

TTAB

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

In the Matter of Application No. 76/389,730
Published in the Official Gazette of December 17, 2002



SUPERSCOPE TECHNOLOGIES, INC.,

Opposer,

v.

TOM BUNCH,

Applicant.

Opposition No. 156,510

01-20-2004

U.S. Patent & TMO/TM Mail Rpt.Dt. #78

CERTIFICATE OF MAILING

I hereby certify that on January 20, 2004, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. EV171936194US for delivery to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.

Linda Norris

REPLY DECLARATION OF JOAN KUPERSMITH LARKIN IN RESPONSE TO APPLICANT'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

I, JOAN KUPERSMITH LARKIN, hereby declare:

1. I am a member of the State Bar of California and a member of the firm of Seyfarth Shaw LLP, counsel for opposer Superscope Technologies, Inc. ("Opposer"). I make this declaration on the basis of my own personal knowledge and in reply to the opposition of applicant Tom Bunch ("Applicant") to Opposer's motion for summary judgment.

2. Attached hereto as Exhibit 1 are true and correct copies of pages downloaded on January 11, 2004 from the website of Target stores at target.com. Exhibit 1 shows the availability on that website of a variety of CDs together with a variety of CD players.

3. Attached hereto as Exhibit 2 are true and correct copies of pages downloaded on January 11, 2004 from the website of WalMart stores at walmart.com. Exhibit 2 shows the availability on that website of a variety of CDs together with a variety of CD players.

4. Attached hereto as Exhibit 3 are true and correct copies of pages downloaded on January 11, 2004 from the websites of Circuit City stores at ccity.thestore24.com and

circuitcity.com. Exhibit 3 shows the availability on that website of a variety of CDs as well as a variety of CD players.

5. Attached hereto as Exhibit 4 are true and correct copies of pages downloaded on January 11, 2004 from the website of Best Buy stores at bestbuy.com. Exhibit 4 shows the availability on that website of a variety of CDs as well as a variety of CD players.

Executed this 20th day of January, 2004 at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


JOAN KUPERSMITH LARKIN

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Target : Entertainment : Music

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1



Speakerboxxx/ The Love Below

~ Outkast
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$21.00~~
 Our Price: **\$16.99**
 You Save: \$4.99
 (23%)

 ADD TO I



The Black Album

~ Jay-Z
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$48.00~~
 Our Price: **\$12.98**
 You Save: \$6.00
 (32%)

 ADD TO I



Resurrection

~ 2Pac
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$48.00~~
 Our Price: **\$10.99**
 You Save: \$7.99
 (42%)

 ADD TO I



Da Derrty Versions: The Reinvention

~ Nelly
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$48.00~~
 Our Price: **\$12.98**
 You Save: \$6.00
 (32%)

 ADD TO I



Blood in My Eye

~ Ja Rule
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$48.00~~
 Our Price: **\$11.99**
 You Save: \$6.99
 (37%)

 ADD TO I



Elephunk

~ Black Eyed Peas
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$42.00~~
 Our Price: **\$10.99**
 You Save: \$1.96
 (15%)

 ADD TO I

Get Rich Or Die Tryin

~ 50 Cent
 Avg. Guest Rating: ★★★★★
 Usually ships in 24 hours

List Price: ~~\$42.00~~
 Our Price: **\$10.99**
 You Save: \$1.96
 (15%)

ADD TO I



Kid Rock
~ Kid Rock
Avg. Guest Rating: ★★★★★
Usually ships in 24 hours

List Price: ~~\$49.98~~
Our Price: **\$13.49**
You Save: \$5.49
(29%)

ADD TO I



This is Not a Test
~ Missy Elliott
Avg. Guest Rating: ★★★★★
Usually ships in 24 hours

List Price: ~~\$49.98~~
Our Price: **\$13.49**
You Save: \$5.49
(29%)

ADD TO I



Speakerboxxx/ The Love Below
~ Outkast
Avg. Guest Rating: ★★★★★
Usually ships in 24 hours

List Price: ~~\$24.98~~
Our Price: **\$17.99**
You Save: \$3.99
(18%)

ADD TO I



The Eminem Show
~ Eminem
Avg. Guest Rating: ★★★★★
Usually ships in 24 hours

List Price: ~~\$49.98~~
Our Price: **\$14.99**
You Save: \$4.99
(25%)

ADD TO I



Stankonia
~ OutKast
Avg. Guest Rating: ★★★★★
Usually ships in 24 hours

List Price: ~~\$49.98~~
Our Price: **\$13.99**
You Save: \$4.99
(26%)

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iRiver SlimX 550
Portable MP3 and
CD Player - IMP-
550

web only
Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price:
\$179.99



Coby CD Player
Mini AM/FM Radio
& Mini Speaker
System

sale
Avg. Guest Rating:
★
Usually ships in 24
hours
List Price: ~~29.99~~
Our Price: **\$26.99**
You Save: \$3.00
(10%)



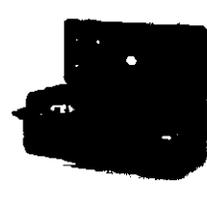
Panasonic Personal
CD Player
SLSX420

Avg. Guest Rating:
★★★★
We will email you
when this item
becomes available
Our Price: **\$49.99**



Sony ATRAC3
Walkman MP3 CD
Player - D-NE710

Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price: **\$99.99**



Portable Field CD
Stereo

web only
Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price:
\$249.99



iRiver Portable
MP3 and CD Pl:
- IMP-50

web only
Avg. Guest Rat
★★★★
Usually ships in
hours
Our Price: **\$49**

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Coby Wireless Car
CD Player - CX-
CD740

sale
Avg. Guest Rating:
★★★
Usually ships in 24
hours
List Price: ~~39.99~~
Our Price: **\$35.99**
You Save: \$4.00
(10%)



Portable Disney
Classic CD Player -
DCD6000-C

Usually ships in 24
hours
Our Price: **\$49.99**



RCA MP3 Personal
CD Player -
RP2478

Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price: **\$59.99**



Sony Psyc
CD/Radio Cassette
Recorder - Blue
CFD-E95

Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price: **\$79.99**



RCA MP3 Portable
CD Player -
RP2480

Avg. Guest Rating:
★★★★
Usually ships in 24
hours
Our Price: **\$49.99**



Sony ATRAC3/I
Walkman /AM/I
Radio/ CD Play:
D-NF610

Avg. Guest Rat
★★★★
Usually ships in
hours
Our Price: **\$89**

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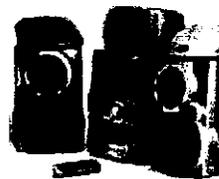


iRiver SlimX 550 Portable MP3 and CD Player - IMP-550

Our Price: \$179.99

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Sharp Home Theater Audio System Sharp

