

1. Opposer is now, and has been for many years, engaged in the business of promoting the world famous musical band the "Grateful Dead" by means of promoting live performances by the same and by means of promoting various entertainment services and related products, including, but not limited to, sound and video recordings, t-shirts, sweatshirts, jackets, socks, hats, posters, decals, stickers, bumper stickers and jewelry.

2. At least as early as August 1969, long prior to the April 16, 2001 filing date of Applicant Acoustic Disc's (hereafter referred to as "Applicant") intent-to-use trademark and service mark application, Opposer (through its affiliated entities) adopted and began using in interstate commerce the GRATEFUL DEAD service mark for the entertainment services of the musical group the "Grateful Dead." Opposer also began using in interstate commerce the GRATEFUL DEAD mark as a trademark for sound recordings, including phonographic records, prerecorded tape cassettes and video cassettes, at least as early as the late 1960s. Additionally, in the late 1960s, Opposer adopted and began using in interstate commerce numerous other service marks and trademarks including the words "Grateful Dead" and either additional words or designs for entertainment services and a variety of goods, including those listed in Paragraph 1 supra. (These service marks and trademarks shall hereinafter be referred to collectively as the "Grateful Dead Marks".) Such use by Opposer has been continuous up to and including the present time. Opposer has made substantial sales and has engaged in extensive advertising in interstate commerce under the Grateful Dead Marks.

3. Opposer is the owner of U.S. Trademark Registration Nos. 0982352, 1340446, 1674215, 1683035, and 2306215, all for the mark GRATEFUL DEAD in connection with entertainment services and a variety of goods; U.S. Trademark Registration Nos. 1032634, 1214080, 1277056, and 1699506, all for the mark GRATEFUL DEAD and various designs in

connection with entertainment services and t-shirts; U.S. Trademark Registration No. 1706358 for the mark GRATEFUL DEAD RECORDS in connection with sound recordings and prerecorded video cassettes featuring music recordings; and U.S. Trademark Registration No. 2306122 for the mark GRATEFUL DEAD BOOKS in connection with calendars and nonfiction books relating to music, history and art. All of these registrations are valid and subsisting and in full force and effect.

4. Large sums of money and substantial efforts have been devoted by Opposer to the promotion of the musical services of the "Grateful Dead" musical group and the variety of related goods under the unique, highly distinctive, and world famous Grateful Dead Marks, so that these marks have become widely known as identifying only the source of the goods and services emanating from Opposer and associated with the "Grateful Dead" musical group. The good will of the business connected with the use of and symbolized by the Grateful Dead Marks is an extremely valuable asset of Opposer.

5. Upon information and belief, Applicant filed its application to register the trademark GRATEFUL DAWG, namely application serial No. 76/242,439, on April 16, 2001, for services in International Classes 25 and 41. Said application was published in the Official Gazette on April 30, 2002. Opposer was granted an extension of time to July 29, 2002 to oppose, and therefore this Notice of Opposition is timely.

**COUNT I
LIKELIHOOD OF CONFUSION**

6. Opposer re-alleges and incorporates herein by this reference each of the allegations contained in Paragraphs 1 through 5 as though fully set forth herein.

7. The mark GRATEFUL DAWG that Applicant seeks to register so resembles Opposer's Grateful Dead Marks that the use and registration thereof by Applicant are likely to

cause confusion, mistake and/or deception as to the source of the goods, and will injure Opposer and the goodwill it now enjoys.

8. The use and/or the registration by Applicant of the mark GRATEFUL DAWG concurrently with Opposer's various Grateful Dead Marks will inevitably cause confusion and mistake, and will deceive the public into believing that the goods of Applicant are provided by, sponsored by, or jointly developed with Opposer, that said goods emanate from the same source, and/or that Applicant is in some other fashion connected with Opposer, all to Opposer's injury.

WHEREFORE, Opposer seeks relief as set forth below.

COUNT II DILUTION

9. Opposer re-alleges and incorporates herein by this reference each of the allegations contained in Paragraphs 1 through 9 as though fully set forth herein.

10. By virtue of their national and worldwide recognition, each of Opposer's Grateful Dead Marks qualifies as a distinctive and famous mark under the factors set forth in Section 3 of the Federal Trademark Dilution Act of 1995 (P.L. 104-98, 109 Stat. 985) (15 U.S.C. § 1125(c)(1)).

11. Use of Applicant's mark in commerce will tend to dilute and lessen the capacity of Opposer's Grateful Dead Marks to uniquely identify Opposer by creating an additional user of a mark that sounds like and resembles Opposer's Grateful Dead Marks.

