago, Illinois, USA

Solo Pop R&B

Matt B is a rising Pop/RnB sensation from Chicago, IL who's quickly becoming a global force in the music industry. Matt is currently signed to Star Base Records in Japan and has had 2 #1 RnB albums show more...

Message

Overview Feed (/band/matt-b/feed/) Music (/band/matt-b/audio/) Videos (/band/matt-b/video/)

Photos (/band/matt-b/image/) Calendar (/band/matt-b/calendar/) Press (/band/matt-b/press/)

About (/band/matt-b/#about) Lyrics (/band/matt-b/lyrics/#lyrics)

Biography

He could be compared to *Justin Bieber, Sam Smith, Justin Timberlake, Usher, Ne-Yo, Adam Levine, Taeyang, Jason Derulo and John Legend.*

Though these legends are a rarity, on September 8, 1989, another young star was born. Singing sensation and producer "Matt B." was raised in Chicago as one of seven talented children. He grew up in some rough neighborhoods, but was relatively shielded from much of the struggles young people encounter in such areas, as he was home schooled until his high school years. He discovered his passion for music at a very early age and spent his entire childhood singing and performing with his two older brothers, Aaron & Timothy Benson. Eventually, the three formed a singing group and branded themselves TriEnd'.

The talented group quickly began amazing crowds and soon starting working with some of music's leading producers, such as the Insomniac and John Monopoly. After achieving some impressive milestones of success as a Jackson Five-esque family singing trio, the young men began growing in different professional directions while, at the same time, Matt B.'s first entry into the Chicago public school system created its own set of challenges.

Though he was humbled by the great success he experienced with TriEnd, Matt B. was maturing - both physically and professionally - and split from TriEnd, branching into a solo career of his own. (His brother, Timothy, also began a solo career at this time and became a pop sensation in Japan after signing to Manhattan Records, selling over 300,000 copies of his debut album "Formula"). Now on his own, Matt B. spent months incubating and developing a new sound and

Band Members

Matthew Benson
Vocalist

Other Info**Record Label:**

Star Base Records - Japan

Record label website:

http://starbase.jp/
(http://starbase.jp/)

Cover band:

No

Links

- Matt B Website
(http://www.mattbworld.com/)
- Facebook page
(http://facebook.com/mattbworld)
- Twitter handle
(http://twitter.com/mattbworld)
- SoundCloud profile
(http://soundcloud.com/mattbworld)
- YouTube channel
(http://youtube.com/MattBOfficialPage)

