

ESTTA Tracking number: **ESTTA174655**

Filing date: **11/14/2007**

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	Universal Music - MGB NA LLC
Granted to Date of previous extension	11/14/2007
Address	10 Universal City Plaza Universal City, CA 91608 UNITED STATES
Party who filed Extension of time to oppose	Universal Music - MBG NA LLC
Relationship to party who filed Extension of time to oppose	There was a minor typographical error when filing the Request for Extension of Time to Oppose.

Attorney information	DeAnne Ozaki Universal Music - MGB NA LLC 2220 Colorado Avenue Santa Monica, CA 90404 UNITED STATES deanne.ozaki@umusic.com Phone:310-865-1709
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Applicant Information

Application No	76617651	Publication date	07/17/2007
Opposition Filing Date	11/14/2007	Opposition Period Ends	11/14/2007
Applicant	Mamos, Douglas 100 Myrtle St. #3 Manchester, NH 03104 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 1994/10/31 First Use In Commerce: 1994/10/31 All goods and services in the class are opposed, namely: Pre-recorded DVDs, CDs and MP3 files recorded on compact disc featuring music; sunglasses
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2878147	Application Date	05/22/2000
Registration Date	08/31/2004	Foreign Priority Date	NONE
Word Mark	KILLER TRACKS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1990/02/00 First Use In Commerce: 1990/02/00 MUSICAL SOUND RECORDINGS Class 041. First use: First Use: 1995/11/00 First Use In Commerce: 1995/11/00 PROVIDING MUSIC FOR USE IN PRODUCTION OF TELEVISION SHOWS, TELEVISION ADVERTISEMENTS, MOTION PICTURES, VIDEO RECORDINGS, IN-HOUSE PRODUCTIONS, AND MULTI MEDIA APPLICATIONS; MUSIC PUBLISHING SERVICES; PROVIDING INFORMATION ABOUT AND PERFORMANCES OF MUSICAL ARTISTS BY MEANS OF A GLOBAL COMPUTER INFORMATION NETWORK		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dho/
Name	DeAnne Ozaki
Date	11/14/2007

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

IN THE MATTER OF APPLICATION FOR U.S. TRADEMARK REGISTRATION

SERIAL NO.: 76/617,651
TRADEMARK: KILLER ROCK
GOODS: Pre-recorded DVDs, CDs and MP3 files recorded on compact disc
featuring music; sunglasses in Class 9
FILING DATE: October 25, 2004
PUBLICATION DATE: July 17, 2007

UNIVERSAL MUSIC – MGB NA LLC)	
)	
Opposer,)	Opposition No.
)	
v.)	_____
)	
Douglas Mamos,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
Attention: TTAB

Dear Sir or Madam:

Universal Music – MGB NA LLC (“Opposer”), a California limited liability company, with a business address at 10 Universal City Plaza, Universal City, California 91608, believes that it will be damaged by the registration, by Douglas Mamos (“Applicant”), of the mark which is the subject of the above-identified application (the “Application”), and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer has used since at least as early as 1990, and is presently using, in commerce the trademark KILLER TRACKS, in connection with musical sound recordings and related goods and/or services (collectively, "Opposer's Goods and Services").

2. The KILLER TRACKS trademark is the subject of United States Trademark Registration Number 2,878,147.

3. Since at least as early as the 1980s, Opposer and/or its predecessor-in-interest, has used in commerce, on or in connection with some or all of Opposer's Goods and Services, a family of marks containing the term KILLER.

4. Opposer is presently using a family of marks containing the term KILLER, including without limitation the following trademarks: "KILLER MUSIC," "KILLER LATINO," "KILLER EDGE," "KILLER FX," "KILLER SONIFIER," "KILLER ANIMATION," "KILLER PROMOS," "KILLER STAGE & SCREEN," "KILLER SCORES," "KILLER TOOLS," and "KILLER UNDERGROUND" (and together with the KILLER TRACKS mark, collectively, the "KILLER Marks").

5. By virtue of Opposer's extensive and continuous use of the KILLER Marks, extensive efforts and the expenditure of large sums for promotional activities, and by virtue of the quality of the goods and services offered under the KILLER Marks, the KILLER Marks have developed extensive goodwill and consumer recognition and/or become famous and well-known, in the United States.

6. There is no issue as to priority. Opposer commenced use of one or more of the KILLER Marks, in commerce, prior to October 31, 1994, Applicant's claimed date of first use of the KILLER ROCK mark ("Applicant's Mark"), and such use by Opposer has been and is continuous.

7. In the Application, Applicant disclaimed the word "ROCK." Accordingly, the only portion of Applicant's Mark that would be potentially entitled to protection is KILLER.

8. Applicant's Mark is confusingly similar to the KILLER Marks. The non-disclaimed portion of Applicant's Mark is identical to the non-disclaimed portion of Opposer's KILLER TRACKS mark, and the goods and services offered under the marks are virtually identical and are likely to be sold, marketed and/or offered to the same class of people and through the same or similar channels of trade.

9. Applicant's Mark is deceptively similar to the KILLER Marks so as to cause confusion and deceive the public as to origin of Applicant's goods offered under Applicant's Mark. Consumers and persons in the trade will assume, contrary to the fact, that Applicant's goods are associated with, endorsed by or in some other way related to Opposer and/or Opposer's Goods and Services.

10. Opposer alleges and believes, for the reasons set forth above, that, if Applicant is permitted to use and/or register Applicant's Mark in connection with the goods specified in the Application, confusion in the trade would occur, resulting in damage and injury to Opposer.

11. If Applicant is granted the registration herein opposed, they would thereby obtain at least a prima facie exclusive right to the use of Applicant's Mark. Such registration would be a source of damage and injury to Opposer.

12. Opposer alleges and believes that, if Applicant is granted the registration herein opposed, it could weaken the strength and reputation of the KILLER Marks, resulting in damage and injury to Opposer.

13. By reason of the foregoing, Applicant is not entitled to registration of Applicant's Mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained in favor of Opposer and that registration of Applicant's Mark be rejected and denied.

Dated: November 14, 2007

Respectfully submitted,

UNIVERSAL MUSIC – MGB NA LLC

By: 

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c/o Universal Music Group
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(310) 865-1709