

ESTTA Tracking number: **ESTTA397183**

Filing date: **03/09/2011**

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	Ate My Heart Inc.
Granted to Date of previous extension	03/09/2011
Address	1880 Century Park East, Suite 1600 c/o Jeff Gillman, Gelfand, Rennert et al Los Angeles, CA 90067 UNITED STATES
Attorney information	Brad D. Rose Pryor Cashman LLP 7 Times Square New York, NY 10036 UNITED STATES mshine@pryorcashman.com, tmurphy@pryorcashman.com, nkaplan@pryorcashman.com

Applicant Information

Application No	85058676	Publication date	11/09/2010
Opposition Filing Date	03/09/2011	Opposition Period Ends	03/09/2011
Applicant	Rule 66, LLC 20780 Fortuna Del Norte Escondido, CA 92029 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, underwear, socks, and belts
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Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3695129	Application Date	01/13/2009
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	LADY GAGA		

Design Mark	LADY GAGA
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Clothing for women, men and children, namely, shirts, t-shirts, sweatshirts, blouses, pullovers, tank tops, jackets, coats, sweaters, vests, pants, sweatpants, shorts, bottoms, skirts, and dresses; fashion accessories, namely, hats, caps, visors, headbands, wristbands, hoods, scarves, bandanas, neckties, mufflers, gloves, mittens and belts; underwear, namely, boxer shorts, undershorts, underpants, bras, socks, and hosiery; footwear, namely, shoes, sneakers and boots; swim wear, beachwear, and loungewear, namely, pajamas and robes

U.S. Registration No.	3695038	Application Date	11/13/2008
Registration Date	10/13/2009	Foreign Priority Date	NONE

Word Mark	LADY GAGA
Design Mark	LADY GAGA
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Entertainment services, namely, performances and public appearances by a live musical artist and providing non-downloadable prerecorded music online and information regarding a musical artist online via a global computer network

U.S. Application No.	77925278	Application Date	02/01/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LADY GAGA		

Design Mark	<h1>LADY GAGA</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 009. First use: First Use: 2008/06/00 First Use In Commerce: 2008/06/00 Series of musical sound recordings, audio-visual recordings featuring music and musical-based entertainment; downloadable musical sound recordings and audio-visual recordings featuring music and musical-based entertainment; downloadable ringtones via a global computer network and wireless devices; computer application software for mobile phones, namely, for electronic storage of data and graphics, for downloading and playing music and video clips, and for the receipt and transmission of messages; vinyl covers specially adapted for cell phones, MP3 players, laptops, and gaming devices; headphones</p> <p>Class 016. First use: First Use: 2009/08/20 First Use In Commerce: 2009/08/20 Printed materials, namely, posters, songbooks; pens</p> <p>Class 025. First use: First Use: 2009/08/20 First Use In Commerce: 2009/08/20 Clothing, namely, tank tops, t-shirts, jackets, hooded sweatshirts; headwear</p> <p>Class 035. First use: First Use: 2009/08/20 First Use In Commerce: 2009/08/20 Issuing gift certificates which may then be redeemed for goods and services</p> <p>Class 038. First use: First Use: 2009/08/20 First Use In Commerce: 2009/08/20 Providing on-line chat rooms for transmission of messages among computer users concerning a musical performer</p> <p>Class 041. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Entertainment services, namely, live musical performances; providing a website featuring entertainment information on a recording artist and her tours, performances, appearances, news, a biography, non-downloadable audio and audiovisual recordings featuring music and musical-based entertainment, photographs, and other entertainment information; online journals, namely, blogs featuring information on a recording artist; fan clubs; entertainment services, namely, providing webcasts featuring music and musical-based entertainment</p>
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U.S. Application No.	85115004	Application Date	08/24/2010
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Registration Date	NONE	Foreign Priority Date	03/03/2010
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Word Mark	LADY GAGA
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Design Mark	<h1 style="text-align: center;">LADY GAGA</h1>
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 2010/02/00 First Use In Commerce: 2010/02/00 Fragrances and perfumery; personal care products; fragrance products; perfumes; colognes; eau de toilette; body wash; body spray; body scrubs; body powder; fragrance and body oils and mists; body moisturizers; body creams; soaps; body butter; bath gels; skin care products; body and foot care products; body and shower products; preparations for the care and conditioning of the body, skin, scalp, and hair; toilet soap; body lotions; deodorants; hair preparations; shampoo; bubble bath, bath oil and shower gel; nail polish, nail polish remover; false eyelashes; decorative transfers for cosmetic purposes; Cosmetics, cosmetic preparations; make-up; Lipsticks</p> <p>Class 004. First use: First Use: 2010/04/00 First Use In Commerce: 2010/04/00 Candles, prayer candles</p> <p>Class 006. First use: First Use: 2009/03/00 First Use In Commerce: 2009/03/00 Metal key chains</p> <p>Class 009. First use: First Use: 2009/02/20 First Use In Commerce: 2009/02/20 Cellular phone accessory charms; protective covers for portable media players; pre-recorded flash drives featuring audio and audiovisual musical recordings; a digital booklet, photographs and links to the web sites of others; sunglasses</p> <p>Class 011. First use: First Use: 2009/11/00 First Use In Commerce: 2009/11/00 Lighted party-themed decorations, electric light decorative strings; Light wands</p> <p>Class 014. First use: First Use: 2008/10/03 First Use In Commerce: 2008/10/03 Charm bracelets; Necklaces, rings, plastic rings, bracelets; rubber or silicone wristbands in the nature of a bracelet; Jewelry</p> <p>Class 016. First use: First Use: 2009/01/07 First Use In Commerce: 2009/01/07 Gift wrapping paper; Christmas cards, holiday cards; writing instruments, pen sets; Greeting cards; decalcomanias; stickers; folders; notebooks; Temporary tattoos; posters; lenticular posters; Calendars; souvenir programs concerning musical events</p> <p>Class 018. First use: First Use: 2009/11/00 First Use In Commerce: 2009/11/00 Cosmetic cases sold empty; cosmetic carrying cases sold empty; Wallets; cosmetic bags sold empty; textile shopping bags; umbrellas; Tote bags</p> <p>Class 021. First use: Cosmetic accessories, namely, cosmetic brushes, applicator sticks for applying make-up, facial sponges for applying make-up, and cosmetic accessory cup holders</p> <p>Class 022. First use: First Use: 2009/11/11 First Use In Commerce: 2009/11/11 Lanyards for holding badges</p> <p>Class 024. First use: First Use: 2010/03/10 First Use In Commerce: 2010/03/10 Sports towels</p>

