

ESTTA Tracking number: **ESTTA78769**

Filing date: **05/01/2006**

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

Notice of Opposition

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

Opposer Information

Name	KEVIN BEYELER AND GENE BAXTER
Granted to Date of previous extension	04/30/2006
Address	c/o Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES

Attorney information	ROBERT A. BECKER FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES rbecker@frosszelnick.com Phone:212-813-5900
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Applicant Information

Application No	78545758	Publication date	11/01/2005
Opposition Filing Date	05/01/2006	Opposition Period Ends	04/30/2006
Applicant	Infinity Broadcasting Corporation of Los Angeles 1515 Broadway New York, NY 10036 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 1989/11/30 First Use In Commerce: 1989/11/30
All goods and services in the class are opposed, namely: Entertainment services, namely, radio talk shows featuring performances by radio personalities

Attachments	060501-0503883-Notice of Opposition-c.williams.pdf (5 pages)(107017 bytes)
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Signature	/Robert Becker/
Name	ROBERT A. BECKER
Date	05/01/2006

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

In the Matter of Application Serial No. 78/545,758
Trademark: KEVIN AND BEAN
Opposers' Ref: KBEY USA TC-05/03883

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KEVIN BEYELER AND GENE BAXTER,	:	
	:	
Opposers,	:	
	:	
v.	:	
	:	
INFINITY BROADCASTING CORPORATION OF	:	Opposition No.
LOS ANGELES,	:	
	:	
Applicant.	:	
	:	
	:	
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Attention: BOX TTAB -- FEE
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Opposers, Kevin Beyeler and Gene Baxter, individuals with an address c/o Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017, believe that they will be damaged by registration of the mark KEVIN AND BEAN, which is the subject of Application Serial No. 78/545,758, published in the Official Gazette of November 1, 2005, and hereby oppose same.

As grounds for the opposition, Opposers allege as follows:

COUNT ONE

1. Opposers are the joint owners of the trademark KEVIN AND BEAN used in connection with radio talk shows featuring performances by radio personalities, and of all common law rights and associated goodwill in that trademark. Opposers have continuously used this mark in commerce for these services since at least as early as November 25, 1989.

2. On January 11, 2005, Applicant filed Application Ser. No. 78/545,758 to register

the mark KEVIN AND BEAN for “entertainment services, namely, radio talk shows featuring performances by radio personalities” based on an alleged first use in commerce date of November 30, 1989.

3. The mark KEVIN AND BEAN sought to be registered by Applicant for the above services is identical to Opposers’ trademark KEVIN AND BEAN for the identical services. Applicant’s mark is therefore likely to cause confusion with Opposers’ mark and services or to cause mistake or to deceive.

4. Use of the mark sought to be registered by Applicant is likely to cause confusion or to cause mistake or to deceive the public by reason of Opposers’ previously-used mark, by creating the mistaken belief that Applicant's services are approved, endorsed, or sponsored by Opposers, or that Opposers are the source of Applicant's services, or that the services of Applicant are in some other way associated with Opposers, all to Opposers’ grave injury and harm.

COUNT TWO

5. Opposers repeat the allegations of ¶¶ 1-4 as if fully set forth herein.

6. Applicant is not, and was not at the time of filing the application, the rightful owner of the mark it is applying for, and thus registration of the applied-for mark by Applicant would violate Section 1(a) of the Lanham Act.

7. Registration of the applied-for mark by Applicant would prevent Opposers, who are the rightful owners of that mark, from registering that mark themselves. Such registration would also cast a cloud over Opposers’ right to use that mark, since such registration would give Applicant a rebuttable presumption of an exclusive right to use the KEVIN AND BEAN mark. Thus, registration of the applied-for mark by Applicant would damage Opposers.

COUNT THREE

8. Opposers repeat the allegations of ¶¶ 1-7 as if fully set forth herein.

9. As part of its application to register the mark KEVIN AND BEAN, on January 11, 2005, Applicant submitted a declaration stating that “he/she believes the applicant to be the owner of the . . . service mark sought to be registered . . . ; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the . . . services of such other person, to cause confusion, or to cause mistake, or to deceive” That statement was knowingly false and was made with the intent to induce authorized agents of the PTO to grant registration of the KEVIN AND BEAN mark, and, reasonably relying upon the truth of Applicant’s false statement, the PTO approved the subject application for publication.

10. In that declaration, Applicant fraudulently represented to the United States Patent and Trademark Office (“PTO”) that it was and is the owner of the KEVIN AND BEAN mark, when in fact Opposers are the rightful owners of that mark.

11. Applicant committed fraud on the PTO by submitting a declaration that falsely represented that Applicant is the owner of the KEVIN AND BEAN mark.

12. Opposers believe that Applicant applied to register KEVIN AND BEAN in order to gain a wrongful advantage over Opposers and their right to the KEVIN AND BEAN mark. Opposers believe that if the KEVIN AND BEAN mark is registered to Applicant, Opposers will be harmed because such registration would cast a cloud over Opposers’ right to use that mark and Opposers may have difficulty continuing to use the KEVIN AND BEAN mark. Opposers will also be harmed by such registration because Opposers, the rightful owners of the KEVIN AND BEAN mark, will be prevented from registering that mark themselves.

COUNT FOUR

13. Opposers repeat the allegations of ¶¶ 1-12 as if fully set forth herein.

14. Because of Opposers’ use of the KEVIN AND BEAN mark, Opposers’ KEVIN

AND BEAN mark was both distinctive and famous in the U.S. prior to the filing date of the subject application or any date upon which Applicant can validly claim that it began using the mark.

15. Applicant's registration and use of the KEVIN AND BEAN mark would dilute the distinctive quality of Opposers' famous KEVIN AND BEAN mark.

16. By reason of the foregoing, Opposers will be damaged by the registration of the mark KEVIN AND BEAN to Applicant.

COUNT FIVE

17. Opposers repeat the allegations of ¶¶ 1-16 as if fully set forth herein.

18. At all times relevant hereto, Opposer Gene Baxter has been publicly known by the name BEAN.

19. The applied-for mark consists of the names of Opposers and would be understood by the public to be a reference to Opposers.

20. Opposers have not consented to the subject application. Thus, registration of the applied-for mark by Applicant would violate Section 2(c) of the Lanham Act.

21. Opposers would be damaged by the registration of the KEVIN AND BEAN mark to Applicant because they would be associated with all services offered by Applicant under that mark.

WHEREFORE, Opposers respectfully request that their opposition be sustained and the application to register the mark KEVIN AND BEAN, Serial No. 78/545,758, be denied.

Dated: New York, New York
May 1, 2006

Respectfully submitted,

**FROSS ZELNICK LEHRMAN
& ZISSU, P.C.**

By: 
Robert A. Becker

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