



As grounds for the opposition, it is alleged that:

1. For many years, Opposer BMG Songs, Inc. (referred to as "Opposer") has been engaged in the business of manufacturing and distributing musical sound recordings, offering music library services, and producing, distributing, and exploiting production music under the marks NETWORK and NETWORK MUSIC (the "NETWORK MUSIC Marks").

2. Long prior to Applicant's alleged date of first use of April 1, 2002, Opposer has used its NETWORK MUSIC Marks in the United States in connection with the sale of musical sound recordings, offering music library services, and producing, distributing, and exploiting production music. Opposer is the owner of the following federal registrations and applications:

<b>Mark</b>	<b>Reg. No./ Serial No.</b>	<b>Reg./App. Date</b>	<b>Goods/Services</b>
NETWORK	1,267,749 (federal reg.)	02/21/84	Int. 9 - sound recordings of background music and sound effects and blank magnetic tapes and tape reels, for use in the production of audio and audio-visual works
	1,296,973 (federal reg.)	09/18/84	Int. 41 - producing background music and commercial sound recordings for broadcasters and production music libraries

Mark	Reg. No./ Serial No.	Reg./App. Date	Goods/Services
NETWORK	2,098,885 (federal reg.)	09/23/97	Int. 9 - audio cassettes and compact discs, audio-visual CD-roms, computer software and computer programs containing digitized audio files for use in multi-media applications, and computer software and CD-roms used for searching, auditioning, editing, converting and exporting audio files
NETWORK MUSIC	76/537,344 (federal app.)	08/14/03	Int. 41 - providing music libraries for use by producers of television shows, television advertisements, motion pictures, video recordings, in-house productions, and multi-media applications

Mark	Reg. No./ Serial No.	Reg./App. Date	Goods/Services
	76/540,263 (federal app.)	08/26/03	<p>Int. 9 - musical sound recordings for use by producers of television shows, television advertisements, motion pictures, video recordings, in-house productions, and multi-media applications; computer software and CD-roms used for searching, auditioning, editing, converting and exporting audio files; computer software and computer programs containing digitized audio files for use in multi-media applications</p> <p>Int. 41 - providing music libraries for use by producers of television shows, television advertisements, motion pictures, video recordings, in-house productions, and multi-media applications</p>

Registration Nos. 2,098,885, 1,296,973, and 1,267,749 have become incontestable.

3. Long prior to Applicant's alleged date of first use of April 1, 2002, Opposer has extensively promoted the sale of its musical sound recordings, music library services, and production music services under the NETWORK MUSIC Marks.

4. As a result of the extensive sale and promotion of its goods and services bearing the NETWORK MUSIC Marks for many years, Opposer has built up a valuable goodwill for its mark.

5. On June 13, 2002, Applicant Astro America, LLC filed a use-based application to register the mark D1 MUSIC NETWORK for “music production services” in Class 41. In its application, Applicant claimed a first use date of April 1, 2002.

6. Upon information and belief, Applicant has made no use of the D1 MUSIC NETWORK mark prior to April 1, 2002.

7. Applicant’s services bearing the applied-for mark and Opposer’s goods and services marked with the NETWORK MUSIC Marks are either identical or closely related and, upon information and belief, are likely to be or are sold or rendered through the same channels of trade to the same kinds of consumers.

8. Applicant’s mark so resembles Opposer’s NETWORK MUSIC Marks, as to be likely, when applied to Applicant’s services, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer, the trade and the public.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant’s mark and prays that said registration not be allowed.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Anna M. DePalo (members of the Bar of the State of New York) and the firm of Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036-6799.

Please address all communications to Mary L. Kevlin, Esq. at the above address.

Dated: New York, New York  
November 26, 2003

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By 

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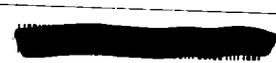
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November 26, 2003

**Via Express Mail**

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Commissioner for Trademarks  
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11-26-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

Re: BMG Songs, Inc.  
Notice of Opposition Against  
the Mark D1 MUSIC NETWORK,  
Serial No. 76/420,774  
Attorney Ref. No. 16513.045

Dear Sir:

We enclose an original and duplicate copy of a Notice of Opposition against application Serial No. 76/420,774, published in the Official Gazette of April 15, 2003. We also enclose a check in the amount of \$300 to cover filing fees.

If the enclosed check is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Kindly confirm receipt of this opposition by returning the attached postcard and address all future correspondence to Mary L. Kevlin, Esq. at the above address.

Respectfully submitted,

Anna DePalo

Enclosures

cc: Mary L. Kevlin, Esq. (w/o enclosures)