Exhibit B

B-1 Web Page Image

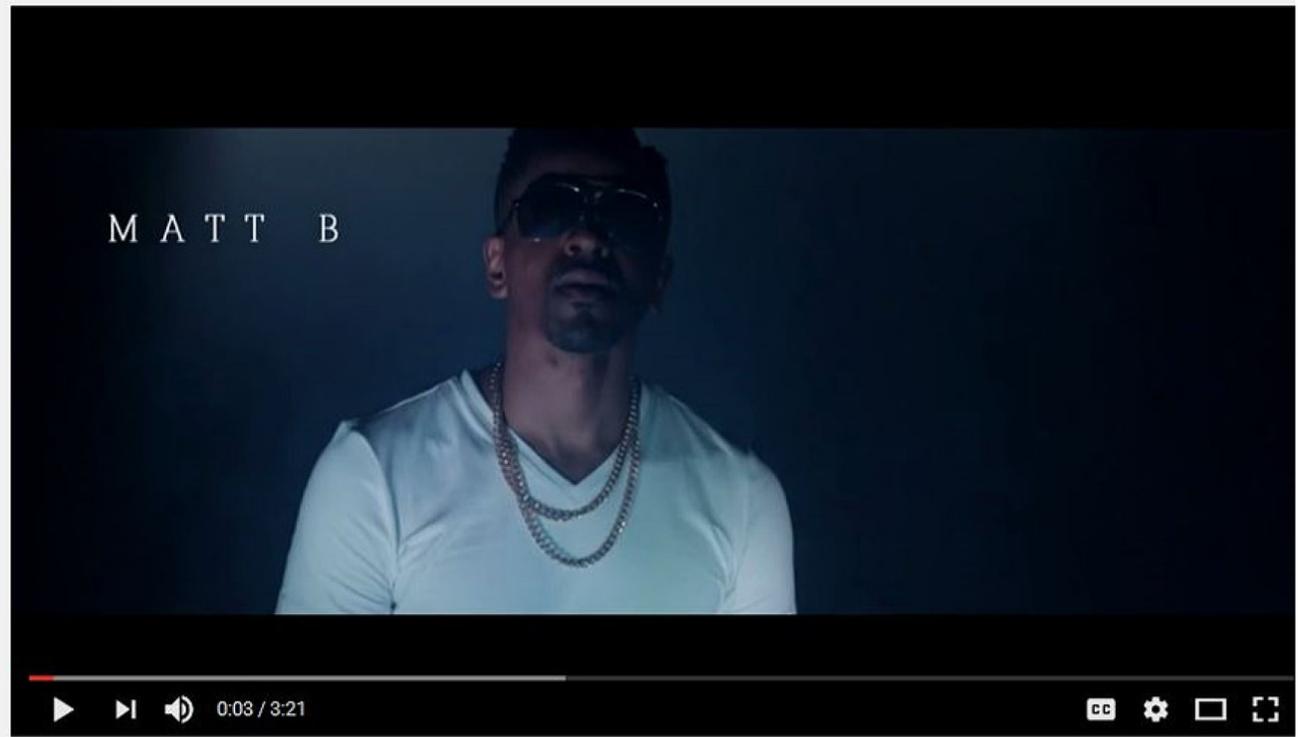
Baby I, by Matt B and \$kilz

Publication Date: 06/19/2016

Source: <http://www.youtube.com/watch?v=gnczNsJIF8Y>



matt b baby i



"BABY i" MATT B 'ft. \$KILLZ (MUSIC VIDEO) SHOT BY @ctmfilms



CTMFMSTV

Subscribe 880

200 views

Exhibit C

MattyBRaps Song Lyrics

"Turned Out The Lights" lyrics

MATTYB LYRICS

"Turned Out The Lights"

(feat. Maddi Jane)

[Maddi:]

Where are you now
Why did you go
Give me a reason for leaving
A reason your heart turned to stone
Now it's so cold
You saw me standing with tears in my eyes
and then you turned out the lights

[MattyB:]

Dear Matt, I know we've never really met each other
But you've helped me out so much I felt I had to write this letter
You might not know it when your making your beats
But every lyric and syllable's like you're speaking to me
Cause where I'm from they don't encourage a kid with a dream
And every time I have an idea that I believe in
It gets stomped or squashed and then I feel lost
Like it wanna go dig a hole feeling so low
Don't get me wrong, I believe but get real Matt
Sometimes it's difficult to achieve when people don't believe back
I'm not complaining but it's hard to go after my goals
Cause the people I need most just leave they're cold
My teacher told me that I'll never amount to anything
But I wrote a chorus for you to sing
I know it's probably not good enough
Not even close
But it's how I feel most so it goes

[Maddi:]

Where are you now
Why did you go
Give me a reason for leaving
A reason your heart turned to stone
Now it's so cold
You saw me standing with tears in my eyes
and then you turned out the lights

[Maddi:]

Lights you turned out the lights
Lights why'd you turn out the lights

[MattyB:]

Everyday brings a new struggle
In every situation is a moment where a choice can bring new trouble
Sometimes I feel like I'm gonna bust like a bubble
Here's what I've been through, now let me inspire you
I hope you never have to feel what it's like, to feel lost
The cost of not a friend in site
Despite your best efforts you can't fight back
When you love someone but they don't love you back Matt
Remember us in your lyrics when you write that
The kids that don't have it all within an arms grasp
Can we dream too? Or is it fantasy? I need to place where I fit in, in the family
So I'mma choose to believe despite all of these words that sting
All of the hurtful things

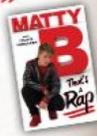
Exhibit D

Evidence Re Famous Mark

MattyBRaps

MATTYBRAPS

Pre-Order *"That's A Rap!"*
MattyBRaps.com/ThatsARap



contact: info@mattyblc.com

MattyBRaps ✓
@MattyBRaps

Timeline About Photos Likes More ▾

Search for posts on this Page

8,484,446 people like this
Jennifer Baker and 16 other friends

Invite friends to like this Page

ABOUT >

Genre: Pop / Rap

Status Photo / Video

Write something on this Page...

