

3. Cello Holdings has used its CELLO[®] and CELLO[®] (Stylized) marks in connection with a variety of audio and video equipment since 1985. Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks are arbitrary marks that are entitled to extensive protection.

4. Cello Holdings also adopted and began using the marks CELLO[®] and CELLO[®] (Stylized) for clothing, namely, hats, shirts, t-shirts, polo shirts, sweat shirts and jackets, at least as early as 1995 and has been using the marks for such goods in interstate commerce continuously since at least as early as 1995.

5. In the United States, Cello Holdings has registered or has pending applications for:

(a) its CELLO[®] (Stylized) trademark for amplifiers, preamplifiers, tone controls, speakers, switchboxes, power supplies, and associated accessories, U.S. Reg. No. 1,913,134;

(b) its CELLO[®] service mark for restaurant and bar services, U.S. Reg. No. 2,291,452;

(c) its CELLO[®] trade mark for sound amplifiers and preamplifiers, antennas, audio mixers, audio tape recorders, electrical cables and wires, video cassette recorders, blank audio cassettes, blank video cassettes, compact disc players and recorders, digital audio tape players and recorders, DVD players and recorders, television sets, loudspeakers, loudspeaker cabinets, video monitors, video cameras, motion picture cameras, optical discs, phonographs, cameras, movie projectors, radios, receivers, tuners, transceivers, tone controls, electric switch boxes, audio speakers, and electrical power supplies, and accessories therefor; wireless remote control for use in accessing and controlling audio and video systems, namely, video projectors, film projectors, projection

screens, sound amplifiers, sound preamplifiers, tone controls, time delay processors, switch boxes, compact disc players and recorders, DVD players and recorders, laser disc players, turntables, audio cassette players and recorders, video cassette players and recorders, audio speakers, radios, stereo tuners and receivers, video monitors and cameras, telephones, antennas, lighting and satellites, U.S. Reg. No. 2,464,794;

(d) its CELLO[®] trade mark for timepieces, namely watches and clocks, U.S. Reg. No. 2,413,551;

(e) its CELLO[®] service mark for entertainment services, namely, presentation of live and recorded performances by a musical group or artist, U.S. Reg. No. 2,360,870; and

(f) the CELLO[®] mark for other goods and/or services.

6. Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks symbolize the extensive and valuable goodwill and customer recognition built up through substantial amounts of advertising, promotional expenditures and other corporate resources. By virtue of these efforts and the excellence of its products and services, Cello Holdings has created a reputation of considerable value in the CELLO[®] and CELLO[®] (Stylized) marks.

7. Cello Holdings and/or its licensees have so used its CELLO[®] and CELLO[®] (Stylized) marks in connection with its goods and services that the public has come to associate the CELLO[®] and CELLO[®] (Stylized) marks with Cello Holdings and/or Cello Holdings' licensees, and the public recognizes the marks as indicating that the products and services so marked originate with Cello Holdings and/or its licensees.

8. Applicant seeks registration of the mark CELO SPORT in International Class 25 for "men's, women's, and children's clothing, namely, sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes,

sneakers, boots, wristbands, socks, t-shirts, belts undergarments, neckties, dress shirts, collared shirts, rugby shirts, shorts, sandals.”

9. Applicant’s application to register the CELO SPORT mark was filed on September 11, 2000 and is based on an intent to use the mark in commerce. Accordingly, because Cello Holdings’ date of first use and date of first use in commerce for its CELLO[®] and CELLO[®] (Stylized) marks for clothing, as well as for its other products, pre-date the filing of Applicant’s intent-to-use application to register its CELO SPORT mark, Cello Holdings has priority. Cello Holdings’ CELLO[®] and CELLO[®] (Stylized) marks are valid and subsisting, and its use has been continuous. Cello Holdings’ legal rights with respect to its CELLO[®] and CELLO[®] (Stylized) marks are, therefore, superior to Applicant’s rights with respect to its CELO SPORT mark.