	<p>Class 025. First use: First Use: 2008/10/02 First Use In Commerce: 2008/10/02 Santa hats; masquerade costumes; masquerade costumes and masks sold therewith; Halloween costumes; Halloween costumes and masks sold therewith; clothing including undergarments, board shorts, hot pants, crop shirts, wrap around hoods; gloves; Shirts, t-shirts, tank tops, hooded jackets, hooded sweatshirts; headwear, hats, raglans</p> <p>Class 026. First use: First Use: 2009/02/23 First Use In Commerce: 2009/02/23 Wigs; hair accessories; headbands; Novelty buttons</p> <p>Class 028. First use: First Use: 2009/03/00 First Use In Commerce: 2009/03/00 Christmas tree ornaments and decorations; bubbles, namely, bubble making wand and solution sets; Costume masks</p> <p>Class 035. First use: First Use: 2008/10/24 First Use In Commerce: 2008/10/24 Online retail store services featuring merchandise, fragrances and perfumery, personal care products, fragrance products, perfumes, colognes, eau de toilette, body wash, body spray, body scrubs, body powder, fragrance and body oils and mists, body moisturizers, body creams, soaps, body butter, bath gels, skin care products, body and foot care products, body and shower products, preparations for the care and conditioning of the body, skin, scalp, and hair, cosmetics, cosmetic preparations, make-up, toilet soap, body lotions, deodorants, hair preparations, shampoo, bubble bath, bath oil and shower gel, nail polish, nail polish remover, false eyelashes, decorative transfers for cosmetic purposes, cellular phone accessory charms, lighted party-themed decorations, electric light decorative strings, charm bracelets, gift wrapping paper, Christmas cards, holiday cards, greeting cards, decalcomanias, stickers, folders, notebooks, writing instruments, pen sets, wallets, cosmetic cases sold empty, cosmetic carrying cases sold empty, cosmetic bags sold empty, textile shopping bags, umbrellas, Santa hats, masquerade costumes, masquerade costumes and masks sold therewith, Halloween costumes, Halloween costumes and masks sold therewith, clothing including undergarments, board shorts, hot pants, crop shirts, wrap around hoods, gloves, wigs, hair accessories, headbands, Christmas tree ornaments and decorations, bubbles, namely, bubble making wand and solution sets; Online retail store services featuring candles, prayer candles, calendars, key chains, clothing, headphones, musical sound recordings, downloadable musical sound recordings, posters, sunglasses, jewelry, sports towels, costume masks, temporary tattoos, tote bags, light wands, ornamental buttons, songbooks, headwear, souvenir programs concerning musical events, pre-recorded flash drives featuring audio and audiovisual recordings, a digital booklet, photographs and links to the websites of others, and music merchandise</p>
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Attachments	77648609#TMSN.jpeg (1 page)(bytes) 77614180#TMSN.jpeg (1 page)(bytes) 77925278#TMSN.jpeg (1 page)(bytes) 85115004#TMSN.jpeg (1 page)(bytes) Rule66 Opp.PDF (9 pages)(97263 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	/Brad D. Rose/
Name	Brad D. Rose