Our Price: \$139.99

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BOOMBOXES



Sony CD Stereo Black Box - CFD-G55 Sony

Our Price: \$99.99

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CLOCK RADIOS



RCA CD/Clock Radio - RP3755 RCA

Our Price: \$69.99

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SHOWER CD PLAYERS

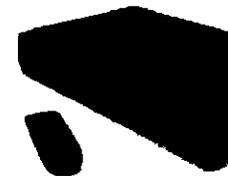


Jensen Shower CD Player and Radio with Mirror - JCR-550 Jensen

Our Price: \$39.99

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20GB TDK CDRW Juk DA9000 TDK

Our Price: \$399.99

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You Got Served
Soundtrack
 Release Date: 12/23/2003
 You Got Served
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CD
 List price: ~~\$18.98~~
Our Price: \$14.88
 You Save: \$4.10 (22%)



And Then...
Joe
 Release Date: 12/16/2003
 And Then...
[More Info](#)



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CD
 List price: ~~\$18.98~~
Our Price: \$9.84
 You Save: \$9.14 (48%)



Soulful
Ruben Studdard
 Release Date: 12/09/2003
 Soulful
[More Info](#)

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CD
 List price: ~~\$18.98~~
Our Price: \$11.88
 You Save: \$7.10 (37%)



Splinter (Edited)
The Offspring
 Release Date: 12/09/2003
 Splinter (Edited) (2CD)
[More Info](#)

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CD
 List price: ~~\$18.98~~
Our Price: \$9.88
 You Save: \$9.10 (48%)



Ultimate Dirty Dancing
Various Artists-Oldies
 Release Date: 12/09/2003
 Ultimate Dirty Dancing
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CD
 List price: ~~\$18.98~~
Our Price: \$14.88
 You Save: \$4.10 (22%)



Source Presents: Hip Hop Hits, Vol.7
(Edited)
Various Artists-Mainstream Rap
Release Date: 12/09/2003
 Source Presents: Hip Hop Hits, Vol.7
 (Edited)
[More Info](#)

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CD

List price: ~~\$12.99~~**Our Price: \$9.88**

You Save: \$3.11 (24%)



Comin' On Strong
Trace Adkins
Release Date: 12/02/2003
 Comin' On Strong
[More Info](#)

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CD

List price: ~~\$19.98~~**Our Price: \$13.42**

You Save: \$5.56 (29%)



Diary Of Alicia Keys, The
Alicia Keys
Release Date: 12/02/2003
 Diary Of Alicia Keys, The
[More Info](#)

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CD

List price: ~~\$19.98~~**Our Price: \$9.88**

You Save: \$9.10 (48%)



This Is Not A Test! (Edited)
Missy Elliott
Release Date: 11/25/2003
 This Is Not A Test! (Edited)
[More Info](#)

[Add to Cart](#)

CD

List price: ~~\$19.98~~**Our Price: \$12.88**

You Save: \$6.10 (32%)



Lord Of The Rings: The Return Of The
King, The
Soundtrack
Release Date: 11/25/2003
 Lord Of The Rings: The Return Of The King,
 The
[More Info](#)

[Add to Cart](#)

CD

List price: ~~\$19.98~~**Our Price: \$13.42**

You Save: \$6.56 (33%)



Seven
Enrique Iglesias
Release Date: 11/25/2003
 Seven
[More Info](#)

[Add to Cart](#)

CD

List price: ~~\$13.99~~**Our Price: \$12.88**

You Save: \$1.11 (8%)



Take A Look In The Mirror (Edited)
KoRn
Release Date: 11/25/2003
 Take A Look In The Mirror (Edited)
[More Info](#)

[Add to Cart](#)

CD

List price: ~~\$18.98~~**Our Price: \$9.72**

You Save: \$9.26 (49%)



Da Derry Version: The Reinvention
(Edited)
Nelly
Release Date: 11/25/2003
 Da Derry Version: The Reinvention (Edited)
[More Info](#)

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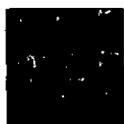
CD

List price: ~~\$12.99~~**Our Price: \$11.88**

You Save: \$1.11 (9%)

Life On Display
Puddle of Mudd

[Add to Cart](#)



Release Date: 11/25/2003
 Life On Display
[More Info](#)

CD
 List price: ~~\$12.99~~
Our Price: \$11.88
 You Save: \$1.11 (9%)



Top Of The World Tour (2CD)
Dixie Chicks
Release Date: 11/25/2003
 Top Of The World Tour (2CD)
[More Info](#)

CD
 List price: ~~\$19.98~~
Our Price: \$11.88
 You Save: \$8.10 (41%)

[Add to Cart](#)



Singles: 1992-2003, The No Doubt
Release Date: 11/25/2003
 Singles: 1992-2003, The
[More Info](#)

CD
 List price: ~~\$12.99~~
Our Price: \$10.88
 You Save: \$2.11 (16%)

[Add to Cart](#)



Greatest Hits (Includes Limited Edition Bonus DVD)
LeAnn Rimes
Release Date: 11/18/2003
 Greatest Hits (Includes Limited Edition Bonus DVD)
[More Info](#)

CD
 List price: ~~\$18.98~~
Our Price: \$12.88
 You Save: \$6.10 (32%)

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Greatest Hits (Edited)
The Red Hot Chili Peppers
Release Date: 11/18/2003
 Greatest Hits (Edited)
[More Info](#)

CD
 List price: ~~\$18.98~~
Our Price: \$13.42
 You Save: \$5.56 (29%)

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Live In Texas (Includes DVD)
Linkin Park
Release Date: 11/18/2003
 Live In Texas (Includes DVD)
[More Info](#)

CD
 List price: ~~\$19.98~~
Our Price: \$14.88
 You Save: \$5.10 (26%)

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Blink-182 (Edited)
Blink 182
Release Date: 11/18/2003
 Blink-182 (Edited)
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CD
 List price: ~~\$13.99~~
Our Price: \$10.88
 You Save: \$3.11 (22%)

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Coby Personal CD Player CX-CD111

\$23.88



Sony CD Walkman D-EJ360

\$48.76



Panasonic Portable CD Player With LCD on Top Cover SL-SX320

\$39.54



Durabrand Personal CD/MP3 Player C

\$29.66



Coby Personal CD Player With FM CXCD305

\$24.68



Sony CD Walkman With Car Kit D-EJ368CK

\$59.54



Panasonic Personal CD/MP3 Player SL-SX420

\$49.95



Case Logic Portal Player Case

\$9.88



Sony MP3/ATRAC3/CD Walkman D-NE510

REFURBISHED



Sony S2 Sports ATRAC3/MP3 CD Walkman D-NS921F



Aiwa Personal CD Player XP-EV501R

REFURBISHED



Sony MP3/Atrac3 Walkman D-NF61

\$89.62

\$68.73

Was: \$71.56

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Sony Sports CD Walkman D-SJ301

