

ESTTA Tracking number: **ESTTA3243**

Filing date: **11/14/2003**

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

Notice is hereby given that the following party opposes registration of the indicated application.

<b>Opposer Name</b>	Sean Daley		
<b>Opposer Entity</b>	Individual	<b>Citizenship of Opposer</b>	UNITED STATES
<b>Opposer Address</b>	c/o Luke W. DeMarte 55 East Monroe Street, Suite 4200 Chicago, IL 60603 UNITED STATES		

<b>Attorney information</b>	Luke W. DeMarte Seyfarth Shaw LLP 55 East Monroe Street Suite 4200 Chicago, IL 60603 UNITED STATES ldemarte@seyfarth.com Phone:312.781.8610
-----------------------------	--

**Applicant Information**

<b>Application No</b>	76475501	<b>Publication date</b>	11/11/2003
<b>Opposition Filing Date</b>	11/14/2003	<b>Opposition Period Ends</b>	12/11/2003
<b>Applicant</b>	Persing, Eric		
<b>Address</b>	P.O. Box 7336 Burbank, CA 91510 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009 First Use: 20020117 First Use In Commerce: 20020924

All goods and services in the class are opposed, namely: Computer software and sound recordings recorded on CD-ROMs and DVD for use in music production, musical sound recordings and multimedia production

**Attachments** atmosphere501noticeofopposition.pdf ( 9 pages )



“computer software and sound recordings recorded on CD-ROMs and DVD for use in music production, musical sound recordings and multimedia production” in International Class 009.

3. Opposer and Anthony Davis are the joint owners of the trademarks ATMOSPHERE for musical sound recordings and entertainment services, namely, musical performances by a performer or group, and filed applications to register the same, Serial Nos. 76/318,031 and 76/315,468. Copies of the application information regarding these marks printed from the TESS database are attached as Exhibits to this Notice of Opposition.

4. Opposer began using the mark set forth in Serial No. 76/318,031 for musical sound recordings in interstate commerce at least as early as September 7, 1993. On September 20, 2001, Opposer filed for federal registration of such mark for musical sound recordings.

5. Opposer began using the mark set forth in Serial No. 76/315,468 for entertainment services, namely, musical performances by a performer or group in interstate commerce at least as early as September 7, 1993. On September 20, 2001, Opposer filed for federal registration of such mark for entertainment services.

6. For over a decade, Opposer has, at great expense, continuously engaged in the sale, rendition and promotion of musical sound recordings and entertainment services under Opposer’s ATMOSPHERE marks. Opposer has, at great expense, extensively and continuously offered to the public high quality musical sound recordings and entertainment services under Opposer’s ATMOSPHERE marks. By reason of Opposer’s efforts, and the expenditure of considerable sums for extensive promotion, and by virtue of the excellence of Opposer’s products sold and services rendered under the ATMOSPHERE marks, the public and trade have come to recognize the ATMOSPHERE marks as signifying Opposer and Opposer’s goods and services, and Opposer has built up exceedingly valuable goodwill in connection with musical sound recordings sold and entertainment services provided under Opposer’s ATMOSPHERE marks.

7. The ATMOSPHERE mark proposed for registration by Applicant is confusingly similar in appearance, sound and meaning to Opposer's well known ATMOSPHERE marks which have been used in interstate commerce for over a decade. Moreover, the goods and services provided by Opposer under Opposer's ATMOSPHERE marks and those goods set forth in the Opposed Application are related, to wit, "musical sound recordings" and "entertainment services, namely, musical performances by a performer or group" on the one hand, and "computer software and sound recordings recorded on CD-ROMs and DVD for use in music production, musical sound recordings and multimedia production" on the other hand, and would be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

#### **Likelihood of Confusion**

8. Opposer repeats and realleges Paragraphs 1 through 7 as though fully stated herein.

9. If Applicant is permitted to use and register its proposed mark for its goods as specified in the application herein opposed, such registration and use by Applicant are likely to cause confusion, deception and mistake, and will seriously damage Opposer. Persons familiar with Opposer's mark would be likely to purchase and/or utilize Applicant's goods as those goods and services offered and provided by Opposer. Any such confusion in trade inevitably would result in loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under the mark set forth in the Opposed Application would necessarily reflect upon and seriously injure the reputation which Opposer has established for the musical sound recordings sold and entertainment services provided under Opposer's ATMOSPHERE marks.

