

ESTTA Tracking number: **ESTTA100461**

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

Proceeding	91172310
Party	Defendant Mega Music, LLC Mega Music, LLC 2428 Field Rose Drive Salt Lake City, UT 84121
Correspondence Address	JONATHAN W. RICHARDS WORKMAN NYDEGGER 1000 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111
Submission	Answer
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Date	09/21/2006
Attachments	91172310 Answer.pdf (6 pages)(167037 bytes)

Applicant lacks knowledge or information sufficient to form a basis to admit or deny that Opposer is a California corporation or that Opposer's principal place of business is located in North Hollywood, California and, therefore, denies such allegations. Applicant denies that Opposer will be damaged by the registration of the mark MEGA MUSIC RECORDS and any and all other allegations of the opening paragraph of the Notice of Opposition.

Applicant hereby answers Opposer's grounds for opposition as follows:

1. Applicant admits the allegations set forth in paragraph 1 of the Notice of Opposition.
2. Applicant lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 2 of the Notice of Opposition and, therefore, denies such allegations.
3. Applicant lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 3 of the Notice of Opposition and, therefore, denies such allegations.
4. Applicant admits the existence of U.S. Trademark Reg. Nos. 1,931,471 and 1,898,704. Applicant denies that Reg. No. 286,607 is directed to either MEGATRAX or MEGATRAX (stylized). Applicant lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 4 of the Notice of Opposition and, therefore, denies such allegations.
5. Applicant admits the filing of the '622 application, but lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations set forth in paragraph 5 of the Notice of Opposition and, therefore, denies such remaining allegations.
6. Applicant lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations set forth in paragraph 7 of the Notice of Opposition.
8. Applicant denies the allegations set forth in paragraph 8 of the Notice of Opposition.
9. Applicant denies the allegations set forth in paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations set forth in paragraph 10 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

By way of defense to the allegations set forth in the Notice of Opposition, Applicant asserts the following:

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer is not likely to be damaged by registration of Applicant's mark and, therefore, lacks standing to oppose registration of the same.

THIRD AFFIRMATIVE DEFENSE

The only element that is common between Applicant's mark and Opposer's cited registrations is the term "MEGA." The term "MEGA" is a laudable term that is widely and commonly used by numerous entities as a trademark formative, and hence is weak, and Opposer's purported rights extend no further than to the specific marks that Opposer alleges it owns, the marks allegedly owned not being the same or confusingly similar to Applicant's mark in terms of connotation, appearance, pronunciation and/or commercial impression.

FOURTH AFFIRMATIVE DEFENSE

Any rights Opposer may have in its asserted marks are limited and narrow in scope of protection and, therefore no likelihood of confusion exists between Opposer's marks as applied to Opposer's goods and Applicant's mark as applied to Applicant's goods.

FIFTH AFFIRMATIVE DEFENSE

Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

SIXTH AFFIRMATIVE DEFENSE

Applicant's mark in its entirety is sufficiently distinctive and different from Opposer's mark to avoid confusion, deception or mistake as to the source, sponsorship or association of Applicant's goods.

SEVENTH AFFIRMATIVE DEFENSE

Applicant's mark, when used in connection with Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

EIGHTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of laches, estoppel, acquiescence and/or waiver in relation to numerous third party uses of the term "MEGA" used on or in connection with a wide variety of goods and services, including goods and services within the music and entertainment fields.

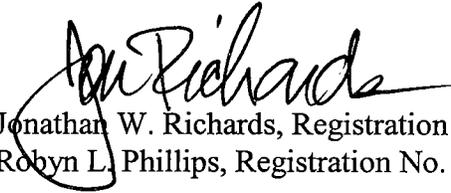
RELIEF REQUESTED

In view of the foregoing, Applicant respectfully requests that the relief requested by Opposer be denied, that the Opposition be dismissed with prejudice, and that registration of Applicant's '622 application be granted.

DATED this 21st day of September, 2006.

Respectfully submitted,

WORKMAN | NYDEGGER



Jonathan W. Richards, Registration No. 29,843
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ATTORNEYS FOR APPLICANT
MEGA MUSIC, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on Opposer by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid, on this 21st day of September, 2006, in an envelope addressed to:

Lucy B. Arant, Esq.
MITCHELL, SILVERBERG & KNUPP, LLP
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