10. Opposer has filed an application to register its CELLO[®] (Stylized) trademark for clothing, namely hats, shirts, t-shirts, polo shirts, sweatshirts and jackets, Serial No. 76/198,755. Although Opposer’s first use of its CELLO[®] mark for clothing predates the filing date of Applicant’s intent-to-use application, said application was filed before Opposer’s application. Accordingly, Applicant’s intent-to-use application has been raised by the Trademark Examiner as a possible bar to registration of Opposer’s mark, and Opposer’s application has been suspended pending the disposition of Applicant’s application.

11. A likelihood of confusion, under Lanham Act § 2(d), exists between Cello Holdings’ CELLO[®] and CELLO[®] (Stylized) marks and Applicant’s CELO SPORT mark because the respective marks are similar in sight, sound and commercial impression.

12. Further, a likelihood of confusion under the Lanham Act § 2(d) exists between Cello Holdings' marks and Applicant's mark because both marks are used in connection with apparel.

13. Because the goods with which Cello Holdings' marks are used and the goods with which Applicant's mark is used are confusingly similar and are in the field of apparel, there is likely to be a substantial overlap in the lines of commerce and distribution of Cello Holdings' goods and services and Applicant's goods. Moreover, the consumers who are likely to buy, use, and be familiar with Cello Holdings' goods and services are substantially the same or overlap significantly with the consumers who are likely to buy, use and be familiar with Applicant's goods. Finally, on information and belief, because both Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks and Applicant's CELO SPORT mark are used in the field of apparel, the modes of advertising and promotion for Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks are likely to overlap significantly with those of Applicant's CELO SPORT mark.

14. Due to the substantially similar nature of Cello Holdings' marks and Applicant's mark and the similar commercial and marketing channels of the services and goods offered under those marks, consumers could reasonably believe that Applicant's goods and/or services originate with, or are affiliated with, endorsed or sponsored by Cello Holdings or that Cello Holdings and Applicant are affiliated or associated entities, all to the considerable detriment of Cello Holdings.

15. As a result, people familiar with Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be likely to use Applicant's goods and/or services believing them to be goods and services provided by Cello Holdings. Any such confusion would result in loss of trade to Cello Holdings. Furthermore, any defect, objection or fault found with

the goods and services marketed under Applicant's mark would necessarily reflect upon and seriously injure the reputation of Cello Holdings' goods and services.

16. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Cello Holdings.

17. If the Applicant were granted a registration for the CELO SPORT mark, the uniqueness of Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be seriously impaired and the strength of Cello Holdings' CELLO[®] and CELLO[®] (Stylized) marks would be diminished.

18. In view of the substantially similar nature of Cello Holdings' marks and Applicant's mark, the use of these marks in the same field, and the similar channels of commerce through which goods and/or services are offered or likely to be offered by Cello Holdings and Applicant, Cello Holdings alleges that Applicant's mark so resembles Cello Holdings' mark as to be likely to cause confusion, or to cause mistake or to deceive under Lanham Act § 2(d), so that the public is likely to believe Applicant's goods and/or services originate with, or are sponsored by, Cello Holdings.

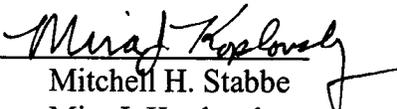
19. For all the foregoing reasons, registration of Applicant's mark CELO SPORT will result in damage to Cello Holdings, and registration should be refused.

WHEREFORE, Cello Holdings respectfully requests that the Opposition be sustained and Application Serial No. 76/127,048 be rejected and denied.

A duplicate copy of this Notice of Opposition and a fee of \$300.00, as required, are enclosed.

Respectfully submitted,

CELLO HOLDINGS, L.L.C.

By: 
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CERTIFICATE OF DELIVERY

I hereby certify that this Notice of Opposition is being hand-delivered to the Trademark Trial and Appeal Board, 2900 Crystal Drive, South Tower Building, 9th Floor, Arlington, Virginia, this 16th day of November, 2004.


Mira J. Koplovsky

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