

ESTTA Tracking number: **ESTTA339314**

Filing date: **03/26/2010**

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	larrymarshak
Granted to Date of previous extension	04/10/2010
Address	69-41 261st street floral park queens, NY 11004 UNITED STATES

Correspondence information	larrymarshak 69-41 261st street floral park queens, NY 11004 UNITED STATES lmar558636@aol.com Phone:(888)301-7607
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Applicant Information

Application No	77550496	Publication date	02/09/2010
Opposition Filing Date	03/26/2010	Opposition Period Ends	04/10/2010
Applicants	Schaffner, Katherine c/o Reed Smith LLP, 599 Lexington Avenue New York, NY 10022 UNITED STATES Horton, Gladys c/o Reed Smith LLP, 599 Lexington Avenue New York, NY 10022 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Pre-recorded multi-media, namely, musical and vocal audio and video recordings by a performing group
Class 041. All goods and services in the class are opposed, namely: Entertainment services in the nature of live musical concerts and stage performances by a musical and vocal recording group

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Mark has been previously assigned to opposer.

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1081340	Application Date	12/27/1976
Registration Date	01/03/1978	Foreign Priority Date	NONE
Word Mark	THE MARVELLETTES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 MUSICAL ENTERTAINMENT SERVICES RENDERED BY A VOCAL AND INSTRUMENTAL GROUP		

Related Proceedings	Not applicable
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Attachments	Opposition.Statement.txt (1 page)(1869 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	/larrymarshak/
Name	larrymarshak
Date	03/26/2010

Larry Marshak

Opposition to Serial Number 7750496

Re: Marvellettes and Marvelettes

Please accept this as a short statement of my grounds for objection to Serial Number 77550496.

- 1) In 1973 I obtained an assignment to the rights to the names Marvellettes and/or Marvelettes from Motown Records and Motown Management companies;
- 2) The aforesaid companies had superior rights to the names than the current Applicants;
- 3) In 1978 I received a registration in the name of the Marvellettes and renewed same twenty years later;
- 4) On December 14, 1994 I obtained an assignment of the name the Marvellettes from current Applicant Gladys Horton;
- 5) Pursuant to the aforesaid assignment current Applicant agreed to restrict her performances to Gladys Horton formerly of the Marvellettes;
- 6) Current Applicant "agreed to the entry of an order of permanenet injunction, in any court of competent jurisdiction enjoining her, her agents, sertvants and employees from representing to any third-party, directly or indirectly that she has the right to use the name or mark the Marvellettes to identify any musical performing group other than a musical performing group controlled by Larry Marshak and Gladys Horton will not knowingly authorize any third-party to represent that Gladys Horton or her performing group are the Marvellettes";
- 7) Larry Marshak has used the names Marvellettes and/or Marvelettes consistently from the date of first use in 1973 to the present;
- 8) Current Applicants have made no legal use of the names from 1973 to present;
- 9) Through inadvertance the registration expired in 2008, however Opposer has maintained his common law rights by continuing to use the mark without interruption;
- 10) Opposer has attempted to reapply for the mark, but his application has been interfered with by virtue of the pending application.