12. By virtue of the foregoing, if Applicant is granted the registration opposed herein and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act of 1946, Opposer will be subjected to great and irreparable damage, and Applicant will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946.

WHEREFORE, Opposer GRATEFUL DEAD PRODUCTIONS believes and alleges that it will be damaged by registration of the GRATEFUL DAWG mark as aforesaid, and therefore respectfully prays that:

- (a) judgment in the present Opposition be entered in favor of Opposer;
- (b) the registration sought by Applicant in application serial no. 76/242,439, be refused and rejected; and
- (c) this Notice of Opposition be sustained.

Opposer submits this Notice of Opposition in triplicate together with the statutory fee of \$600.

Respectfully submitted,

GRATEFUL DEAD PRODUCTIONS

Dated: July 29, 2002

By: _____

Julie E. Hofer

Michael J. Dalton

DONAHUE, GALLAGHER, WOODS & WOOD, LLP

Attorneys for Opposer

300 Lakeside Drive, Suite 1900

Oakland, California 94612-3570

(510) 451-0544



ROBERT N. WOOD
 WILFRID F. ROBERGE, JR.*
 HARRISON S. ROBINSON
 ANDREW W. LAFRENZ
 GEORGE J. BARRON
 LAWRENCE K. ROCKWELL
 ERIC W. DONEY
 JONATHAN M. WONG
 JOHN J. COPPINGER
 WILLIAM R. HILL
 MICHAEL J. DALTON
 DOUGLAS A. CROSBY
 JULIE E. HOFER
 JONATHAN N. OSDER
 PETER T. HOLT
 CAROL B. O'NEILL
 STEPHEN C. GUSTAVSON
 BRUCE S. EADS
 ANDREW S. MACKAY
 CATHERINE M. LEE
 STEVEN K. LEE
 PETER M. CALDWELL
 DANIEL G. DOUGHERTY
 JOHN P. RUTLEDGE
 LISA J. SNYDER
 ANDREW M. MCNAUGHT
 ARIANA S. HAWBECKER
 JOHN C. KIRKE
 SARA M. BRAUN
 JASON F. SCHWARZ

LAW OFFICES OF
DONAHUE, GALLAGHER, WOODS & WOOD, LLP

FOUNDED 1918

300 LAKESIDE DRIVE
 SUITE 1900

OAKLAND, CALIFORNIA 94612-3570

MAILING ADDRESS

P.O. BOX 12979

OAKLAND, CALIFORNIA 94604-2979

TELEPHONE (510) 451-0544 FACSIMILE (510) 832-1486

www.donahue.com

REPLY TO OAKLAND OFFICE

07-31-2002

U.S. Patent & TMOc/TM Mail Rcpt Dt. #26

ALAN J. MAUS
 OF COUNSEL

WILLIAM H. DONAHUE
 (1871-1948)
 JAMES E. GALLAGHER
 (1911-1981)

MARIN OFFICE
 SHELTERPOINT
 591 REDWOOD HIGHWAY
 SUITE 1200
 MILL VALLEY, CA 94941
 (415) 381-4161

WALNUT CREEK OFFICE
 GROWERS SQUARE
 1646 NORTH CALIFORNIA BOULEVARD
 SUITE 310
 WALNUT CREEK, CA 94596
 (925) 746-7770

MONTEREY PENINSULA
 (831) 372-7740

* CERTIFIED SPECIALIST IN ESTATE PLANNING,
 PROBATE AND TRUST LAW BY THE STATE BAR
 OF CA BOARD OF LEGAL SPECIALIZATION

July 29, 2002

Commissioner for Trademarks
 2900 Crystal Drive
 Box TTAB FEE
 Arlington, Virginia 22202-3513

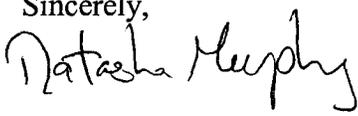
Re: Mark: GRATEFUL DAWG
 Serial No. 76/242439

Dear Commissioner :

Enclosed please find the following: (1) an original and three copies of a Notice of Opposition; (2) \$300 filing fee; and (3) a self-addressed, stamped postcard.

Please date stamp the enclosed postcard and return it to me upon receipt of these items. Please forward an endorsed copy of the Opposition to me as soon as possible in the enclosed self-addressed stamped envelope.

If you have any questions, please call.

Sincerely,

 Natasha Murphy

Enclosures

TRADEMARK TRIAL AND
 APPEAL BOARD
 02 AUG - 7 AM 8:44

K