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

Proceeding	91196822
Party	Plaintiff Megatrax Production Music, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/679,307
Published for Opposition in the OFFICIAL GAZETTE of July 27, 2010

MEGATRAX PRODUCTION MUSIC, INC.,

Opposer

v.

MEGAMEDIA, LTD.,

Applicant.

Opposition No.: 91196822

Mark: MEGAVIDEO

AMENDED NOTICE OF OPPOSITION

Megatrax Production Music, Inc. (“Opposer”), a California corporation, having its principal place of business at 7629 Fulton Avenue, North Hollywood, CA 91605, believes it would be damaged by registration of the mark MEGAVIDEO as shown in Application Serial No. 77/679,307 filed by Megamedia, Ltd. (“Applicant”) and hereby opposes same.

As grounds for this opposition it is alleged:

1. On or before February 26, 2009, Applicant filed an application with the United States Patent & Trademark Office to register the mark MEGAVIDEO for services in International Classes 38, 41 and 42. The services in International Class 41 which are covered in the application are “entertainment services, namely providing a web site featuring videos on a

wide variety of topics and subjects; entertainment services, namely providing a web site featuring user-generated videos on a wide variety of topics and subjects.”

2. Opposer is the owner of a family of MEGATRAX marks, which it uses in connection with pre-recorded compact discs featuring music, CD-ROMs , DVDs, digital music storage devices, servers, and computer hard drives featuring music and catalogs of music; maintaining a library of recorded music; record production services; music publishing services, producing audio recordings featuring musical and non-musical sound effects; sound design, namely creation of musical and non-musical sound effects for others, publications of musical works; music editing services for others, composition of music of and for others, and ownership recording studio services for others, and online websites featuring music and catalogs of music.

3. In addition to its common law use of its family of marks in connection with said goods and services, Opposer also is the owner of registrations in the USPTO for the following marks: (1) Registration No. 2,866,607 in International Classes 9 and 41 for MEGATRAX in connection with pre-recorded compact discs featuring music and CD-ROMs featuring music and catalogs of music; maintaining a library of recorded music; record production services; music publishing services, producing audio recordings of music and sound effects; publications for cultural and educational purpose of musical works; music editing services for others, composition of music of others and ownership recording studio services for others; (2) Registration No. 1,898,704 in International Classes 9, 41 and 42 for MEGATRAX in connection with pre-recorded compact discs featuring music, and CD-ROMs featuring music and catalogs of music; maintaining a library of recorded music; record production services; and composition of music for others; (3) Registration No. 3,145,436 in International Classes 9 and 41 for MEGATRAX in connection with pre-recorded compact discs featuring music; CD-ROMs,

DVDs and computer hard drives featuring music and catalogs of music; maintaining a library of recorded music; record production services; music publishing services, producing audio recordings of music and sound effects; publication of musical works; music editing services for others, composition of music for others and ownership recording studio services for others and online websites featuring music and catalogs of music; and (4) Registration No. 3,011,965 in International Classes 9 and 41 for MEGASONICS in connection with sound recordings featuring musical and non-musical sound effects for others and sound design, namely creation of musical and non-musical sound effects for others.

4. As proof of status and title, attached as Exhibit A hereto and incorporated by reference herein are true and correct copies of the foregoing registrations. (Collectively, the marks identified above hereinafter are designated as the “Opposer’s Marks” for purposes of this pleading).

5. Since long prior to Applicant’s filing of the application for the mark MEGAVIDEO and/or any alleged use of the mark, Opposer has made substantial and continuous use of the Opposer’s Marks in interstate commerce on and in connection with the advertising, promotion, and sale of its goods and services, as set forth above. As a result, Opposer has established an enviable reputation, acquired substantial goodwill, and attained distinctiveness and fame in each of the Marks throughout the entire United States.

6. By virtue of the aforesaid advertising, promotions and sales, Opposer’s Marks have come to represent valuable goodwill owned by Opposer.

7. The goods and services in connection with which Opposer uses Opposer’s Marks and the services of the application for which Applicant seeks to register the MEGAVIDEO mark

are closely related and they are sold through the same channels of trade and to the same class of purchasers.

8. Furthermore, Opposer's Marks and Applicant's mark MEGAVIDEO are highly similar.

9. Use by Applicant of the mark MEGAVIDEO for the goods identified in the application would be likely to cause confusion, mistake or deception with Opposer's Marks and result in the erroneous belief by members of the public that Applicant's goods originate with, or that Applicant or its goods are in some way legitimately connected with, associated with, sponsored by, or approved by Opposer, in violation of, *inter alia*, Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

10. In view of the fame of each of the Marks, and that this fame preceded any of Applicant's rights in its mark, Applicant's MEGABOX mark is likely to cause dilution, and registration is therefore also precluded under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

11. Any use Applicant has made or may make of the mark MEGAVIDEO as to the goods identified in its application Serial No. 77/679,307 is and will be without Opposer's consent or permission.

WHEREFORE registration by Applicant of the aforesaid trademark for the aforesaid goods will be damaging to Opposer and Opposer, therefore, requests that the Opposition be sustained and application Serial No. 77/679,307 be denied registration.

Dated: February 29, 2012

Respectfully submitted,



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Attorneys for Opposer

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on February 29, 2012.