\$78.88

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\$148.92

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Sony CD Walkman With AM-FM-TV-Weather D-FJ210

\$69.92

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\$44.76

Was: \$48.76

[Add to Cart](#)

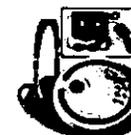


Philips Car Adapter Kit for Personal CD Players

\$19.96

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Panasonic Personal Player with Car K SX321C

\$49.95

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Panasonic Personal CD/MP3 Player SL-J900

\$180.48

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Panasonic Shockwave Personal CD Player SL-SW940P/R

\$69.92

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Philips Personal CD Player AX7201/17

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Sony "Psyc" CD Walkman DEJ360

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[add to cart](#) CD \$13.99

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(includes DVD Video: Howard Shore)****add to cart** CD \$29.98**Peter Pan (Original Motion Picture Soundtrack)****add to cart** CD \$13.99**Chicago (The Miramax Motion Picture Soundtrack)****add to cart** CD \$13.99**The Incredible Christmas Album****special order** CD \$13.99

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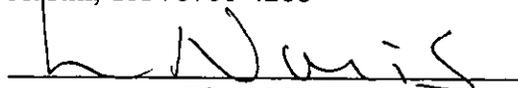
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I hereby certify that on January 20, 2004, I served the foregoing Reply Declaration of Joan Kupersmith Larkin in Response to Applicant's Opposition to Opposer's Motion for Summary Judgment on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First-Class U.S. mail addressed to applicant's counsel as follows:

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Linda Norris

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

In the Matter of Application No. 76/389,730
Published in the Official Gazette of December 17, 2002

SUPERSCOPE TECHNOLOGIES, INC.,

Opposer,

v.

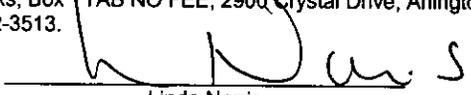
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Opposition No. 156,510

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OPPOSER'S REPLY BRIEF ON ITS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION¹

Applicant's scattershot opposition reflects a fundamental misunderstanding of the nature of the issues in a Board proceeding under § 2(d). Applicant relies almost entirely upon evidence and arguments that might have some bearing in an infringement suit directed to Applicant's use of his alleged mark, but simply have none here. "Proceedings before the Board are concerned with registrability and not use of a mark." *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000). Applicant completely ignores this critical distinction.

The issue in this proceeding is whether "SUPERSCOPE RECORDS" in a typed drawing for unrestricted goods identified as "vinyl phonograph records and compact discs containing pre-recorded musical performances" is confusingly similar to Opposer's registered mark "SUPERSCOPE" in a typed drawing for unrestricted goods identified broadly as, *inter alia*, "CD

¹ Opposer respectfully requests that the Board exercise its discretion under 37 C.F.R. § 2.127(d) to consider this reply brief, which addresses the numerous arguments raised in Applicant's opposition and the evidence offered in the supporting declaration of Applicant's counsel.

players,” “CD recorders,” and “amplifiers.” Applicant has completely failed to show the existence of a genuine issue of material on that question, and this motion should be granted.

ARGUMENT

APPLICANT HAS FAILED TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT AND OPPOSER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Applicant’s position regarding the application of the *DuPont* factors on this motion bears a striking resemblance to that of the applicant/unsuccessful appellant in *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990), a case that is cited in passing by Applicant on the standard for summary judgment, Memo. ¶ 5, but obviously was not read for substance.²

The *Octocom* applicant “took the position that under *DuPont*, once evidence is presented on a factor (*e.g.*, on an applicant’s specific trade channels), such evidence is controlling regardless of the lack of any limitation in the applicant’s description of goods reflecting the newly asserted limitation.” 16 USPQ2d at 1787. Here, Applicant claims that his “evidence establishes several of the *DuPont* factors; specifically, the conditions under which sales are made to buyers (*i.e.*, sophisticated purchasers of both parties’ products) [and] the dissimilarity of established and likely-to-be continued trade channels (Opposer’s products are not found in the same channels of trade as [Applicant’s] products).” Memo. ¶ 18.

But as in *Octocom*, “the factors which [Applicant here] asks to have considered are not reflected, either expressly or inherently, in [his] application.” *Id.* “Because [Applicant] seeks an *unrestricted* registration, such evidence as there is of a specific class of customers [does] not

² In *Octocom*, the Federal Circuit affirmed a summary judgment for the opposer (and granted sanctions against the applicant), rejecting many of the arguments made by Applicant here.

relate to a *material* fact.” *Id.* at 1787-88 (emphasis in original). Like that of the *Octocom* applicant:

“In essence [Applicant’s] argument concerning the *DuPont* factors is backwards. A factor listed in *DuPont* is not made material by submission of evidence on the point; rather, the factor must be shown to be material or relevant *in the particular* case before any evidence offered on the point should be considered. . . . [A]n application with an identification of goods having no restrictions on trade channels is obviously not narrowed by testimony that the applicant’s use is, in fact, restricted to a particular class of purchasers. Thus, such evidence does not support [the applicant’s] alleged right to registration of the mark for the goods *set forth in the application* at issue.”

Id. at 1788 (emphasis in original).³

Accordingly, as discussed in detail below, Applicant’s evidence of the parties’ current actual uses of their marks is irrelevant and fails to create a genuine issue of material fact regarding Applicant’s right to register his mark.⁴ To decide this motion properly under *DuPont*, the Board need go no further than an analysis of the similarity of the marks and the similarity, in terms of nature, channels of trade, and classes of customers, of goods identified broadly as “vinyl phonograph records and compact discs containing prerecorded musical performances,” and “CD players,” “CD recorders,” and “amplifiers.”⁵ Under that analysis, confusion is likely as a matter of law.

³ The same principle applies, of course, to Applicant’s evidence regarding the current actual use of Opposer’s mark. *See, e.g., San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977).

⁴ Opposer has separately filed evidentiary objections under Rule 56(e) of the Federal Rules of Civil Procedure to most of Applicant’s evidence.

⁵ Applicant suggests that Opposer is barred from addressing the *DuPont* factors raised by Applicant in his reply, Memo. ¶ 6, n.1, but the single case relied upon by Applicant, *Lexicon Inc. v. Lexicon Music, Inc.*, 225 USPQ 201 (TTAB 1985), says nothing of the sort. *Lexicon* simply held that an opposer in a § 2(d) opposition who had not introduced any evidence at trial regarding a separate § 2(a) ground for opposition was deemed to have abandoned that ground at final hearing. Applicant understandably tries to avoid the *result* in *Lexicon*, the Board’s finding of a likelihood of confusion between “LEXICON” for phonograph records and tape recordings

I.

**THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT
THE MARKS ARE CONFUSINGLY SIMILAR.**

It is self-evident that the parties' marks, "SUPERSCOPE" and "SUPERSCOPE RECORDS," are virtually identical in sight, sound, and meaning, as they differ only by the presence of the term "RECORDS" in Applicant's mark. Applicant makes no effort to deny that Opposer's "SUPERSCOPE" mark is the dominant, source-identifying portion of Applicant's mark, or that "[t]he word ['RECORDS'] in [A]pplicant's mark is a generic and disclaimed term which contributes relatively little to the overall commercial impression created by [A]pplicant's mark." *In re Continental Graphics Corp.*, 52 USPQ2d 1374, 1376 (TTAB 1999).

Instead, Applicant argues that "[t]he parties' marks are also both stylized in distinctly different manners," Memo. ¶ 10, n.3, thus claiming "to distinguish his mark with such techniques as using particular colors and a particular font," *Cunningham*, 55 USPQ2d at 1847, and the presence of various elements of trade dress. But because these claimed elements do not appear in the drawings in Opposer's registrations or in the opposed application, they are irrelevant on the issue of the similarity of the marks. *Id.* (registrations or applications "with typed drawings are not limited to any particular rendition of the mark and, in particular, are not limited to the mark as it is used in commerce"); *see also Vornado, Inc. v. Breuer Elec. Mfg. Co.*, 390 F.2d 724, 156 USPQ 340, 342 (CCPA 1968) (because registration of senior mark upon which opposition was based disclosed only the word mark, "the display of the mark in a particular style is of no material significance since the display may be changed at any time as may be dictated by the

and "LEXICON" for speech processors, digital delay systems, and audio signal processors, based upon a "long line of decisions [requiring the Board] to determine likelihood of confusion issues according to the goods as they are identified in the application for registration, irrespective of how they may be presently used." 225 USPQ at 205 (citations omitted).

fancy of the applicant or the owner of the mark”); *Kimberly-Clark Corp. v. H. Douglas Enters., Ltd.*, 774 F.2d 1144, 227 USPQ 541, 543 (Fed. Cir. 1985) (trade dress associated with challenged mark is irrelevant because it can be changed at any time and only word mark itself is to be registered).⁶

The near-identity of the marks here substantially reduces the degree of similarity of the goods necessary for confusion to be likely, *see, e.g., In re Concordia Inter'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB), and weighs strongly in favor of a finding that confusion is likely as a matter of law.

II.

THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT THE PARTIES' GOODS ARE VERY CLOSELY RELATED BECAUSE THEY ARE COMPLIMENTARY AND ARE SOLD IN THE SAME CHANNELS OF TRADE TO THE SAME CLASSES OF CUSTOMERS.

Applicant's opposition focuses on his and Opposer's current actual use of their respective "SUPERSCOPE RECORDS" and "SUPERSCOPE" marks. He argues that "[i]t is . . . undisputed that [Applicant's] product--prerecorded music--is found in channels of commerce different from those of Opposer," Memo. ¶ 3; that "consumers of [Opposer's] products are a specific market of consumers; its products are designed for use as a rehearsal and performance tool for music educators, musicians, dancers, and others in the performing arts" who are "highly

⁶ Applicant's reliance upon *Sunenblick v. Harrell*, 895 F. Supp. 616 (S.D.N.Y. 1995), is similarly misplaced because Applicant again urges the Board to consider subject matter ("a style of music and the name of a performer or the title of a piece of music," Memo. ¶ 9), that is not in the drawing in the opposed application. In finding that the marks were dissimilar in *Sunenblick*, the court relied upon "the manner in which the parties' logos are displayed on the parties' respective products," 895 F. Supp. at 628, a matter that the Board cannot consider on this motion. Applicant's citation of *Modular Cinemas of Am., Inc. v. Mini Cinemas Corp.*, 348 F. Supp. 578 (S.D.N.Y. 1972), Memo. ¶ 10, is unavailing for essentially the same reason, as the court in that case also considered subject matter in addition to the word marks in making its determination. 348 F. Supp. at 583.

specialized, sophisticated, and not susceptible to confusion,” Memo. ¶ 10; and that “the products of Opposer are not to be found at the national chains that sell compact discs: Circuit City (Exhibit 3), Best Buy (Exhibit 3), Tower Records, Walmart, Sam Goody, or Barnes & Noble,” Memo. ¶ 11. The conclusion that he urges the Board to draw from this evidence is that summary judgment must be denied because the “average consumer who purchases records and compact discs for personal enjoyment is unlikely even to be aware of the existence of Opposer’s products, and the average consumer purchasing a compact disc issued by [Applicant’s] company will see no relationship between that and the product produced by Opposer.” Memo. ¶ 16.

Applicant’s evidence and argument fail to raise a genuine issue of *material* fact. “The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application *regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the classes of purchasers as to which sales of the goods are directed.*” *Octocom*, 16 USPQ 2d at 1787 (emphasis added); *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999) (“[i]t is well settled that the issue of likelihood of confusion must be determined on the basis of the goods as they are identified in the involved application and the cited registration, *rather than on what any evidence may show as to the actual nature of the goods, their channels of trade and/or classes of purchasers*”) (emphasis added).⁷ Applying the correct analysis,

⁷ Applicant’s argument that he “does not seek to register the mark in International Class 9 (Opposer’s registration class),” Memo. ¶ 4, is truly bizarre because his application *is* in Class 9. But even if it were in another class, that fact alone would be irrelevant. “The classification system was established for the convenience of the [Patent and Trademark] Office rather than to indicate that goods in the same class are necessarily related or that the classification in different classes indicates that they are not related” for § 2(d) likelihood of confusion purposes. *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216, n.5 (TTAB 1990). For this and other reasons, the third-party registration of “SUPERSCOPE” for software in Class 9 offered by Applicant is irrelevant. See pp. 11-12, *infra*.

Opposer's and Applicant's goods are so closely related as to make confusion likely as a matter of law when those goods are sold under the parties' virtually-identical marks.

A. Opposer's Registrations Contain No Restrictions or Limitations on the Goods, Channels of Trade, or Classes of Customers.

There are no restrictions or limitations in any of Opposer's registrations on the identifications of goods, or the channels of trade and the classes of customers for those goods. Accordingly, Opposer's CD players, CD recorders, amplifiers, and other goods are assumed to include all goods of those sorts, sold through all ordinary and customary channels of trade for such goods, and to all ordinary and customary classes of customers of such goods, regardless of what Applicant's evidence may show Opposer's current actual goods, channels of trade, and classes of customers to be. *See, e.g., Cunningham*, 55 USPQ2d at 1846 and cases cited therein.

