

ESTTA Tracking number: **ESTTA87147**

Filing date: **06/26/2006**

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	Apple Computer, Inc.
Granted to Date of previous extension	06/25/2006
Address	1 Infinite Loop Cupertino, CA 95014 UNITED STATES
Attorney information	Jennifer D. Arkowitz Townsend and Townsend and Crew LLP Two Embarcadero Center, Eighth Floor San Francisco, CA 94111 UNITED STATES jdarkowitz@townsend.com, DHI@townsend.com, jcb@townsend.com, bws@townsend.com, litdocketinginbox@townsend.com Phone:415-576-0200

**Applicant Information**

Application No	78488754	Publication date	12/27/2005
Opposition Filing Date	06/26/2006	Opposition Period Ends	06/25/2006
Applicant	MPTools.com, LLC 41 Sterling Avenue Staten Island, NY 10306 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 2004/08/20 First Use In Commerce: 2004/08/20 All goods and services in the class are opposed, namely: MULTIMEDIA EQUIPMENT AND PROGRAMS, NAMELY, MULTIMEDIA ACCELERATOR BOARDS AND INTERACTIVE MULTIMEDIA COMPUTER PROGRAM FOR ORGANIZING MP3 FILES
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Attachments	EASYTUNES Notice of Opposition.pdf ( 6 pages )(249559 bytes )
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Signature	/Jennifer D. Arkowitz/
Name	Jennifer D. Arkowitz
Date	06/26/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Application No.78/488,754  
Published: December 27, 2005  
Applicant: MPTools.com, LLC  
Mark: **EASYTUNES**

APPLE COMPUTER, INC.,

Opposer

vs.

MPTOOLS.COM, LLC,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P. O. Box 1451  
Alexandria, Virginia 22313-1451

Madam:

APPLE COMPUTER, INC. ("Opposer"), a California corporation, located and doing business at 1 Infinite Loop, Cupertino, California, 95014, believes that it will be damaged by the registration in International Class 9 of the mark **EASYTUNES** as shown in Application Serial No. 78/488,754 filed by MPTOOLS.COM, LLC ("Applicant"), a New York limited liability company, with a mailing address at 41 Sterling Avenue, Staten Island, New York 10306, and published in the Official Gazette on December 27, 2005, and hereby opposes registration thereof.

As grounds for opposition, Opposer alleges:

1. Opposer is the owner of Registration No. 2,653,465 for **ITUNES** for "computer software for use in authoring, downloading, transmitting, receiving, editing, extracting,

encoding, decoding, playing, storing and organizing audio data" in International Class 9.

Opposer's application for said registration was filed on January 9, 2001, and matured to registration on November 26, 2002. Opposer has used the mark **ITUNES** on and in connection with the sale of the aforementioned goods since at least as early as January 2001.

2. Opposer is the owner of Registration No. 2,993,227 for **ITUNES MUSIC STORE** for "providing on-line facilities, via a global computer network, to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs," in International Class 41 and "providing search engines for obtaining data via communications networks; providing search engines for obtaining data on a global computer network; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; internet services, namely, creating indexes of information, sites and other resources available on global computer networks for others; searching, browsing and retrieving information, sites, and other resources available on global computer networks for others," in International Class 42. Opposer's application for said registration was filed on October 16, 2003, and matured to registration on September 6, 2005.

Opposer has used the mark **ITUNES MUSIC STORE** on and in connection with the sale of the aforementioned goods since at least as early as April 2003.

3. Opposer is the owner of Registration No. 2,828,093 for **ITUNES MUSIC STORE** for "retail store services in the field of entertainment, namely, musical and audiovisual works and related merchandise, provided via the internet and other computer and electronic communications networks" in International Class 35. Opposer's application for said registration

was filed on May 15, 2003, and matured to registration on March 30, 2004. Opposer has used the mark **ITUNES MUSIC STORE** on and in connection with the sale of the aforementioned goods since at least as early as April 2003.

