

ESTTA Tracking number: **ESTTA144239**

Filing date: **06/05/2007**

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	Clay Aiken
Granted to Date of previous extension	06/06/2007
Address	c/o Greenberg Traurig, LLP 3290 Northside Parkway, Suite 400 Atlanta, GA 30327 UNITED STATES
Party who filed Extension of time to oppose	ClayAiken
Relationship to party who filed Extension of time to oppose	space between the first and last names

Attorney information	Kristen L. Fancher and Joel R. Feldman Greenberg Traurig, LLP 3290 Northside Parkway, Suite 400 Atlanta, GA 30327 UNITED STATES atltrademark@gtlaw.com Phone:678-553-2100
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Applicant Information

Application No	76662106	Publication date	02/06/2007
Opposition Filing Date	06/05/2007	Opposition Period Ends	06/06/2007
Applicant	Prabhakar, Raymond John 4266 Pleasant Garden Rd. Greensboro, NC 27406 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. All goods and services in the class are opposed, namely: children's multiple activity toys, namely, toys for forming various modeling clays into shapes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	78396177	Application Date	04/05/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLAYMATES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: Entertainment services, namely providing fan club services; organizing and conducting fan club conventions featuring entertainment exhibitions, live musical performances, and personal appearances by musical performers; electronic publication of fan club newsletters and magazines; providing a web site featuring prerecorded music, musical performances and video clips, photographs, fan artwork, news, reviews and other multimedia articles in connection with musical performers, information pertaining to live entertainment events and fan club conventions		

U.S. Application No.	78396146	Application Date	04/05/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLAYMATES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Clothing, namely, shirts, sweatshirts, T-shirts, tank tops, jackets, jerseys, bandanas, caps and hats		

Attachments	78396177#TMSN.jpeg (1 page)(bytes) 78396146#TMSN.jpeg (1 page)(bytes) CLAYMATE - Notice of Opposition.pdf (6 pages)(272061 bytes)
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Signature	/joel r. feldman/
Name	Kristen L. Fancher and Joel R. Feldman
Date	06/05/2007

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

_____)	
CLAY AIKEN,)	
)	Opposition No. _____
Opposer,)	
)	
v.)	
)	Serial No.: 76/662,106
RAYMOND JOHN PRABHAKAR,)	Filed: June 26, 2006
)	Published: February 6, 2007
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Clay Aiken (“Opposer”), by and through his undersigned counsel, hereby opposes the application for registration of the mark CLAYMATE, filed by Raymond John Prabhakar (“Applicant”) on June 26, 2006, bearing Serial No. 76/662,106, for the reasons that Opposer would be damaged thereby, and states as follows:

OPPOSER’S BACKGROUND

1. Opposer, Clay Aiken, is an individual residing in North Carolina, with a mailing address c/o Greenberg Traurig, LLP, 3290 Northside Parkway, Suite 400, Atlanta, Georgia 30327.
2. Opposer was a finalist on the top-rated television show *American Idol* during the 2003 season.
3. Opposer recorded and sold three different albums and has performed live and on television hundreds of times since 2003.
4. Opposer’s first album, “Measure of a Man,” debuted at number one on the Billboard 200 chart in October 2003, and was the highest-selling debut album for a solo album

for the decade preceding the album's release. To this date, over 2.75 million copies of this album have been sold.

5. Opposer's second album, "Merry Christmas With Love," debuted at number four on the Billboard 200 chart in November 2004, tying the highest debut ever for a holiday album.

6. Opposer's third album, "A Thousand Different Ways," debuted at number two on the Billboard 200 chart in September 2006.

7. As a result of Opposer's efforts and musical talent, Opposer has amassed a significant fan base since 2003.

8. Opposer regularly refers to his fans as CLAYMATES.

9. As a result of Opposer's use of the term CLAYMATES to refer to his fans, the term CLAYMATES has become strongly associated with Opposer.

10. With the permission of Opposer, fan clubs dedicated to Opposer use the term CLAYMATES to refer to Opposer in cities throughout the United States.

11. Opposer owns two Allowed United States Trademark Applications for the CLAYMATES mark (collectively, the "CLAYMATES Marks"):

- A. Allowed App No. 78/396,177 for CLAYMATES for Entertainment services, namely providing fan club services; organizing and conducting fan club conventions featuring entertainment exhibitions, live musical performances, and personal appearances by musical performers; electronic publication of fan club newsletters and magazines; providing a web site featuring prerecorded music, musical performances and video clips, photographs, fan artwork, news, reviews and other multimedia articles in connection with musical performers, information pertaining to live entertainment events and fan club conventions in Class 41; and
- B. Allowed App. No. 78/396,146 for CLAYMATES for Clothing, namely, shirts, sweatshirts, T-shirts, tank tops, jackets, bandanas, caps and hats in Class 25.