Date	03/09/2011
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application
Serial No. 85/058,676
for the mark LADY HAHA

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ATE MY HEART, INC.,	:	
	:	
Opposer,	:	Opposition No.
	:	
-against-	:	
	:	
RULE 66, LLC,	:	
	:	
Applicant.	:	
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In the matter of the Application of Rule 66, LLC (“Applicant” or “Rule 66”) for registration of the trademark LADY HAHA (“Mark”) which was published in the *Official Gazette* on November 9, 2010, Ate My Heart, Inc. (“Opposer” or “AMH”), a corporation organized under the laws of the State of California, with its principal place of business at c/o Pryor Cashman LLP, 7 Times Square, New York, NY 10036, respectfully avers that it will be substantially and irreparably damaged by the registration of the alleged mark LADY HAHA covering “apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, underwear, socks, and belts” in cl. 25 (“cl. 25 Goods”), as shown in Application Serial No. 85/058,676 (“Application”). Accordingly, Ate My Heart, Inc. hereby opposes the filing and registration of the mark LADY HAHA. As grounds for opposition, it is alleged that:

I. Background on AMH and Lady Gaga:

1. AMH is a corporation owned by the internationally renown musical star Stefani Germanotta p/k/a Lady Gaga. Lady Gaga catapulted to fame in 2008 following the release

of her debut studio album “The Fame”, which was a commercial success and achieved international popularity with the quadruple Platinum singles "Just Dance" and "Poker Face". “The Fame” reached number one on the record charts of six countries, accomplished positions within the top-ten worldwide, and topped the Billboard Dance/Electronic Albums chart while simultaneously peaking at number two on the Billboard 200 chart in the United States. Achieving similar worldwide success, the follow-up album “The Fame Monster”, produced the global chart-topping singles "Bad Romance" and "Telephone".

2. Lady Gaga's second studio album and third major release “Born This Way” will be released on May 23, 2011. Its arrival follows the release of its homonymous lead single on February 11, 2011, which was performed live for the first time on the 53rd Grammy Awards and which debuted atop the Billboard Hot 100.

3. Lady Gaga has sold more than 15 million albums and 51 million singles worldwide. Both *Time Magazine* and *Forbes* include Lady Gaga in its annual list of the most influential people in the world and the most powerful and influential celebrities in the world, respectively. *Forbes* also placed her at number seven (7) on their annual list of the World’s 100 Most Powerful Women.

4. Lady Gaga has also enjoyed several prominent accolades, including but not limited to Grammy Awards for Best Dance Recording “Just Dance”, Best Pop Vocal Album for “The Fame Monster”, Best Female Pop Vocal Performance for “Bad Romance” and Best Short Form Music Video for “Bad Romance”.

5. In addition to her musical achievements, Lady Gaga is considered a fashion icon and has been lauded for breathing life into the fashion industry. Lady Gaga identified fashion as a major influence and has her own creative production team named the

“Haus of Gaga”, which she personally oversees. Haus of Gaga creates many of her clothes, stage props, and hairdos. As a result of her efforts, the *Global Language Monitor* named "Lady Gaga" as the Top Fashion Buzzword and *Entertainment Weekly* included her outfits on its decade "best-of" list, saying, "Whether it's a dress made of Muppets or strategically placed bubbles, Gaga's outré ensembles brought performance art into the mainstream."

