

TTAB

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

In the matter of U.S. Trademark Application
Serial No.: 76/475,501
Filed: December 15, 2002
Trademark: ATMOSPHERE
Published: November 11, 2003



12-30-2003

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

Sean Daley,

Opposer,

Opposition No. 91,158,448

vs.

Lori Persing and Eric Persing dba
Spectrasonics,

Applicants.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicants, Lorey Persing and Eric Persing dba Spectrasonics (collectively "Applicant"),
hereby answer Opposer's Notice of Opposition as follows:

1. Applicant admits the allegations contained in paragraph 1 of the Notice of Opposition.
2. Applicant admits the allegations contained in paragraph 2 of the Notice of Opposition.

CERTIFICATE OF MAILING

I, Victoria Haynes, hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on December 24, 2003.

Victoria Haynes 12.24.03
Victoria Haynes

3. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and accordingly denies the allegations.

4. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and accordingly denies the allegations.

5. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition and accordingly denies the allegations.

6. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition and accordingly denies the allegations.

7. Applicant denies the allegations contained in paragraph 7 of the Notice of Opposition.

8. With regard to paragraph 8 of the Notice of Opposition, Opposer repeats and realleges Paragraphs 1 through 7 above as though fully set forth herein.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in paragraph 10 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant hereby asserts the following affirmative defenses:

11. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

12. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's goods sold under Applicant's mark and Applicant's channels of trade are **not** similar to the services and goods provided under Opposer's mark and Opposer's channels of trade.

13. Upon information and belief, Applicant further asserts that the term "ATMOSPHERE" has been used and registered by numerous third parties in International Class 9 in the field of music. As a result, Opposer cannot base any similarity between its pleaded marks and Applicant's mark on the word portion of the mark "ATMOSPHERE."

14. Applicant further alleges that according to the records of the U.S. Patent and Trademark Office, Opposer's pleaded marks are currently suspended, pursuant to Lanham (Trademark) Act, Section 2(d), 15 U.S.C. Section 1052(d), for likelihood of confusion pending the disposition of U.S. Trademark Application Serial No. 75/838,592 for the mark ATMOSPHERES in International Class 9 in the field of music.

15. Applicant further affirmatively alleges that as a result of its continuous and substantial use of its mark since adoption, its mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of the goods offered under the mark. Such goodwill and widespread usage has made the mark distinctive to the Applicant.

16. Applicant further affirmatively alleges that Applicant's mark and the pleaded marks of Opposer have been used by the respective parties and have co-existed in the marketplace since at least September 2003 without any instance of actual confusion.

17. Applicant further affirmatively alleges that Opposer is barred from maintaining this opposition because of the doctrine of unclean hands.

18. Applicant further affirmatively alleges that Opposer is barred from maintaining this opposition because of the doctrine of laches.

19. Applicant further affirmatively alleges that Opposer is barred from maintaining this opposition because of the doctrine of acquiescence.

20. The Notice of Opposition fails to state a claim upon which relief can be granted.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; and Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer. Applicant therefore prays that this opposition be dismissed and that Applicant be granted registration of its trademark.

It is not believed that any fees are due in connection with the filing of this paper.

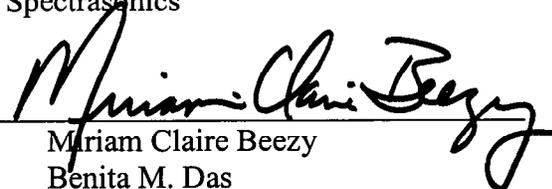
However, if any fees are due, please charge such fees to our Deposit Account No. 50-1833.

Respectfully submitted,

Eric Persing And Lorey Persing
dba Spectrasonics

Dated: December 24, 2003

By:


Miriam Claire Beezy
Benita M. Das
Attorneys for Applicant

**Greenberg Glusker Fields Claman
Machtinger & Kinsella LLP**
1900 Avenue of the Stars, Suite 2100
Los Angeles, California 90067-4590
Tel.: 310 201 7406
Fax: 310 553 0687
Email: mbeezy@ggfirm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document entitled:

APPLICANTS' ANSWER TO NOTICE OF OPPOSITION

was served on the attorneys for Opposer via first class mail in a sealed envelope addressed as follows:

Luke W. Demarte
Jeffrey H. Brown
Seyfarth Shaw LLP
55 East Monroe Street, Suite 4200
Chicago, IL 60603

Executed on the 24th day of December, 2003 in Los Angeles, California.

By: Victoria Haynes
Victoria Haynes