In *San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977), the Court of Customs and Patent Appeals held that where the goods in the opposer's registration ("capacitors") were identified broadly and without limitation as to type, channels of trade, or classes of customers, "the particular uses of the mark [opposer] happened to be making at the time of [trial] are irrelevant, together with the particular types of purchasers assumed to be buying from opposer." 196 USPQ at 2. This is because a registrant's "rights are not to be tied to its current business practices, which may change at any time. Its rights are as broad as its registration for [its goods]." *Id.*

These principles affect not only the analysis of the nature of Opposer's goods, but also the channels of trade through which, and the classes of customers to which, the registrant's goods are assumed to be sold. For example, the *San Fernando* court found that "[c]apacitors are of enormous variety in type and size," *id.*, and the opposer's rights under its registration thus were not limited to the relatively expensive products that it actually sold to sophisticated

purchasers, but extended to all goods fairly falling within the registration identification, including cheap and simple capacitors sold to “kids assembling educational science kits and picking [the capacitors] off of racks in stores selling electronic parts.” *Id.*

Opposer’s goods, identified broadly as “CD players,” “CD recorders,” and “amplifiers,” are thus assumed, as a matter of law, to include all such goods, ranging from expensive CD players for professional use sold for hundreds of dollars each only in high-end electronic stores to cheaper personal CD players sold for less than \$20 in mass merchandise outlets and other retail outlets to members of the general public, including children, for recreational listening. Larkin Reply Decl. Exs. 1-4; Pratt Decl. ¶¶ 2-3; Exs. 1-2. Even assuming, for purposes of this motion only, that Opposer’s current “products are designed for use as a rehearsal and performance tool for music educators, musicians, dancers, and others in the performing arts,” Memo. ¶ 10; that currently “the products of Opposer are not to be found at the national chains that sell compact discs,” Memo. ¶ 11; that currently “Opposer’s products are used by highly sophisticated end-users and under specialized conditions,” Memo. ¶ 12; and that currently “Opposer’s products are highly specialized and not used by the average consumer, rather more so in a professional context,” Memo. ¶ 12, Opposer’s goods must be given a very broad interpretation as to their types, prices, channels of trade, and classes of customers on this motion. *San Fernando, supra.*

B. The Opposed Application Contains No Limitations or Restrictions on the Goods, Channels of Trade, or Classes of Customers.

Like Opposer’s registrations, the opposed application contains no limitations or restrictions on the records and CDs identified therein in terms of contents, channels of trade, or classes of customers. As a result, Applicant’s recorded music goods must be given a broad

interpretation as to their contents, channels of trade, and classes of customers, irrespective of Applicant's evidence of his actual current use of the mark.

C. The Goods Identified in Opposer's Registration and in the Opposed Application Are Very Closely Related and Confusion is Likely as a Matter of Law When The Goods Are Sold Under the Parties' Marks.

It is self-evident that there is a very close relationship between the parties' goods. The goods identified in the opposed application, CDs and records, cannot be used for their intended purpose without many of the goods identified in Opposer's registrations, most obviously CD players; indeed, Applicant's own evidence regarding the nature of Opposer's goods confirms this very point. Perkins Decl. Ex. 5. Applicant's largely incomprehensible response to this undisputed (and indisputable) fact offers no relevant contrary evidence or Board authority.

Applicant merely argues that the "fact that one of [Applicant's] compact discs could be put into one of Opposer's machines and played does not make these two goods related," dismissing any such notion as a "simplistic argument [that] flies in the face of well established trademark law" (without citing any). Memo. ¶ 14. The only "well established trademark law" on this point is found in the three Board decisions, *In re Webcor, Inc.*, 122 USPQ 97 (TTAB 1959); *Lexicon, supra*; and *Data Packaging Corp. v. Morning Star, Inc.*, 212 USPQ 109 (TTAB 1981), cited by Opposer in its opening papers. These cases hold, directly contrary to Applicant's position, that recorded music, and the equipment used to play or house it, are very closely related goods because they are complimentary.⁸

In its opening papers, Opposer made of record a number of use-based registrations of marks for both the goods identified in the opposed application and the goods identified in the

⁸ Applicant tries to distinguish these cases by suggesting that they were overruled *sub silentio* in the *Harrell* infringement case. Memo. ¶ 9, n.2. But as shown above, *Harrell* simply does not speak to issues of registrability and certainly said nothing about the issue of the relatedness of the goods at issue in the controlling Board cases and on this motion.

registrations of record. Other than trashing Opposer for allegedly comparing itself in size and stature to one of these registrants, Sony Corporation, Memo. ¶ 13, Applicant ignores this evidence, which the Board has held to be highly probative of relatedness, *see In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988), and it is wholly un rebutted.

Finally, as noted above, Opposer argues that the parties' goods are not related because they travel in different channels of trade and are purchased by different classes of customers. But when the goods, channels of trade, and classes of customers are considered under the proper legal standards discussed above, there is no genuine issue that CDs and records, and CD players, CD recorders, and amplifiers, are sold in the same channels of trade and are (necessarily) purchased by the same classes of customers. Indeed, although the distribution of CDs and records is obviously not limited, as Applicant suggests, either to "stores that specialize in this type of product," Memo. ¶ 3, or to the specific retail outlets discussed in Mr. Perkins' declaration, the Larkin Reply Declaration establishes that CD players are offered on the websites of Target, Wal-Mart, Circuit City, and Best Buy,⁹ and the Pratt Declaration establishes that CD players are offered in Tower Records and Sam Goody stores, all of which retailers admittedly carry Applicant's goods, CDs and records. Larkin Reply Decl. ¶¶ 2-5; Exs. 1-4; Pratt Decl. ¶¶ 2-3; Exs. 1-2.

Given the identity of the channels of trade, the complimentary nature of the goods, and the virtual identity of the parties' marks, Applicant has failed to raise a genuine issue of material fact that confusion is not likely and Opposer is entitled to judgment as a matter of law.

⁹ Some of these CD players are offered for less than \$20 each (slightly above the typical \$12-15 price for a CD), Larkin Reply Decl. Ex. 4, belying Applicant's claim that the purchasers of these goods are invariably sophisticated and will exercise in making purchases care because of the high price of the goods. Indeed, the Board can judicially notice that CDs and the equipment used to play them are purchased and used by consumers of all ages, income and educational levels, and sophistication.

III.

APPLICANT'S "WAIVER" ARGUMENT FAILS TO CREATE A GENUINE ISSUE OF MATERIAL FACT.