MattyBRaps
Yesterday at 4:08pm · 🌐

I still can't believe I got played by this #LowKey girl! 🤔

Watch the New Music Video HERE:



Instagram

Search

Get the app

Log in



mattybraps

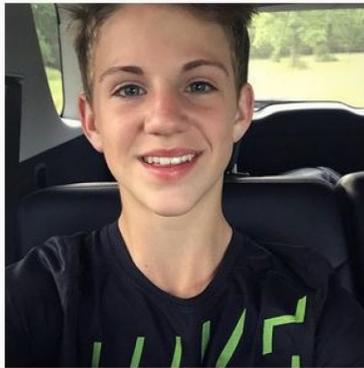
Follow

MattyB Official Instagram for 13-Year-Old Artist MattyB! www.mattybraps.com

583 posts

822k followers

0 following

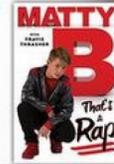


MATTYBRAPS

Pre-Order *"That's A Rap!"*

MattyBRaps.com/ThatsARap

info@mattyblc.com



TWEETS 8,855 FOLLOWING 6,469 FOLLOWERS 766K

MattyBRaps

@MattyBRaps

Official Twitter Page of 13-Year-Old Artist
MattyBRaps [Facebook.com/MattyBRaps](https://www.facebook.com/MattyBRaps)
[YouTube.com/MattyBRaps](https://www.youtube.com/MattyBRaps) tiny.cc