4. Opposer is the owner of Registration No. 3,048,602 for **ITUNES MUSIC STORE** for “telecommunications services, namely, electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film new, sports, games and cultural events; web casting services; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communication networks, for transmission or reception of audio, video or multimedia content; Telecommunications services, namely, electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; web casting services; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content” in International Class 38. Opposer’s application for said registration was filed on October 16, 2003, and matured to registration on January 24, 2006. Opposer has used the mark **ITUNES MUSIC STORE** on and in connection with the sale of the aforementioned goods since at least as early as April 2003.

5. Opposer's **ITUNES** and **ITUNES MUSIC STORE** marks will be referred to collectively as the "**ITUNES Marks**."

6. As a result of Opposer's extensive advertising, sales, and marketing, Opposer's **ITUNES** Marks are famous and well known to purchasers.

7. By virtue of Opposer's extensive use and promotion of the **ITUNES** Marks, Opposer has established valuable goodwill in the **ITUNES** Marks, and the public has come to associate **ITUNES** with Opposer. As such, the public has come to know the **ITUNES** Marks as an indicator of goods and services that originate from Opposer.

8. Applicant filed U.S. Trademark Application Serial No. 78/488,754 (the "Application"), which is the subject of this Opposition, on September 23, 2004, for the mark **EASYTUNES** for "Multimedia equipment and programs, namely, multimedia accelerator boards and interactive multimedia computer programs for organizing MP3 files" in International Class 9. Applicant's goods as described in the Application are identical or highly related to Opposer's **ITUNES** to the goods and services identified in Opposer's registrations for its **ITUNES** Marks.

13. Opposer began use of its **ITUNES** mark in connection with its goods and services at least as early as January 2001, which is well prior to Applicant's September 23, 2004 filing date and September 20, 2004 claimed date of first use. Opposer began use of its **ITUNES MUSIC STORE** mark in connection with its goods and services at least as early as April 2003, which is also well prior to Applicant's September 23, 2004 filing date and September 20, 2004 claimed date of first use.

14. Opposer's **ITUNES** Marks became famous before Applicant's September 23, 2004 filing date and September 20, 2004 claimed date of first use.

15. Applicant's **EASYTUNES** mark is nearly identical to Opposer's marks. As a result of the similarity between Opposer's marks and Applicant's mark, and the identical or

highly related nature of the goods and services offered by Opposer and Applicant under their respective marks, Applicant's mark is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective goods and services.

16. Registration of the mark in the Application is likely to dilute Opposer's famous **ITUNES** Marks, resulting in damage to Opposer, its good will and the strength and value of its **ITUNES** Marks.

17. Registration of Applicant's mark shown in the opposed application also will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), pursuant to the allegations stated above.

18. If the Application is permitted to register, the registration would presumptively entitle Applicant to *prima facie* exclusive ownership and rights to the **EASYTUNES** mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant's goods and Opposer's goods and services and the relationship of Opposer to Applicant, thereby damaging Opposer's goodwill in Opposer's Marks, diluting the value thereof, and resulting in irreparable harm to Opposer's business and reputation, all to the detriment of Opposer who has expended considerable sums and effort in promoting Opposer's marks.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 78/488,754 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of Townsend and Townsend and Crew LLP, 20-1430, and credit any overpayment to such deposit account.

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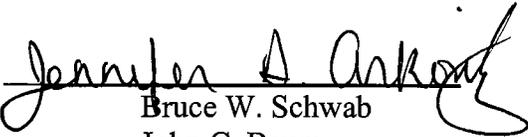
Please direct all notices, pleadings and process regarding this matter to:

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Respectfully submitted,

TOWNSEND and TOWNSEND and CREW LLP

Dated: June 26, 2006

By:   
Bruce W. Schwab  
John C. Baum  
Jennifer D. Arkowitz  
*Attorneys for Opposer*

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