Applicant "asserts that Opposer's failure to police its market by allowing use by other third parties constitutes waiver and is indicative of a lack of confusion." Memo. ¶¶ 7, 17. He bases this claim on Reg. No. 1,616,530 for the mark "SUPERSCOPE" for "computer programs for use in data acquisition, input/output and display tasks," Perkins Decl. Ex. 1, the alleged use of the "SUPERSCOPE" mark by an Australian band, Perkins Decl. ¶ 4, Ex. 3, and the alleged use of the mark "SUPERSCOPE" by a company in connection with a floor cleaning product. Perkins Decl. ¶ 6; Ex. 6. This argument is utterly meritless.

In Board proceedings, waiver is an equitable defense that is personal to the applicant and requires proof of an affirmative act by the opposer renouncing the right to oppose registration of the applicant's mark. *M-5 Steel Mfg., Inc. v. O'Hagin's Inc.*, 61 USPQ2d 1086, 1094-95 (TTAB 2001). Applicant does not even attempt such a showing here. Instead, his third-party evidence appears to be offered to show that confusion between the parties' marks is unlikely because of the existence of other uses of "SUPERSCOPE." It is woefully inadequate for that purpose.

The possible use of "SUPERSCOPE" in connection with a floor cleaning product involves goods that are so unrelated to the parties' goods as to be legally irrelevant. *Nat'l Cable Television Ass'n, Inc. v. American Cinema Editors, Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1429-30 (Fed. Cir. 1991); *Charrette Corp. v. Bowater Communication Papers, Inc.*, 13 USPQ2d 2040 (TTAB 1989); *see also Eclipse Assocs. Ltd. v. Data General Corp.*, 894 F.2d 1114, 13 USPQ2d 1885 (9th Cir. 1990) (use of mark on floor cleaning product and other goods unrelated to parties' computer software irrelevant on issue of scope of protection for plaintiff's mark). The same principle bars any evidence regarding the "SUPERSCOPE" mark for software, but (as with the

floor cleaner as well) this evidence is inadmissible for the additional reason that Applicant has offered no proof of any actual use of the registered mark and it is well settled that “[t]he mere citation of third party registrations is not proof of third party uses for the purpose of showing a crowded field and relative weakness [of a mark]. Third party registrations are not evidence of use ‘so as to have conditioned the mind of prospective purchasers’.” 1 J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 11:89 at 11-171 (4th ed. 2003 (quoting *San Fernando*, *supra* 196 USPQ at 2)).

With respect to the claimed use of “SUPERSCOPE” as the name of a musical group, Perkins Decl. Ex. 3, the page from the Best Buy website offered by Applicant shows no use of “SUPERSCOPE” as a mark for the CD and, in any event, Mr. Perkins lacks personal knowledge as to how long and how widely this particular CD, or the CDs shown on the Wherehouse Records website, have been available in the United States, and no other evidence is offered on those subjects.¹⁰

Applicant has fallen far short of showing that there is a genuine issue of material fact that Opposer’s registered “SUPERSCOPE” mark has been so weakened by relevant third-party uses as to make confusion with Applicant’s “SUPERSCOPE RECORDS” mark unlikely. His “waiver” claim fails as a matter of law.

¹⁰ Applicant’s bold claim that this mark has been in use “since at least 1996,” Memo. ¶ 17, is based solely upon the listed release date of the CD shown on the Best Buy site. Even assuming that this CD was released somewhere in the world in 1996, Applicant offers no evidence regarding the duration and extent of the distribution of this product in the United States, much less any evidence of its impact on the strength of Opposer’s registered marks. Without such evidence, this snapshot picture of a possible third-party use has no probative value whatsoever. *See, e.g., Lexington Management Corp. v. Lexington Capital Partners*, 10 F. Supp. 2d 271, 47 USPQ2d 1558 (S.D.N.Y. 1998).

CONCLUSION

For all of the foregoing reasons and for all of the reasons set forth in Opposer's opening papers, Opposer's motion for summary judgment should be granted in its entirety.

Respectfully submitted,

Dated: January 20, 2004

SEYFARTH SHAW LLP

By: _____

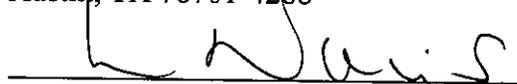
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2029 Century Park East, Suite 3300
Los Angeles, CA 90067-3063
Telephone: (310) 277-7200
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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2004, I served the foregoing Opposer's Reply Brief on Its Motion for Summary Judgment on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First-Class U.S. mail addressed to applicant's counsel as follows:

Bruce Perkins, Esq.
Fritz, Byrne, Head & Harrison LLP
98 San Jacinto Boulevard, Suite 2000
Austin, TX 78701-4288



Linda Norris

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

In the Matter of Application No. 76/389,730
Published in the Official Gazette of December 17, 2002

SUPERSCOPE TECHNOLOGIES, INC.,

Opposer,

v.

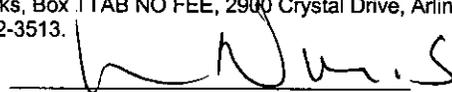
TOM BUNCH,

Applicant.

Opposition No. 156,510

CERTIFICATE OF MAILING

I hereby certify that on January 20, 2004, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. EV171936194US for delivery to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.


Linda Norris

**OPPOSER'S EVIDENTIARY OBJECTIONS TO APPLICANT'S OPPOSITION TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56(e) of the Federal Rules of Civil Procedure, opposer Superscope Technologies, Inc. ("Opposer") hereby objects to the admission on this motion of the following evidence offered by applicant Tom Bunch ("Applicant") in his opposition to Opposer's motion for summary judgment, and requests that the Board exclude it from the record on this motion.

1. Perkins Decl. ¶ 3 and Ex. 1: Exhibit 1, Reg. No. 1,616,530 for the mark "SUPERSCOPE" for "computer programs for use in data acquisition, input/output and display tasks," is inadmissible for any purpose as irrelevant because it does not establish any actual use in commerce of the mark shown therein and, in any event, the goods identified therein are less closely related to either the goods identified in Opposer's registration or the goods identified in the opposed application than the parties' goods are to each other. Fed. R. Evid. 401-402; TBMP § 703.02(b) and cases cited therein; I J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 11:89 at 11-171 (4th ed. 2003) and cases cited therein; *Nat'l Cable Television*

Ass'n, Inc. v. American Cinema Editors, Inc., 937 F.2d 1572, 19 USPQ2d 1424, 1429-30 (Fed. Cir. 1991).