Tweets Tweets & replies Media

MattyBRaps Retweeted



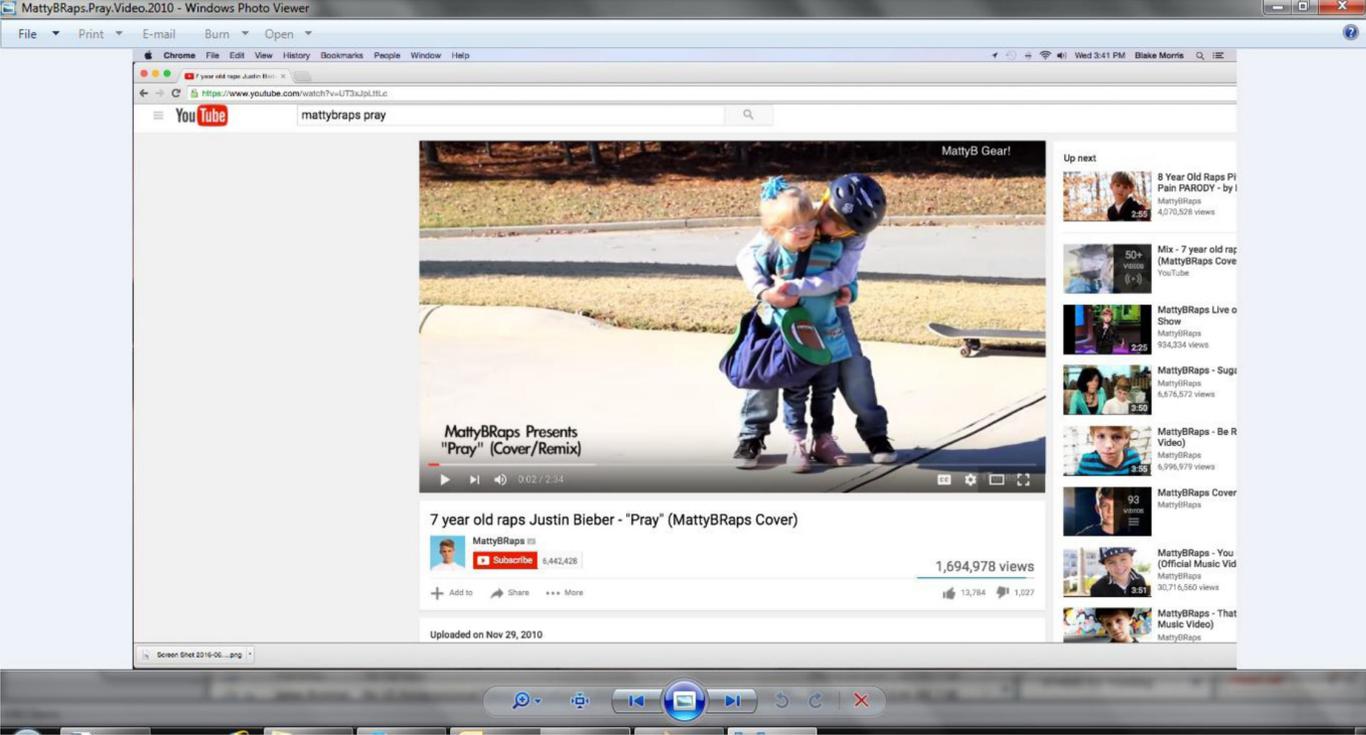
MattyBRaps @MattyBCatalonia · 21h

@MattyBRaps LOW KEY on repeat right now! Is arriving to 100 K with just two hours! PROUD!:) [youtube.com/watch?v=S0bsfs...](https://www.youtube.com/watch?v=S0bsfs...)

