

ESTTA Tracking number: **ESTTA327608**

Filing date: **01/19/2010**

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	Apple Inc.
Granted to Date of previous extension	01/27/2010
Address	One Infinite Loop Cupertino, CA 95014 UNITED STATES

Attorney information	Anthony J. Malutta, Esq. Townsend and Townsend and Crew LLP Two Embarcadero Center, 8th Floor San Francisco, CA 94111-3834 UNITED STATES ajmalutta@townsend.com, dhongyee@townsend.com, v1t@townsend.com, litdocketinginbox@townsend.com Phone:415.576.0200
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Applicant Information

Application No	77416832	Publication date	09/29/2009
Opposition Filing Date	01/19/2010	Opposition Period Ends	01/27/2010
Applicant	Fegan, Tal M. 700 Mountain Road Lake Bluff, IL 60044 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Digital materials, namely, downloadable audio files featuring prerecorded songs by recording artists; digital media, namely, digital media, namely, downloadable audio files featuring prerecorded songs by recording artists
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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.	3529307	Application Date	07/27/2006
Registration Date	11/04/2008	Foreign Priority Date	NONE
Word Mark	TRIPLE PLAY		

Design Mark	TRIPLE PLAY
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2006/12/05 First Use In Commerce: 2006/12/05 Retail store services in the field of entertainment, namely, musical, audio and audiovisual works a provided via the internet and other computer and electronic communication networks</p> <p>Class 041. First use: First Use: 2006/12/05 First Use In Commerce: 2006/12/05 providing information in the fields of music, video, entertainment, and arts and leisure</p>

Attachments	<p>78939417#TMSN.jpeg (1 page)(bytes)</p> <p>TRIPLE PLAY CREATIONS Notice of Opposition.pdf (7 pages)(227491 bytes)</p>
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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	/Anthony J. Malutta/
Name	Anthony J. Malutta, Esq.
Date	01/19/2010

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

In re Application Ser. No. 77/416,832
Published: September 29, 2009
Applicant: Tal M. Fegan
Mark: **TRIPLE PLAY CREATIONS**

APPLE INC.,

Opposer,

vs.

TAL M. FEGAN,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Commissioner for Trademarks
P. O. Box 1451
Alexandria, Virginia 22313-1451

Dear Commissioner:

APPLE INC. ("Opposer"), a California corporation, located and doing business at 1 Infinite Loop, Cupertino, California, 95014, believes that it will be damaged by the registration in International Class 09 of the mark **TRIPLE PLAY CREATIONS** shown in Application Serial No. 77/416,832 filed by TAL M. FEGAN ("Applicant"), an individual with a mailing address at 700 Mountain Road, Lake Bluff, Illinois 60044, and published in the Official Gazette of September 29, 2009, and hereby opposes registration thereof.

As grounds for opposition, Opposer alleges:

1. Opposer is the owner of Registration No. 3,529,301 for **TRIPLE PLAY** for “retail store services in the field of entertainment, namely, musical, audio and audiovisual works provided via the internet and other computer and electronic communication networks” in International Class 035 and “providing information in the fields of music, video, entertainment, and arts and leisure” in International Class 041. Opposer’s application was filed on July 27, 2006 and registered on November 4, 2008. Opposer has used the mark **TRIPLE PLAY** on and in connection with the aforementioned services since at least as early as December 5, 2006. A copy of Opposer’s Certificate of Registration for Registration No. 3,529,307 is attached hereto as Exhibit A.

2. By virtue of Opposer’s extensive use and promotion of the **TRIPLE PLAY** mark, Opposer has established valuable goodwill in the mark, and the public has come to associate the **TRIPLE PLAY** mark with Opposer. As such, the public has come to know **TRIPLE PLAY** as an indication of services and products that originate from Opposer.

3. As a result of Opposer’s advertising, sales, and marketing, Opposer’s **TRIPLE PLAY** mark is well known to purchasers.

4. Applicant filed U.S. Trademark Application Serial No. 77/416,832 (the “Application”), which is the subject of this Opposition, on March 8, 2008 based on its use of the mark **TRIPLE PLAY CREATIONS** in connection with “digital materials, namely, downloadable audio files featuring prerecorded songs by recording artists; digital media; namely, downloadable audio files featuring prerecorded songs by recording artists” in International Class 009.

5. Applicant's goods as described in the Application are highly related to the services identified in Opposer's registration for its **TRIPLE PLAY** mark and with which Opposer has been using its mark for many years.

6. Opposer began use of its **TRIPLE PLAY** mark in connection with music, video, and entertainment services since at least as early as July 27, 2006, which is well prior to Applicant's filing date of March 8, 2008.

7. Applicant's **TRIPLE PLAY CREATIONS** mark, containing the entirety of Opposer's **TRIPLE PLAY** mark, is extremely similar and largely identical to Opposer's mark. As a result of the similarity between Opposer's **TRIPLE PLAY** mark and Applicant's **TRIPLE PLAY CREATIONS** mark and the highly related nature of the goods and services that are or will be provided under each respective mark, Applicant's mark is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective goods and services.

8. Registration of Applicant's mark shown in the opposed application will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), pursuant to the allegations stated above.

9. If the Application is permitted to register, the registration would presumptively entitle Applicant to *prima facie* exclusive ownership and rights to the **TRIPLE PLAY CREATIONS** mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant's goods and Opposer's goods and the relationship of Opposer to Applicant, thereby damaging Opposer's goodwill in its **TRIPLE PLAY** mark, and

resulting in irreparable harm to Opposer's business and reputation, all to the detriment of Opposer who has expended considerable sums and effort in promoting its **TRIPLE PLAY** mark.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 77/416,832 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of Townsend and Townsend and Crew LLP, 20-1430, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Anthony J. Malutta, Esq.
TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
ajmalutta@townsend.com

Respectfully submitted,

TOWNSEND and TOWNSEND and CREW LLP

Dated: January 19, 2010

By: 

Anthony J. Malutta
Attorneys for Opposer

Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
E-mail: ajmalutta@townsend.com

CERTIFICATE OF SERVICE

I, Dena Hong-Yee, certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Tal M. Fegan by mailing said copy on January 19, 2010, via First Class Mail, postage prepaid to:

Tal M. Fegan
700 Mountain Rd.
Lake Bluff, IL 60044-2105



Dena Hong-Yee

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EXHIBIT A

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102, and 107

United States Patent and Trademark Office

Reg. No. 3,529,307

Registered Nov. 4, 2008

SERVICE MARK
PRINCIPAL REGISTER

TRIPLE PLAY

APPLE INC. (CALIFORNIA CORPORATION)
1 INFINITE LOOP
CUPERTINO, CA 95014

FOR: RETAIL STORE SERVICES IN THE FIELD OF ENTERTAINMENT, NAMELY, MUSICAL, AUDIO AND AUDIOVISUAL WORKS PROVIDED VIA THE INTERNET AND OTHER COMPUTER AND ELECTRONIC COMMUNICATION NETWORKS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-5-2006; IN COMMERCE 12-5-2006.

FOR: PROVIDING INFORMATION IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT, AND ARTS AND LEISURE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 12-5-2006; IN COMMERCE 12-5-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-939,417, FILED 7-27-2006.

JAMES LOVELACE, EXAMINING ATTORNEY