6. Lady Gaga promotes herself throughout the United States, via the internet, and through the website www.ladygaga.com, Facebook, Twitter and MySpace.

7. In addition to the common law rights that AMH owns in the mark “LADY GAGA”, it is also the owner of the following federal trademark registrations and pending trademark applications, among others. (hereinafter referred to as the “LADY GAGA Marks”):

Mark	Reg. No. / Serial Appl. No.	Goods / Services
LADY GAGA	3,695,129	Clothing for women, men and children, namely, shirts, t-shirts, sweatshirts, blouses, pullovers, tank tops, jackets, coats, sweaters, vests, pants, sweatpants, shorts, bottoms, skirts, and dresses; fashion accessories, namely, hats, caps, visors, headbands, wristbands, hoods, scarves, bandanas, neckties, mufflers, gloves, mittens and belts; underwear, namely, boxer shorts, undershorts, underpants, bras, socks, and hosiery; footwear, namely, shoes, sneakers and boots; swim wear, beachwear, and loungewear, namely, pajamas and robes, in cl. 25
LADY GAGA	3,695,038	Entertainment services, namely, performances and public appearances by a live musical artist and providing non-downloadable prerecorded music online and information regarding a musical artist online via a global computer network, in cl. 41
LADY GAGA	77/925,278	Series of musical sound recordings, audio-visual recordings featuring music and musical-based entertainment; downloadable musical sound recordings and audio-visual recordings featuring music and musical-based entertainment; downloadable ringtones via a global computer network and wireless devices; computer application software for mobile phones, namely, for electronic storage of data and graphics, for downloading and playing music and video clips, and for the receipt and

		<p>transmission of messages; vinyl covers specially adapted for cell phones, MP3 players, laptops, and gaming devices; headphones, in cl. 9</p> <p>Printed materials, namely, posters, songbooks; pens, in cl. 16</p> <p>Clothing, namely, tank tops, t-shirts, jackets, hooded sweatshirts; headwear, in cl. 25</p> <p>Issuing gift certificates which may then be redeemed for goods and services, in cl. 35.</p> <p>Providing on-line chat rooms for transmission of messages among computer users concerning a musical performer, in cl. 38</p> <p>Entertainment services, namely, live musical performances; providing a website featuring entertainment information on a recording artist and her tours, performances, appearances, news, a biography, non-downloadable audio and audiovisual recordings featuring music and musical-based entertainment, photographs, and other entertainment information; online journals, namely, blogs featuring information on a recording artist; fan clubs; entertainment services, namely, providing webcasts featuring music and musical-based entertainment, in cl. 41</p>
LADY GAGA	85/115,004	<p>Fragrances and perfumery; personal care products; fragrance products; perfumes; colognes; eau de toilette; body wash; body spray; body scrubs; body powder; fragrance and body oils and mists; body moisturizers; body creams; soaps; body butter; bath gels; skin care products; body and foot care products; body and shower products; preparations for the care and conditioning of the body, skin, scalp, and hair; toilet soap; body lotions; deodorants; hair preparations; shampoo; bubble bath, bath oil and shower gel; nail polish, nail polish remover; false eyelashes; decorative transfers for cosmetic purposes; Cosmetics, cosmetic preparations; make-up; Lipsticks, in cl. 3</p>

8. AMH has continuously and substantially used the mark LADY GAGA in interstate commerce on or in connection with entertainment related goods and services in cls. 9 and 41 since at least as early as September 2006 and on or in connection with apparel in cl. 25

since at least as early as October 2, 2008 (entertainment related goods and services and apparel are collectively hereinafter referred to as “Goods and Services”).

9. AMH vigorously polices its LADY GAGA mark, which has been in valid and continuous use since the aforementioned dates of first use and has not been abandoned.

10. As a result of Lady Gaga’s dominance of the musical industry, including her sold-out musical performances and concert tours, platinum selling albums, her national and international public and media appearances, the solicited and unsolicited publicity she has received and the substantial amount of time and money AMH has expended over the years in advertising and promoting merchandise, including apparel, under the mark LADY GAGA, Lady Gaga has acquired substantial goodwill in her famous name such that the public has come to associate the trademark LADY GAGA® solely and exclusively with her and AMH.