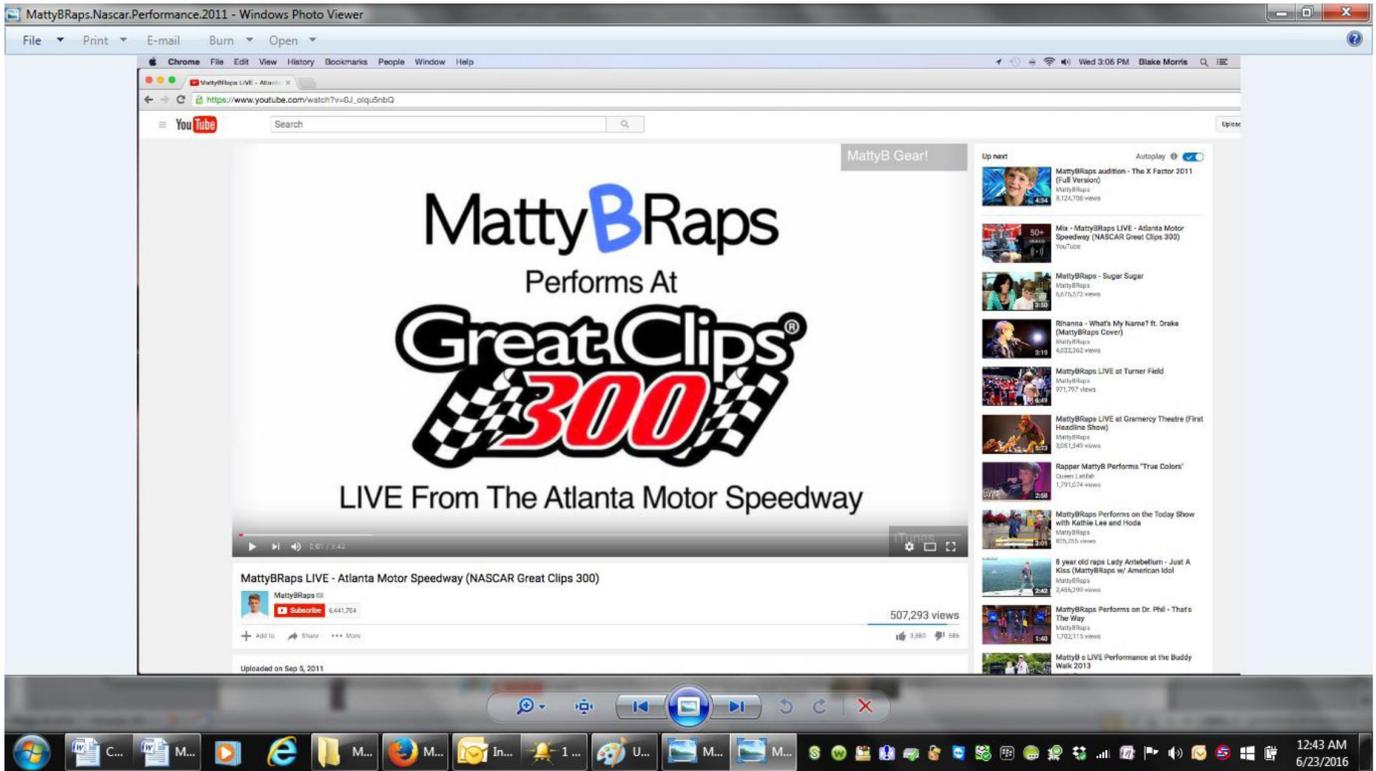
Exhibit E

Evidence of Acquired Distinctiveness - MATTYBRAPS

Specimen – 2010 YouTube® Audiovisual Recording



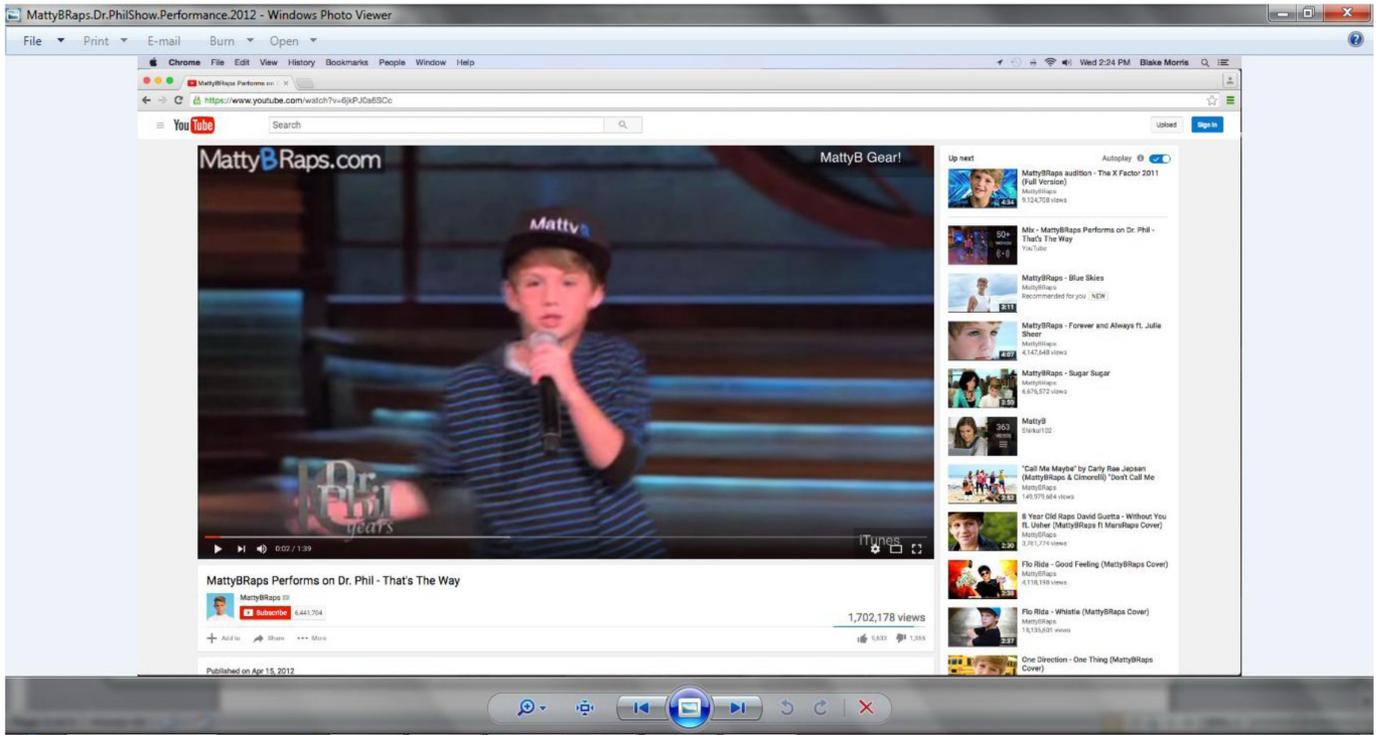
Specimen – 2011 YouTube® Recording of a Live Performance