Kimberly Stewart

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February, 2012, a true and correct copy of the foregoing **AMENDED NOTICE OF OPPOSITION** was served upon Applicant's counsel of record by U.S. Mail to the following address:

Sean McChesney
Focal PLLC
800 Fifth Ave. Ste. 4100
Seattle, WA 98104


Kimberly Stewart

EXHIBIT A

EXHIBIT A

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

Reg. No. 2,866,607

United States Patent and Trademark Office

Registered July 27, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

MEGATRAX

MEGATRAX PRODUCTION MUSIC, INC. (CALIFORNIA CORPORATION)
7629 FULTON AVENUE
NORTH HOLLYWOOD, CA 91605

FOR: PRE-RECORDED COMPACT DISCS FEATURING MUSIC AND CD-ROMS FEATURING MUSIC AND CATALOGS OF MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-12-1993; IN COMMERCE 4-12-1993.

FOR: MAINTAINING A LIBRARY OF RECORDED MUSIC; RECORD PRODUCTION SERVICES; MUSIC PUBLISHING SERVICES, PRODUCING AUDIO RECORDINGS OF MUSIC AND SOUND

EFFECTS; PUBLICATIONS FOR CULTURAL AND EDUCATIONAL PURPOSE OF MUSICAL WORKS; MUSIC EDITING SERVICES FOR OTHERS, COMPOSITION OF MUSIC FOR OTHERS AND OWNERSHIP RECORDING STUDIO SERVICES FOR OTHERS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-12-1993; IN COMMERCE 4-12-1993.

OWNER OF U.S. REG. NOS. 1,898,704 AND 1,931,471.

SER. NO. 78-204,262, FILED 1-16-2003.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

Int. Cls.: 9, 41 and 42

Prior U.S. Cls.: 36, 38, 100 and 107

Reg. No. 1,898,704

United States Patent and Trademark Office Registered June 13, 1995

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

MEGATRAX

MEGATRAX PRODUCTION MUSIC, INC.
(CALIFORNIA CORPORATION)
11684 VENTURA BLVD., STE. 978
STUDIO CITY, CA 91604

FOR: PRERECORDED COMPACT DISCS
FEATURING MUSIC, AND CD-ROMS FEATUR-
ING MUSIC AND CATALOGS OF MUSIC, IN
CLASS 9 (U.S. CLS. 36 AND 38).

FIRST USE 4-12-1993; IN COMMERCE
4-12-1993.

FOR: MAINTAINING A LIBRARY OF RE-
CORDED MUSIC; RECORD PRODUCTION
SERVICES, IN CLASS 41 (U.S. CL. 107).
FIRST USE 4-12-1993; IN COMMERCE
4-12-1993.

FOR: COMPOSITION OF MUSIC FOR
OTHERS, IN CLASS 42 (U.S. CLS. 100 AND 107).
FIRST USE 4-12-1993; IN COMMERCE
4-12-1993.

SER. NO. 74-507,452, FILED 3-31-1994.

KEVIN PESKA, EXAMINING ATTORNEY

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,145,436

Registered Sep. 19, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

m e g a t r a x

MEGATRAX PRODUCTION MUSIC, INC. (CALI-
FORNIA CORPORATION)
7629 FULTON AVENUE
NORTH HOLLYWOOD, CA 91605

FOR: PRE-RECORDED COMPACT DISCS FEATURING MUSIC; CD-ROMS, DVDS AND COMPUTER HARD DRIVES FEATURING MUSIC AND CATALOGS OF MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-12-1993; IN COMMERCE 4-12-1993.

FOR: MAINTAINING A LIBRARY OF RECORDED MUSIC; RECORD PRODUCTION SERVICES; MUSIC PUBLISHING SERVICES, PRODUCING AUDIO RECORDINGS OF MUSIC AND SOUND

EFFECTS; PUBLICATION OF MUSICAL WORKS; MUSIC EDITING SERVICES FOR OTHERS, COMPOSITION OF MUSIC FOR OTHERS AND OWNERSHIP RECORDING STUDIO SERVICES FOR OTHERS AND ONLINE WEBSITES FEATURING MUSIC AND CATALOGS OF MUSIC, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-12-1993; IN COMMERCE 4-12-1993.

OWNER OF U.S. REG. NOS. 1,898,704, 1,931,471, AND 2,866,607.

SER. NO. 78-740,413, FILED 10-25-2005.

TANYA AMOS, EXAMINING ATTORNEY

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,011,965

Registered Nov. 1, 2005

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

MEGASONICS

MEGATRAX PRODUCTION MUSIC, INC. (CALI-
FORNIA CORPORATION)
7629 FULTON AVENUE
NORTH HOLLYWOOD, CA 91605

FOR: SOUND RECORDINGS FEATURING MU-
SICAL AND NON-MUSICAL SOUND EFFECTS FOR
OTHERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-0-2003; IN COMMERCE 9-3-2004.

FOR: SOUND DESIGN, NAMELY CREATION OF
MUSICAL AND NON-MUSICAL SOUND EFFECTS
FOR OTHERS, IN CLASS 41 (U.S. CLS. 100, 101 AND
107).

FIRST USE 4-0-2003; IN COMMERCE 9-3-2004.

SN 78-219,930, FILED 2-27-2003.

JOHN KELLY, EXAMINING ATTORNEY