II. Applicant’s Mark is Confusingly Similar to the Mark LADY GAGA:

11. On May 26, 2010, over three years after AMH first commenced use of the mark LADY GAGA and almost two years after it first used the mark LADY GAGA in connection with apparel, Applicant filed its *Intent-to-Use* Application for the mark LADY HAHA covering “apparel, namely, t-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, underwear, socks, and belts” in cl. 25.

12. Applicant’s mark LADY HAHA is both phonetically and visually similar to AMH’s LADY GAGA Marks. Indeed, the mark LADY HAHA is essentially identical to the mark LADY GAGA, but for the substitution of the letters “G” in the term GAGA with the letter “H”. This minor alteration does not reduce the likelihood of consumer confusion.

13. In addition, Applicant’s Mark is intended to be used in connection with the same goods with which AMH uses its famous marks (apparel).

14. Given that the Application does not contain any limitations with respect to the channels of trade through which Applicant will be selling its apparel, it can be presumed and expected that such apparel will be marketed and sold to the same types of consumers through the same or similar channels of trade as AMH sells and markets its apparel under the LADY GAGA Marks. This increases the likelihood of consumer confusion.

15. Since LADY GAGA has become exclusively associated with AMH and its Goods and Services, Applicant's registration and use of the mark LADY HAHA in connection with the cl. 25 Goods will inevitably cause confusion in the minds of the public, thereby misleading the public to believe that Applicant's goods emanates from AMH or that Applicant is in some way associated with or connected to AMH, when, in fact, no such relationship exists.

16. Finally, because the LADY GAGA Marks are famous, use and registration of LADY HAHA by Applicant will unquestionably dilute AMH's marks.

17. In sum, registration of Applicant's mark will likely cause considerable confusion, mistake, deception and/or dilution in view of the facts that:

- (i) Opposer's LADY GAGA Marks have been in continuous use since at least as early as 2006, almost four years before Applicant's filing date of the Application thus Opposer's rights are superior;
- (ii) Opposer's LADY GAGA Marks are famous and distinctive;
- (iii) the goods applied for by Applicant (apparel) are identical to the Goods in connection with which Opposer uses its LADY GAGA brand identifier;
- (iv) Applicant's Mark is both substantially and confusingly similar to Opposer's LADY GAGA Marks;
- (v) Applicant's Mark suggests a false association with the LADY GAGA Marks;
- (vii) Applicant's Mark is deceptively and confusingly similar to Opposer's LADY GAGA Marks;

(viii) Applicant's Mark will dilute Opposer's famous LADY GAGA Marks.

WHEREFORE, Opposer prays that the Application, Serial No. 85/058,676, be rejected and that the Mark therein sought for the goods therein specified in International Class 25 be denied and refused.

The fee of \$300.00 to file this opposition against Applicant's in cl. 25 application has been paid electronically through ESTTA.

POWER OF ATTORNEY

Opposer hereby appoints Brad D. Rose, Teresa Lee, Nicole E. Kaplan, Philippe Zylberg and Muzamil A. Huq members of the Bar of the State of New York, whose address is Pryor Cashman LLP, 7 Times Square, New York, New York 10036, (212) 421-4100, as its duly authorized agents and attorneys in this matter to prosecute this Opposition, to transact all business in the Patent and Trademark Office and in the United States Courts in connection with the Opposition, to sign their names to all papers which may be hereinafter filed in connection therewith and to receive all communications relating to same.

Dated: March 9, 2011

Respectfully submitted,

By: 
Brad D. Rose, Esq.
Nicole E. Kaplan, Esq.
Philippe Zylberg, Esq.

Pryor Cashman LLP
7 Times Square
New York, New York 10036
(212) 421-4100

Attorneys for Opposer,
ATE MY HEART, INC.

Certificate of Mailing by ESTTA

I, Moira Shine, hereby certify that the Notice of Opposition is being filed electronically via ESTTA to: Commissioner for Trademarks, ATT: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date indicated below.

Date of Deposit: March 9, 2011

Signed: Moira Shine

Certificate of Service by First Class Mail

I hereby certify that a true and correct copy of NOTICE OF OPPOSITION is being served by "First Class Mail" and addressed to Applicant's counsel of record, on March 9, 2011 at the address listed below:

Pollie Gautsch
G&A Legal, PAC
2033 San Elijo Ave, Suite 201
Cardiff, CA 92007-1726

Signed: Maira Shine

Name: Moira Shine