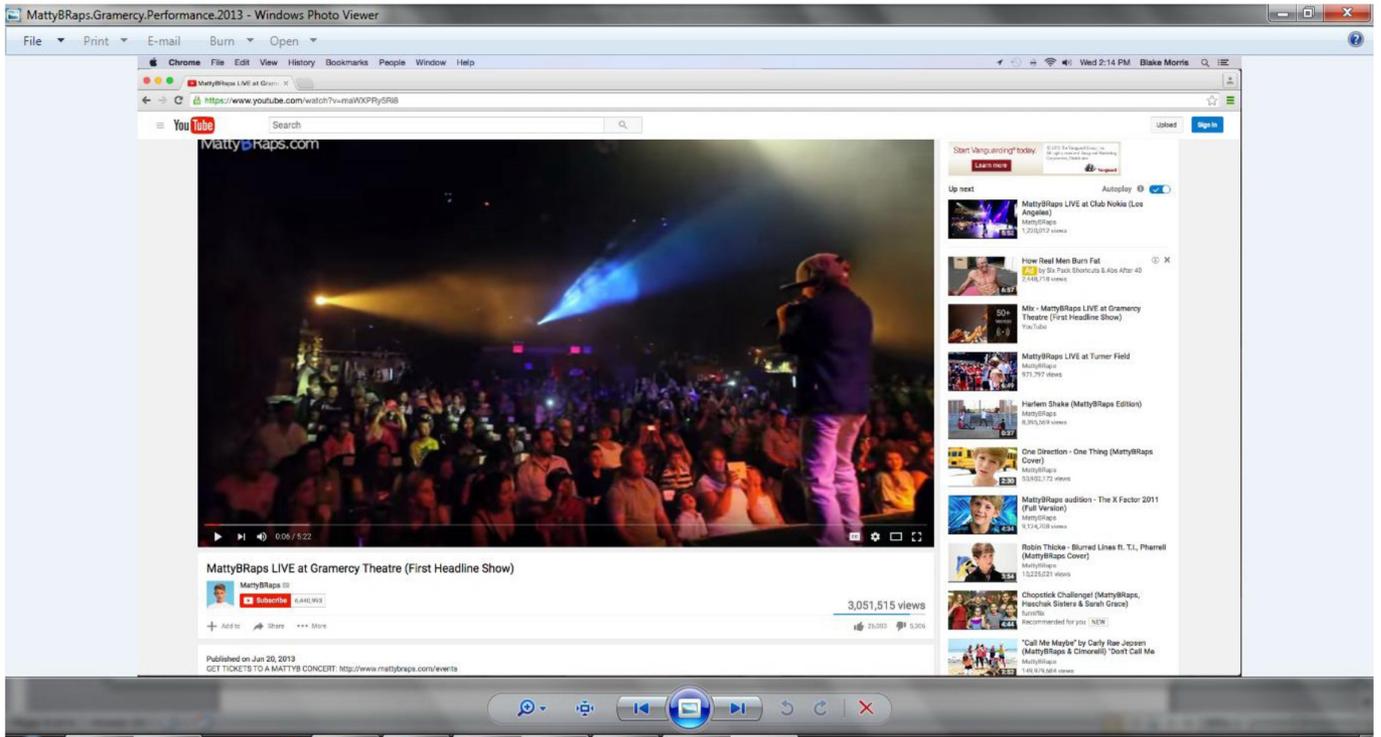
Specimen – 2011 YouTube® Audiovisual Recording

