

ESTTA Tracking number: **ESTTA254310**

Filing date: **12/10/2008**

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	Bill Degley, Brian Kushner & Michael Schermick		
Entity	joint owners	Citizenship	United States
Address	c/o Serling Rooks & Ferrara LLP 119 5th Avenue (3d flr) NEW YORK, NY 10003 UNITED STATES		

Attorney information	wallace collins serling rooks & ferrara llp 119 5th avenue (3d flr) NEW YORK, NY 10003 UNITED STATES wallace@wallacecollins.com Phone:212-245-7300
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Applicant Information

Application No	77332262	Publication date	11/11/2008
Opposition Filing Date	12/10/2008	Opposition Period Ends	12/11/2008
Applicant	DEGLEY, WILLIAM 858 ISAAC NEWTON DRIVE HANFORD, CA 93230 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 1986/01/12 First Use In Commerce: 1986/01/12 All goods and services in the class are opposed, namely: Entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; entertainment in the nature of live music concerts; entertainment, namely, live performances by a musical band; entertainment, namely, live music concerts; entertainment, namely, live performances by musical bands

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77334416	Application Date	11/20/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	BRITNY FOX
Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1986/01/02 First Use In Commerce: 1986/03/01 Entertainment, namely, live music concerts in the nature of live visual and audio performances by a musical artist and musical band; Entertainment services, namely, personal appearances by a musician and musical band; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, and photographs; entertainment services, namely, providing prerecorded music, information in the field of music, commentary and articles about music, all online via a global computer network; Providing information in the field of entertainment, namely, providing entertainment information about a musician and musical band in the nature of schedules of releases of sound recordings, schedules of releases of video recordings, schedules of releases of laser and digital recordings, schedules of releases of multi-media software, schedules of releases of collectibles, fashion, apparel, jewelry and printed matter merchandise, schedules of tours, schedules of travel, schedules of live and prerecorded musical performances, schedules of live and personal appearances, all online via a global computer network; production of radio and television programs; production of music videos and music production services; audio recording and production; sound recording studios; composition of music for others and organizing exhibitions for musical entertainment

Attachments	77334416#TMSN.jpeg (1 page)(bytes) 1-Opposition.pdf (3 pages)(75520 bytes)
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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	/wallace collins/
Name	wallace collins
Date	12/10/2008

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

In the Matter of Application Serial No. 77/332262
Applicant: William Degley
Trademark: BRITNY FOX
Published: November 11, 2008

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Bill Degley, Brian Kushner &	:	
Michael Schermick	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
William Degley	:	
	:	
Applicant.	:	
<hr/>		x

Box TTAB
Assistant Commissioner of Patents
and Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

1. Opposer, a partnership comprised of the individual musicians Bill Degley and Michael Schermick, members of the band BRITNY FOX (the "Rock Band") and their manager , Brian Kushner, all with an address as c/o Nicholas Ferrara, 119 5th Avenue (3d flr), New York, NY 10003, believing that it will be damaged by the registration of the mark shown in Application Serial No. 77/332262, hereby opposes registration of the same, alleging as follows:

2. Upon information and belief, William Degley a/k/a Bill Degley ("Applicant") is an individual residing in California who is a member of the Rock Band that is the Opposer.

3. At least as early as any first use date which can be claimed by Applicant individually of the mark that is the subject of Application Serial No. 77/332262, Opposer, first as a corporation and now as a partnership of members of the Rock Band and their manager, had adopted, used and is still using in commerce its trademark consisting of the term BRITNY FOX for a wide spectrum of entertainment services in the nature of live musical services as well as audio/visual recordings of such performances featuring musical entertainment.

4. Opposer is the owner of an Application pending Federal Registration in the United States Patent and Trademark Office for the mark "BRITNY FOX" (Serial No.: 77/334416).

5. Opposer, as a partnership between members of a rock band and their manager, used the BRITNY FOX mark in the United States since at least as early as January 1986. Opposer, as a partnership, advertised and promoted its mark BRITNY FOX as a result of which Opposer's mark has become favorably known to the trade and to the public, and has become known and recognized as Opposer's mark, and thus identifies to the purchasers and prospective purchasers quality entertainment services originating only with Opposer as a partnership and as the Rock Band.

6. Opposer's trademark BRITNY FOX is identical to Applicant's mark BRITNY FOX and the goods and services represented by Opposer's trademark (and Opposer's Pending Application), and Applicant's mark travel in the same channels of trade and are related.

7. Applicant's use of the trademark would be likely, when used on or in connection with Applicant's goods and services, to cause confusion, or to cause mistake, or to deceive.

8. Applicant, with knowledge that the mark BRITNY FOX was the name of the Opposer's Rock Band (of which Applicant was a partner and member) and knowledge that the mark rightfully belonged to the members of the Opposer partnership collectively, nonetheless committed fraud on the trademark office by proceeding with his application in his own name individually.

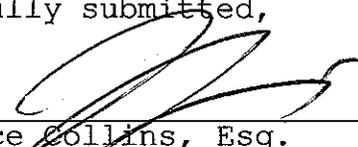
9. Opposer's application for its mark BRITNY FOX has been suspended by the trademark office pending a determination on the Applicant's application.

10. For the above reasons, Opposer would be damaged by the registration of BRITNY FOX Serial No. 77/332262 to Applicant.

WHEREFORE, Opposer requests that registration of the mark, BRITNY FOX, Application Serial No. 77/332262, be refused and that this opposition be sustained.

Respectfully submitted,

Dated: December 9 2008

By: 
Wallace Collins, Esq.
Attorney for Opposer
119 5th Avenue (3d flr)
New York, New York 10019
(212) 245-7300

Enclosures:
Check No. _____ \$300