

ESTTA Tracking number: **ESTTA165330**

Filing date: **09/27/2007**

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	Roland Corporation
Granted to Date of previous extension	09/29/2007
Address	2036-1, Nakagawa, Hosoe-cho, Kita-ku Hamamatsu, Shizuoka, 431-1304 JAPAN

Attorney information	Christopher C. Larkin Seyfarth Shaw LLP 2029 Century Park East Suite 3300 LOS ANGELES, CA 90067-3063 UNITED STATES clarkin@seyfarth.com, kelko@seyfarth.com Phone:310 277-7200
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Applicant Information

Application No	78883538	Publication date	07/31/2007
Opposition Filing Date	09/27/2007	Opposition Period Ends	09/29/2007
Applicant	christopher r. mahoney 2009 Big Oak Drive Spring Hill, TN 37174 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2006/02/19 First Use In Commerce: 2006/05/15 All goods and services in the class are opposed, namely: Guitar pedals, namely, electronic effect pedals for use with sound amplifiers
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Fraudulent Misuse of Federal Registration Symbol

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1150998	Application Date	10/10/1979
Registration Date	04/14/1981	Foreign Priority Date	NONE
Word Mark	BOSS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 015. First use: First Use: 1976/06/12 First Use In Commerce: 1976/06/12 Electronic Sound Effectors for Musical Instruments and Parts and Fittings Therefor

U.S. Registration No.	1151665	Application Date	10/10/1979
Registration Date	04/21/1981	Foreign Priority Date	NONE
Word Mark	BOSS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 015. First use: First Use: 1976/06/12 First Use In Commerce: 1976/06/12 Electronic Sound Effectors for Musical Instruments and Parts and Fittings Therefor		

U.S. Registration No.	1468044	Application Date	12/18/1985
Registration Date	12/08/1987	Foreign Priority Date	NONE
Word Mark	BOSS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1984/10/00 First Use In Commerce: 1984/10/00 HEADPHONE AMPLIFIERS; MONITOR SPEAKERS; HEADPHONES; ELECTRICAL APPARATUS FOR MIXING SOUND; GRAPHIC EQUALIZERS; ANALOG OR DIGITAL EFFECTS FOR MUSICAL SOUND; AND PARTS AND FITTINGS OF ALL THE AFORESAID GOODS</p> <p>Class 015. First use: First Use: 1984/10/00 First Use In Commerce: 1984/10/00 ELECTRONIC MUSICAL INSTRUMENTS, NAMELY SYNTHESIZERS, ELECTRONIC PIANOS AND ORGANS; COMPUTER CONTROLLED MUSICAL INSTRUMENTS, NAMELY A PRESET PROGRAMMABLE RHYTHM MACHINE; ELECTRONIC AUTOMATICALLY CONTROLLED RHYTHM MACHINES; ELECTRONIC METRONOMES; TUNERS; AND PARTS AND FITTINGS OF ALL THE AFORESAID GOODS</p>		

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Signature	/Christopher C. Larkin/
Name	Christopher C. Larkin
Date	09/27/2007

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

In the Matter of Application Serial No. 78/883,538
Published in the Official Gazette of July 31, 2007

ROLAND CORPORATION,

Opposer,

v.

CHRISTOPHER R. MAHONEY,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Roland Corporation (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 78/883,538, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of Japan, with offices in Hamamatsu, Japan.
2. Upon information and belief, applicant Christopher R. Mahoney (“Applicant”) is an individual with an address in Spring Hill, Tennessee.
3. On May 15, 2005, Applicant filed Application Serial 78/883,538 (the “Opposed Application”) to register the claimed mark “BOSSTONE” for goods originally identified as “electronic equipment, guitar pedals, electric guitars” on the basis of Applicant’s claimed use of the mark since at least as early as February 19, 2006. During prosecution of the Opposed Application, Applicant amended his identification of goods to read “guitar pedals, namely, effects pedals for use with sound amplifiers” and amended the drawing of his mark to “BOSS TONE.”

4. Upon information and belief, Applicant has used the mark “BOSS TONE” in commerce in the United States in connection with the goods identified in the Opposed Application together with the federal registration symbol ® with the knowledge that the “BOSS TONE” mark is not registered in the United States and with the intent to deceive purchasers and prospective purchasers into believing mistakenly that the mark is registered in the United States.

5. From a time long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, and continuously to the present, Opposer has used the trademark “BOSS” in the United States in connection with guitar effects pedals and related goods. Opposer owns United States Trademark Reg. No. 1,150,998 for the mark “BOSS” for electronic sound effectors for musical instruments and parts and fittings therefor, United States Trademark Reg. No. 1,151,665 for the mark “BOSS” and design for electronic sound effectors for musical instruments and parts and fittings therefor, and United States Trademark Reg. No. 1,468,044 for the mark “BOSS” for graphic equalizers and analog or digital effects for musical sound, in Class 9, and computer controlled musical instruments, namely a preset programmable rhythm machine, and electronic automatically controlled rhythm machines, electronic metronomes, and tuners, in Class 15. These registrations are valid and subsisting and certain of them have become incontestable.

6. Opposer’s “BOSS” mark is famous in the United States for guitar effects pedals and related goods, and it became famous long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely.

FIRST CLAIM FOR RELIEF

(Likelihood of Confusion With Registered Trademarks)

7. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

8. The mark shown in the Opposed Application so resembles Opposer's registered "BOSS" trademarks as to be likely, when applied to the goods identified in the Opposed Application, to cause confusion, or to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

9. Opposer is or may be damaged by registration of the mark shown in the Opposed Application because such registration would give Applicant *prima facie* evidence of his exclusive nationwide right to use the "BOSS TONE" mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its registered "BOSS" marks.

SECOND CLAIM FOR RELIEF

(Likelihood of Confusion With Previously-Used Trademarks)

10. Opposer repeats and realleges the allegations set forth in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

11. The mark shown in the Opposed Application so resembles the "BOSS" trademark previously used by Opposer in the United States and not abandoned as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 2(d).

12. Opposer is or may be damaged by the registration of the mark shown in the Opposed Application because such registration will give Applicant *prima facie* evidence of his

exclusive nationwide right to use the "BOSS TONE" mark in commerce in connection with the goods identified in the Opposed Application, in derogation of Opposer's rights in its "BOSS" trademarks.

THIRD CLAIM FOR RELIEF
(Fraudulent Misuse of Federal Registration Symbol)

13. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

14. Applicant has made fraudulent misuse of the federal registration symbol in connection with his claimed "BOSS TONE" and his mark is thus ineligible for registration.

15. Opposer is or may be damaged by Applicant's registration of his mark because such registration will give Applicant prima facie evidence of rights in his mark, in derogation of Opposer's rights in its "BOSS" marks.

WHEREFORE, Opposer Roland Corporation prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

Please charge the filing fees for this opposition to Deposit Account No. 50-2291 and direct all correspondence and communications in this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW LLP

By: 
Christopher C. Larkin
Attorneys for Opposer
ROLAND CORPORATION

Dated: September 27, 2007

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