The screenshot shows a Windows Photo Viewer window titled "MattyBRaps.Sugar.Sugar.Video.2011". The viewer is displaying a YouTube video. The video player shows a close-up of a white cake decorated with blue roses and green icing. The text on the cake reads "MattyBRaps presents Sugar Sugar". The video player interface includes a progress bar at 0:00 / 1:29, a play button, and a volume icon. Below the video player, the video title "MattyBRaps - Sugar Sugar" is displayed, along with the channel name "MattyBRaps" and a subscriber count of 6,441,704. The video has 6,677,453 views, 45,576 likes, and 4,872 comments. The video was uploaded on Aug 16, 2011. To the right of the video player, there is a sidebar titled "MattyBRaps Original Music Videos" with a list of other videos, including "MattyBRaps - Sugar Sugar", "MattyBRaps - Forever and Always ft. Julia Sheer", "MattyBRaps - My First Girlfriend (Official Music Video)", "MattyBRaps - CLAP (Official Music Video)", "MattyBRaps - That's The Way (Official Music Video)", "MattyBRaps - Be Right There (Official Music Video)", "MattyBRaps - Turn It Up (Official Music Video)", "MattyBRaps - The Good Life", "MattyBRaps - Turned Out The Lights feat. Madd Jare", and "MattyBRaps - Be Mine (Official Music Video)". At the bottom of the window, there is a Windows taskbar with a navigation bar containing icons for back, forward, and other functions.

Specimen – 2012 YouTube® Video Recording of Live Performance



Specimen – 2013 YouTube® Video Recording of Live Performance



Specimen – 2014 YouTube® Audiovisual Recording

MattyBRaps.TrueColors.Video.2014 - Windows Photo Viewer

File Print E-mail Burn Open

Chrome File Edit View History Bookmarks People Window Help

Wed 4:52 PM Blake Morris

https://www.youtube.com/watch?v=d5maE0041Y0

YouTube MattyBRaps.TrueColors

MattyBRaps.com

0:02 / 3:19

Cyndi Lauper - True Colors (MattyBRaps Cover ft Olivia Kay)

MattyBRaps 6,443,343

73,044,115 views

462,258 26,524

Published on Sep 2, 2014

RAM 3500

Best-in-Class gas 410 hp and 429 lb-ft of torque with available 6.4L HEMI® V8 engine