2. Perkins Decl. ¶ 3; Exs. 2-4: To the extent that these web pages are offered to show that Opposer's current goods do not appear in Tower Records, Barnes & Noble, Circuit City, Best Buy, Walmart, Warehouse Music, and Sam Goody stores, and that Opposer's current goods appear on Amazon.com as "Industrial Supplies," they are inadmissible as irrelevant because the issue before the Board on this motion is whether the goods identified in Opposer's pleaded registrations travel in the same channels of trade as the goods identified in the opposed application, regardless of what the evidence may show as to the parties' current actual channels of trade. Fed. R. Evid. 401-402; *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); *San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977). To the extent that Exhibit 3 is offered to show alleged third-party use of the mark "SUPERSCOPE" on sound recordings, it is inadmissible because Mr. Perkins does not demonstrate that he has personal knowledge regarding the nature, duration, and extent of any use of the mark in commerce, and no other evidence on those subjects is offered. Fed. R. Evid. 602; TMBP § 703.02(b) and cases cited therein.

3. Perkins Decl. ¶ 5; Ex. 5: To the extent that Exhibit 5, pages from Opposer's website, is offered to show Opposer's current actual use of its "SUPERSCOPE" mark, it is inadmissible as irrelevant because the issue before the Board on this motion is whether the goods identified in Opposer's pleaded registrations are related to those identified in the opposed application, regardless of what the evidence may show as to Opposer's current actual business practices, which may change at any time. Fed. R. Evid. 401-402; *Cunningham v. Laser Golf*

Corp., 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000); *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977). To the extent that Exhibit 5 is offered to show Opposer's actual use of the mark shown in its pleaded registrations, it is inadmissible as irrelevant because only the mark as shown in the pleaded registrations is at issue on this motion. *Cunningham*, 55 USPQ2d at 1847; *Vornado, Inc. v. Breuer Elec. Mfg. Co.*, 390 F.2d 724, 156 USPQ 340, 342 (CCPA 1968); *Kimberly-Clark Corp. v. H. Douglas Enters., Inc.*, 774 F.2d 1144, 227 USPQ 541, 543 (Fed. Cir. 1985).

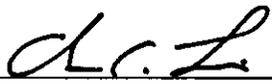
4. Perkins Decl. ¶ 6; Ex. 6: Exhibit 6, a photograph of an alleged "SUPERSCOPE" floor care product, is inadmissible as irrelevant because floor care products are less closely related to either the goods identified in Opposer's pleaded registrations or the goods identified in the opposed application than the parties' goods are to each other, and because Mr. Perkins does not demonstrate that he has personal knowledge regarding the nature, duration, and extent of any use of this mark in commerce, and no other evidence is offered on those subjects. Fed. R. Evid. 401-402, 602; I J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 11.89 at 11-171 (4th ed. 2003), and cases cited therein; *Nat'l Cable Television Ass'n, Inc. v. American Cinema Editors, Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1429-30 (Fed. Cir. 1991).

5. Perkins Decl. ¶ 7; Ex. 7. Exhibit 7, the alleged artwork for Applicant's product "showing the use of the SUPERSCOPE mark," is inadmissible as irrelevant because only Applicant's mark as shown in the opposed application is at issue on this motion. *Cunningham*, 55 USPQ2d at 1847; *Vornado*, 156 USPQ at 342, *Kimberly-Clark*, 227 USPQ at 543.

Dated: January 20, 2004

Respectfully submitted,

SEYFARTH SHAW LLP

By: _____

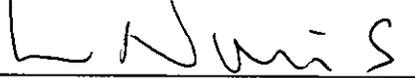
Christopher C. Larkin
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2029 Century Park East, Suite 3300
Los Angeles, CA 90067-3063
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Facsimile: (310) 201-5219

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2004 I served the foregoing Opposer's Evidentiary Objections to Applicant's Opposition to Opposer's Motion for Summary Judgment on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First-Class U.S. mail addressed to applicant's counsel as follows:

Bruce Perkins, Esq.
Fritz, Byrne, Head & Harrison LLP
98 San Jacinto Boulevard, Suite 2000
Austin, TX 78701-4288



Linda Norris

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

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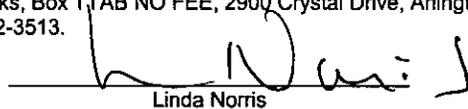
TOM BUNCH,

Applicant.

Opposition No. 156,510

CERTIFICATE OF MAILING

I hereby certify that on January 20, 2004, 2003, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. EV171936194US for delivery to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.


Linda Norris

**DECLARATION OF DAVID PRATT IN REPLY TO APPLICANT'S OPPOSITION TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, DAVID PRATT, hereby declare:

1. I am the Marketing Communications Manager for opposer Superscope Technologies, Inc. ("Opposer"). I make this declaration on the basis of my own personal knowledge and in reply to the opposition of applicant Tom Bunch ("Applicant") to Opposer's motion for summary judgment.

2. On January 13, 2004, I visited a Sam Goody store in Aurora, Illinois. The store carried a wide variety of compact discs, together with a wide variety of CD players, and other electronic musical equipment. Attached hereto as Exhibit 1 is a true and correct copy of a photograph that I took inside the store, showing the availability of numerous types of CD players, as well as CDs. Exhibit 1 accurately depicts what I saw during my visit to the store.

2. On January 14, 2003, I visited a Tower Records store in Schaumburg, Illinois. Like the Sam Goody store, the Tower Records store carried a wide variety of compact discs, together with a wide variety of CD players, and other electronic musical equipment. Attached

