

6. Applicant is without sufficient information to admit or deny the allegations of Paragraph 6 of the Opposition.

7. Applicant admits there is a trademark registration numbered 748,808 (“Tape Recorder Registration”), as alleged by Opposer. Applicant is without sufficient information to admit or deny the current validity, enforceability, or ownership of the Tape Recorder Registration as set out in the allegations of Paragraph 7 of the Opposition.

8. Applicant admits there is a trademark registration numbered 1,172,114 (“Radio Tuner Registration”), as alleged by Opposer. Applicant is without sufficient information to admit or deny the current validity, enforceability, or ownership of the Radio Tuner Registration as set out in the allegations of Paragraph 8 of the Opposition.

9. Applicant admits there is a trademark registration numbered 2,674,939 (“CD Player Registration”), as alleged by Opposer. Applicant is without sufficient information to admit or deny the current validity, enforceability, or ownership of the CD Player Registration as set out in the allegations of Paragraph 9 of the Opposition.

10. Applicant is without sufficient knowledge to admit or deny the allegations of Paragraph 10 of the Opposition.

11. No response is necessary to Paragraph 11 of the Opposition.

12. Applicant denies the allegations of Paragraph 12 of the Opposition, as the mark as shown in the Application Serial No. 76/389,730 (Applicant’s Mark) is not likely to cause confusion with the Opposer’s marks. Applicant’s Mark is to be used as a record label for musical recordings,

whereas Opposer, according to its Opposition, uses its marks for audio equipment, supplies, and hardware. Opposer's products are used to play and manipulate pre-recorded music. Upon information and belief, Opposer does not produce pre-recorded music and in fact on its web site offers, for demonstration purposes only, pre-recorded music produced by third parties. Consumers who seek out Opposer's products will not be confused, as Applicant will not be attempting to market or sell audio equipment, supplies, or hardware. Applicant's product, pre-recorded music, will be in different channels of commerce, since pre-recorded music is found primarily in stores that specialize in this type of product (e.g., Tower Records, Sam Goody, Wherehouse Music, etc.) and other retail outlets (such as Walmart, etc.). Furthermore, the likelihood of confusion is highly remote since, unlike other types of goods and services, it is widely recognized that marks such as Applicant's Mark are not the basis by which consumers make their choices in pre-recorded music. Consumers choose pre-recorded music by the artists and specific songs, not based on the record label producing the music. In addition, the United States Patent and Trademark Office has allowed the registration of the mark SUPERSCOPE in international class 9 (which is the same class as some of Opposer's marks) for GW Instruments, Inc. ("GW"), a company that is not believed to be affiliated with Opposer, under registration number 1,616,530. GW's goods and services are computer programs. Given the fact that GW's application was filed substantially after those of Opposer and registration was granted, it is unclear why this Opposition has been filed. Applicant is simply not in competition with Opposer in Opposer's channels of commerce; therefore, Applicant's Mark should be allowed to be registered, as approved by the examining attorney.

13. Applicant denies the allegations of Paragraph 13 of the Opposition for the reasons previously stated herein in Paragraph 12.

14. There is no response required for Paragraph 14 of the Opposition.

15. Applicant denies the allegations of Paragraph 15 of the Opposition for the reasons previously stated herein in Paragraph 12.

16. Applicant denies the allegations of Paragraph 16 of the Opposition for the reasons previously stated herein in Paragraph 12.

THEREFORE, Applicant requests the entry of judgment denying Opposer's opposition to the Applicant's Mark, and that Applicant's application for the mark SUPERSCOPE RECORDS be granted and placed on the principal register.

CERTIFICATE OF MAILING

Express Mail Tracking No. EO 901 293 367 US

Date of Deposit: August 13, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service, with sufficient postage, as "USPS Express Mail," on the date indicated above, in an envelope addressed to: Box TTAB No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Bruce Perkins
[Printed name of Applicant, attorney, or representative certifying mailing]

Bruce Perkins
[Signature]

8/13/03
[Date of signing]

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, LLP

98 San Jacinto Boulevard, Suite 2000

Austin, Texas 78701-4288

Telephone: (512) 476-2020

Telecopier: (512) 477-5267

By: Bruce Perkins

Bruce Perkins

State Bar No. 15783020

Marc L. Lippincott

State Bar No. 24002480

Attorneys for Applicant,
TOM BUNCH

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's Response to Notice of Opposition is being served by certified mail, return receipt requested, upon-

Joan Kupersmith Larkin, Esq.
Christopher C. Larkin, Esq.
Seyfarth Shaw
One Century Plaza, Suite 3300
2029 Century Park East
Los Angeles, CA 90067
Telephone: (310) 277-7200
Telecopier: (310) 201-5219

► Counsel for Opposer,
SUPERSCOPE TECHNOLOGIES, INC.

-on this 13th day of August, 2003.



Bruce Perkins
Marc L. Lippincott

TTAB

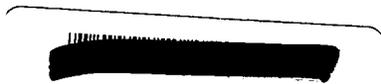
FRITZ, BYRNE, HEAD
& HARRISON, LLP
A t t o r n e y s A t L a w

98 San Jacinto Blvd. • Suite 2000 • Austin, Texas 78701-4286
(512) 476-2020 • Fax (512) 477-5267 • www.fbhlaw.com

August 13, 2003

USPS EXPRESS MAIL

Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



08-13-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Re: Superscope Technologies, Inc. v.
Tom Bunch
Opposition No. 91-156,510
Serial No. 76/389,730
United States Patent and Trademark Office
Trademark Trial and Appeal Board

08 AUG 18 PM 9:32
RECEIVED

Greetings:

I enclose the original **Applicant's Response to Notice of Opposition** in the referenced matter, being filed on behalf of Applicant, Tom Bunch. Also enclosed is a self-addressed, postage-paid postcard, which we ask that you return to confirm receipt of this submission.

By copy of this letter and the enclosure, counsel of record are hereby notified of the filing of this instrument. Thank you for your courtesy and assistance.

Very truly yours,

Bruce Perkins

sb
Enclosures

cc: Joan Kupersmith Larkin, Esq.
Christopher C. Larkin, Esq.
Seyfarth Shaw
One Century Plaza, Suite 3300
2029 Century Park East
Los Angeles, CA 90067
 CERTIFIED MAIL/RRR

K:\DIR17\1770703\USPTO-ltr.wpd