BUILD & PRICE SEARCH INVENTORY

Up next Autoplay

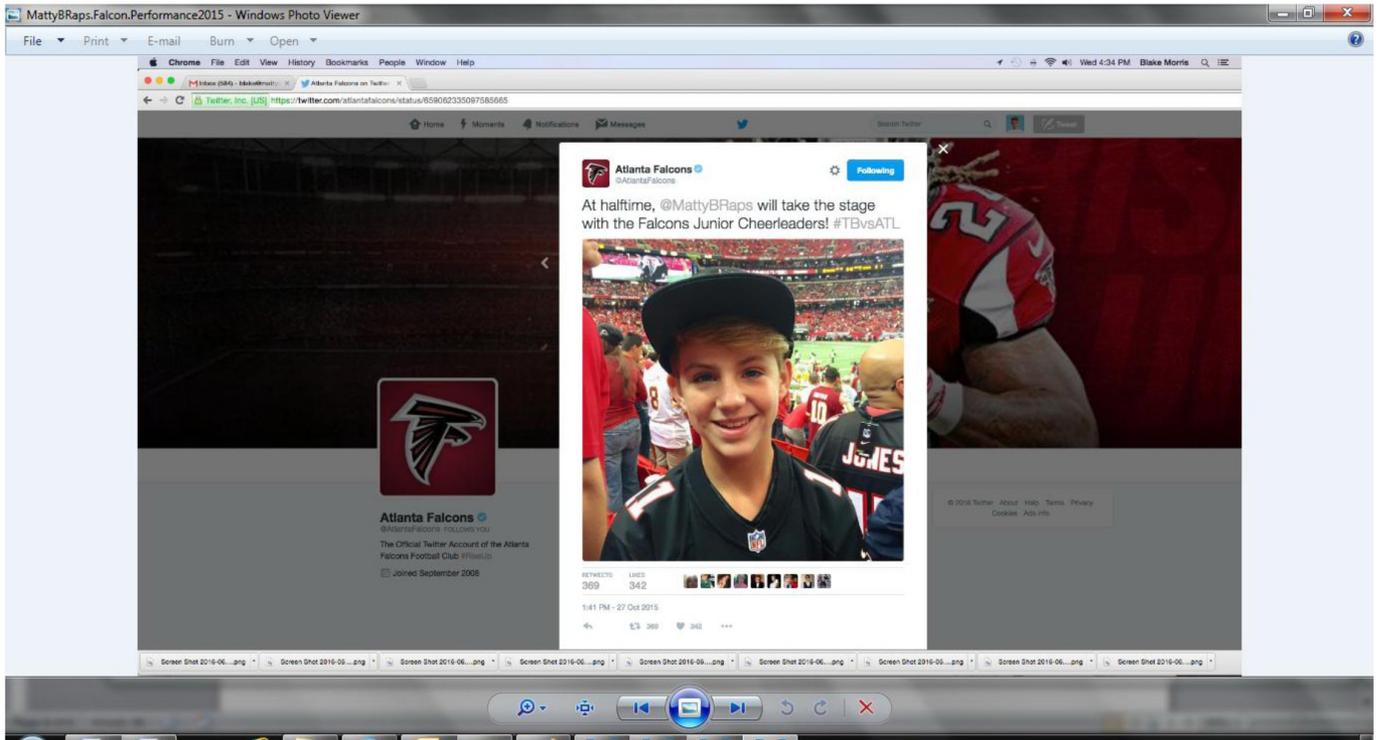
OutKast - Ms. Jackson (MattyBRaps Cover) 88,891,345 views 3:26

Mix - Cyndi Lauper - True Colors (MattyBRaps Cover ft Olivia Kay) YouTube

Mag! - Rude (MattyBRaps Cover) 89,866,811 views 3:50

Screen Shot 2016-06-..._png

Specimen – 2015 Online Promotional Piece for Live Performance



Specimen – 2016 YouTube® Audiovisual Recording

MattyBRaps.FriendZone.2016 - Windows Photo Viewer

File Print E-mail Burn Open

Chrome File Edit View History Bookmarks People Window Help

Wed 4:53 PM Blake Morris

https://www.youtube.com/watch?v=8v6d8JNUOMs

MattyBRaps.Friendzone

MattyBRaps - Friend Zone (ft Gracie Haschak)

21,978,029 views

Published on Apr 18, 2016

RAM 3500
Legendary Power
6.7L Cummins® Diesel Engine with Best-in-Class Torque, 900 ft-lb

Up next

MattyBRaps - You Are My Shining Star
11,431,988 views

Mix - MattyBRaps - Friend Zone (ft Gracie Haschak)
YouTube

MattyBRaps - My Oh My
31,193,272 views

Screen Shot 2016-06-... .png

Specimen – 2016 Facebook Fan Page Promotional Post re Live Performances

New Tab x MattyBRaps Specimen.zip x Upcoming Events | Page n... x MattyBRaps x Matty B opens up about lif... x

https://www.facebook.com/MattyBRaps/photos/a.161695213863357.32949.124065857626293/1234101179956083/?type=3&t Search

MattyBRaps
Page Liked · June 9 ·

NYC u were amazing! Soooo crazy and hyped! Let's see if NJ & Philly can be even more crazy!

Like Comment Share

20K Top Comments

86 shares 181 Comments

Olivia Rohland DID YOU KNOW THAT
-Kissing is healthy
-Bananas are good for cramps... See More
Like Reply 1 · June 10 at 6:58pm

Ashley Mae Morgan Matty b r ever gonna ckme to louisville ky. Would love to take my kidos to ur show that would be the best surprise for them. #mattybraps
Like Reply · June 9 at 9:03pm

Leah Castleberry I got dared to do this but it really works!!!!
1.put ur hand on ur forehead

Write a comment...