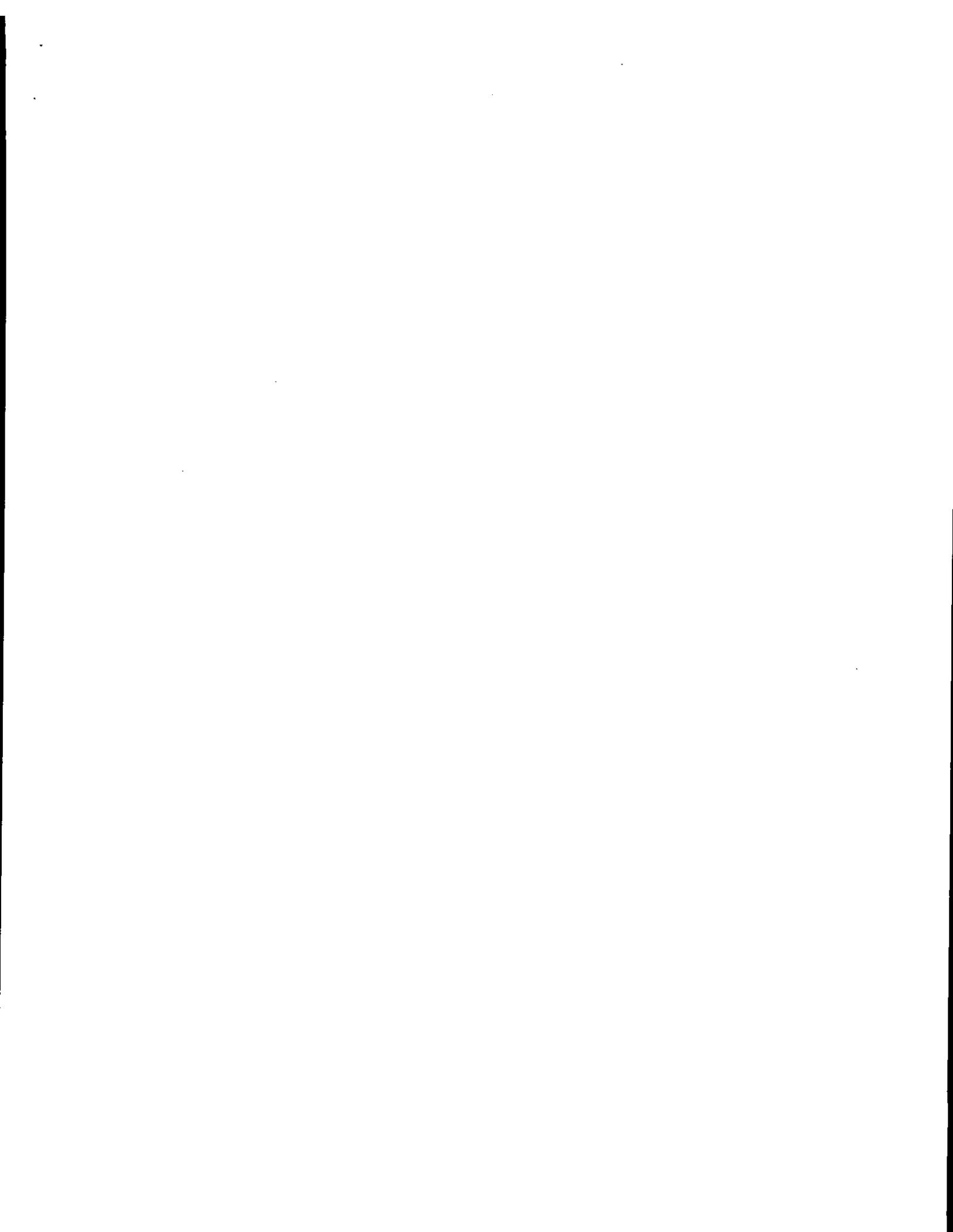
hereto as Exhibit 2 is a true and correct copy of a photograph that I took inside the store, showing the availability of numerous types of CD players, as well as CDs. Exhibit 2 accurately depicts what I saw during my visit to the store.

Executed this 19th day of January, 2004 at Aurora, Illinois.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



DAVID PRATT





SAM GOODY

Aurora, IL
Jan. 13, 2004

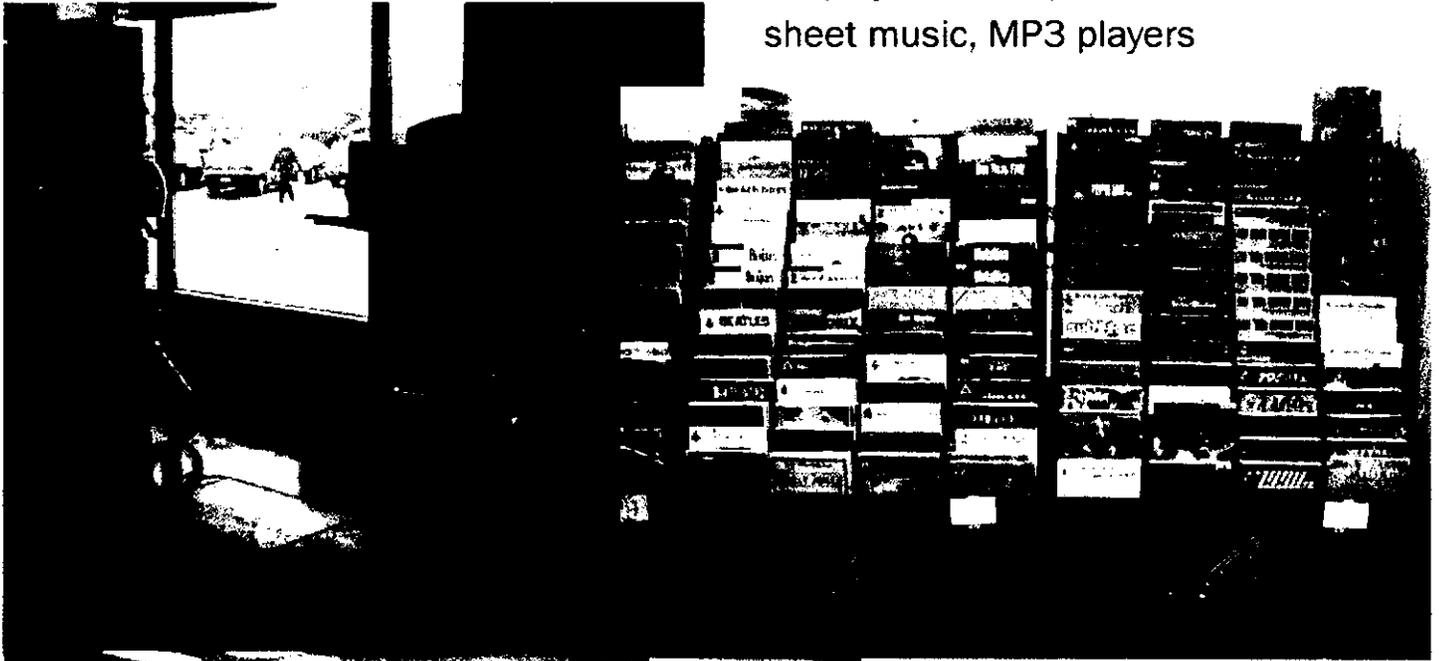
CD players, walkmans,
karaoke systems,
electronic keyboards,
guitars, headphones.
sheet music



TOWER RECORDS, SCHAUMBURG, IL

Jan 14, 2003

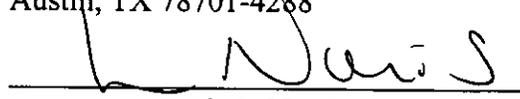
CD players, headphones, boomboxes,
sheet music, MP3 players



CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2004, I served the foregoing Declaration of David Pratt in Reply to Applicant's Opposition to Opposer's Motion for Summary Judgment on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First-Class U.S. mail addressed to applicant's counsel as follows:

Bruce Perkins, Esq.
Fritz, Byrne, Head & Harrison LLP
98 San Jacinto Boulevard, Suite 2000
Austin, TX 78701-4288

A handwritten signature in cursive script, appearing to read "Linda Norris", is written over a horizontal line.

Linda Norris