12. Opposer's applications for the CLAYMATES Marks give Opposer priority in the mark for entertainment services and clothing since April 5, 2004.

13. No other third party owns a federal registration for any CLAYMATES mark for any goods or services.

14. Opposer vigilantly monitors use of the CLAYMATES Marks by third parties.

15. As a result of the foregoing, consumers are likely to recognize any use of this term or a similar term as originating with Opposer.

16. By virtue of Opposer's fame and the resulting fame of the mark CLAYMATES, Opposer is entitled to a broad scope of protection therefor.

APPLICANT'S BACKGROUND

17. Upon information and belief, Applicant is an individual residing at 4266 Pleasant Garden Road, Greensboro, North Carolina 27406.

18. Upon information and belief, Applicant is located in the same state as Opposer.

19. Applicant seeks to register the trademark CLAYMATE in International Class 28 for use in connection with children's multiple activity toys, namely, toys for various modeling clays into shapes.

20. Applicant filed its intent-to-use application for the mark CLAYMATE on June 26, 2006, over two (2) years after Opposer filed his trademark applications for the CLAYMATES Marks.

21. Applicant's mark CLAYMATE is confusingly similar to Opposer's Allowed CLAYMATES Marks and will dilute the distinguishable nature of Opposer's famous CLAYMATES Marks.

COUNT I LIKELIHOOD OF CONFUSION

22. Opposer repeats and realleges each and every allegation set forth in paragraphs one through twenty-one as though set forth herein.

23. The CLAYMATES Marks have been associated with Opposer since long before Applicant applied to register the CLAYMATE mark.

24. Due to the near identity of the marks, concurrent use of the mark CLAYMATE by Applicant and the CLAYMATES Marks by Opposer will likely result in consumer confusion as to source, sponsorship, approval, or affiliation within the meaning of 15 U.S.C. §§ 1114 and 1125(a), and as such, Opposer is likely to be damaged by the registration of Applicant's proposed mark within the meaning of 15 U.S.C. § 1063(a).

25. Opposer's marks are nationally recognized and, as a result, Applicant's goods are likely to be sold in geographic locations where Opposer's marks are recognized.

26. Applicant's proposed goods are within the zone of natural expansion of Opposer's goods and services.

27. Applicant's proposed mark is unregistrable pursuant to 15 U.S.C. § 1052(d), as it so resembles a mark previously applied-for and used in the United States by another and not abandoned as to be likely to cause confusion, mistake or to deceive.

COUNT II DILUTION

28. Opposer repeats and reallages each and every allegation set forth in paragraphs one through twenty-seven as though set forth herein.

29. The CLAYMATES Marks have achieved national fame and recognition due to the fame of Opposer and his fans, and the operation of "Claymates" fan clubs throughout the country.

30. Opposer, as the owner of the famous and distinctive CLAYMATES Marks, is entitled to protection against dilution of the distinctive quality of Opposer's well-known CLAYMATES Marks, as set forth in 15 U.S.C. § 1125(c).

31. Applicant's proposed CLAYMATE mark is virtually identical to Opposer's CLAYMATES Marks, which are highly distinctive.

32. Applicant's CLAYMATE mark so nearly resembles Opposer's CLAYMATES Marks, that Applicant's registration and use of this mark for children's toys is likely to cause blurring in the minds of consumers as to the source, sponsorship, or affiliation of Applicant's goods with the CLAYMATES Marks.

33. Upon information and belief, any use of Applicant's mark CLAYMATE in the United States in connection with the goods identified in its application therefor, began after Opposer's CLAYMATES Marks became famous.

34. Applicant's use and registration of the CLAYMATE mark dilutes Opposer's CLAYMATES Marks by lessening their capacity to be distinguished and identified as related to Opposer and such use and registration should therefore be prohibited.

CONCLUSION

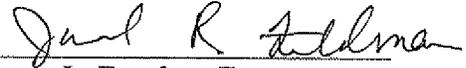
35. Opposer, upon information and belief, avers that it will be damaged by the registration and use by Applicant of the alleged CLAYMATE trademark, as set forth in Applicant's Trademark Application Serial No. 76/662,106, in that the mark is confusingly similar to Opposer's applied-for CLAYMATES Marks and because such registration and use will dilute the distinguishable nature of Opposer's famous CLAYMATES Marks.

WHEREFORE, Opposer prays that the instant opposition be sustained and registration of Applicant's mark CLAYMATE be refused.

This 5th day of June, 2007.

Respectfully submitted,

GREENBERG TRAURIG LLP



Kristen L. Fancher, Esq.
Joel R. Feldman, Esq.

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*Attorneys for Opposer,
Clay Aiken*

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: June 5, 2007

I hereby certify that this paper is being transmitted electronically to the United States Patent & Trademark Office through the ESTTA electronic filing system on the date indicated above and is addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22323-1451.



Joel R. Feldman, Esq.