10. Opposer will be damaged by the registration of the mark shown in the Opposed Registration because registration of such mark would give Applicant at least *prima facie* evidence of its ownership of, and exclusive right to use in commerce, a mark that is confusingly similar to Opposer's marks.

WHEREFORE, Opposer prays for the entry of judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

We authorize the withdrawal of the fee required in Rule 2.6 of the Rules of Practice from our PTO Deposit Account 191351.

Opposer hereby consents and appoints Luke W. DeMarte and Jeffrey H. Brown, members of the bar of the State of Illinois, whose address is Seyfarth Shaw LLP, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603, as its duly authorized agents and attorneys in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this opposition, to sign its name to all papers which may hereafter be filed in connection therewith, and to receive all communications related to the same.

Dated: November 14, 2003

Respectfully submitted,

Sean Daley

By:   
One of his Attorneys

Luke W. DeMarte  
Jeffrey H. Brown  
Seyfarth Shaw LLP  
55 East Monroe Street, Suite 4200  
Chicago, IL 60603  
(312) 781-8610

Attorneys for Sean Daley

## Exhibits



UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)
[Index](#)
[Search](#)
[System Alerts](#)
[eBusiness Center](#)
[News & Notices](#)
[Contact Us](#)

## Trademark Electronic Search System(Tess)

TESS was last updated on Thu Nov 13 04:22:34 EST 2003

[FTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[BOTTOM](#)
[HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

## Record 1 out of 1

[Check Status](#) (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

### Typed Drawing

**Word Mark** ATMOSPHERE  
**Goods and Services** IC 009. US 021 023 026 036 038. G & S: musical sound recordings. FIRST USE: 19930907. FIRST USE IN COMMERCE: 19930907  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 76318031  
**Filing Date** September 20, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Owner** (APPLICANT) Davis, Anthony INDIVIDUAL UNITED STATES c/o Luke W. DeMarte D'Ancona & Pflaum LLC 111 E. Wacker Drive, Suite 2800 Chicago ILLINOIS 60601  
 (APPLICANT) Daley, Sean INDIVIDUAL UNITED STATES c/o Luke W. DeMarte D'Ancona & Pflaum LLC 111 E. Wacker Drive, Suite 2800 Chicago ILLINOIS 60601  
**Attorney of Record** Luke W. DeMarte  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

[FTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[TOP](#)
[HELP](#)

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)



UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)
[Index](#)
[Search](#)
[System Alerts](#)
[eBusiness Center](#)
[News & Notices](#)
[Contact Us](#)

## Trademark Electronic Search System(Tess)

TESS was last updated on Thu Nov 13 04:22:34 EST 2003

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[BOTTOM](#)
[HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

## Record 1 out of 1

### Check Status

*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

### Typed Drawing

**Word Mark** ATMOSPHERE  
**Goods and Services** IC 041. US 100 101 107. G & S: entertainment services, namely, live musical performances by a performer or group. FIRST USE: 19930907. FIRST USE IN COMMERCE: 19930907  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 76315468  
**Filing Date** September 20, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Owner** (APPLICANT) Davis, Anthony INDIVIDUAL UNITED STATES c/o Luke W. DeMarte D'Ancona & Pflaum LLC, 111 East Wacker Drive, Suite 2800 D'Ancona & Pflaum LLC 111 East Wacker Drive, Suite 2800 Chicago ILLINOIS 60601  
 (APPLICANT) Daley, Sean INDIVIDUAL UNITED STATES c/o Luke W. DeMarte D'Ancona & Pflaum LLC, 111 East Wacker Drive, Suite 2800 D'Ancona & Pflaum LLC 111 East Wacker Drive, Suite 2800 Chicago ILLINOIS 60601  
**Attorney of Record** Luke W. DeMarte  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[TOP](#)
[HELP](#)

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) |



**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on November 14, 2003.

A handwritten signature in black ink, appearing to read "Luke W. DeMarte", is written over a horizontal line.

Person signing certificate: Luke W. DeMarte