ESTTA Tracking number: **ESTTA678936**

Filing date: **06/18/2015**

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

Proceeding	91203192
Party	Defendant Merkury Innovations, LLC
Correspondence Address	ANTHONY F LO CICERO AMSTER ROTHSTEIN & EBENSTEIN LLP 90 PARK AVE NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com, mjason@arelaw.com
Submission	Other Motions/Papers
Filer's Name	Marc J. Jason
Filer's e-mail	ptodocket@arelaw.com
Signature	/Marc J. Jason/
Date	06/18/2015
Attachments	Redac-ted_Merkury_Innovations_LLC's_Motion_To_Compel_The_Deposition_of_Andre_Young.pdf(615841 bytes) Redac-ted_Declaration_of_Marc_J_Jason_In_Support_of_Applicant's_Motion_to_Compel.pdf(749535 bytes)

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

BEATS ELECTRONICS, LLC, Opposer, v. MERKURY INNOVATIONS, LLC, Applicant.	Opposition No. 91203192 Application Serial No. 85/203,076 Filing Date: December 21, 2010 Publication Date: September 6, 2011 Trademark: URBAN BEATZ
MERKURY INNOVATIONS, LLC, Petitioner, v. BEATS ELECTRONICS, LLC, Registrant.	

MERKURY INNOVATIONS, LLC'S MOTION TO COMPEL THE DEPOSITION OF ANDRE YOUNG

Applicant Merkury Innovations, LLC ("Applicant") brings this Motion pursuant to 37 C.F.R. § 2.120(e). Applicant seeks an Order compelling opposer Beats Electronics LLC ("Opposer") to produce Andre Young for deposition. Mr. Young is a co-founder and senior executive at Opposer and is the person responsible for selecting Opposer's BEATS trademark.

I. FACTS

This Opposition proceeding was filed by Opposer on December 29, 2011. During the course of discovery, Applicant served upon Opposer a Rule 30(b)(6) deposition notice setting forth testimony topics. (A copy of Applicant's Rule 30(b)(6) deposition notice is attached as Exhibit A to the Declaration of Marc J. Jason ("Jason Decl.") filed herewith.) Topic 10 of the

notice was "Opposer's conception, creation and/or adoption of each of Opposer's Marks." (Jason Decl. ¶ 2, Ex. A at 3.) Opposer did not object to this topic or any other topic in the Rule 30(b)(6) notice.

On March 6, 2014, Applicant took the deposition of Tyler Williamson, Opposer's Rule 30(b)(6) designee on topics that included topic 10. (Jason Decl. ¶ 3, Ex. B at 9.) Mr. Williamson testified specifically that he was designated to testify regarding topic 10 (*id.*); and at no time during the deposition did Opposer object to topic 10 on any ground.

During Mr. Williamson's deposition, he was asked about the selection and adoption of the BEATS mark by Opposer. The following exchange is an example:

[redacted]

[redacted]

In sum, Mr. Williamson, Opposer's Rule 30(b)(6) designee on the topic, was not familiar with the factual circumstances regarding Opposer's conception, creation, or adoption of the BEATS mark.

As stated above, Mr. Williamson's deposition was taken on March 6, 2014. Shortly after the deposition was taken, the parties engaged in settlement discussions. Consequently, these proceedings were suspended five times between mid-2014 and the first half of 2015 to allow the parties to pursue settlement. The discussions did not yield fruit.

When it became apparent that settlement negotiations were not going to succeed, and the parties would need to resume and conclude discovery, Applicant issued a deposition notice for Mr. Young. (Jason Decl. ¶ 4, Ex. C.) Opposer objected to the deposition notice on the grounds that adoption of the BEATS mark by Opposer is irrelevant to the claims and defenses in the proceeding. (Jason Decl. ¶ 5, Ex. D.) This was the first time that Opposer had objected that adoption of the BEATS mark by Opposer was irrelevant.

On May 14, 2015, Opposer filed a further Consented Motion to Extend to allow to parties to try to resolve their discovery disputes, among which was the noticed deposition of Mr. Young. (Dkt. 42 at ¶ 6.)

Counsel for the parties, Marc Jason for Applicant and Michael Kelber and Katherine Nye for Opposer, conferred in good faith multiple times by letter, by email and by telephone (including conversations on May 13 and May 19, 2015) to attempt to resolve the issue raised in this motion. However, counsel were unable to resolve their differences.

II. LEGAL ARGUMENT

A. Motion to Compel is Proper

Pursuant to 37 C.F.R. § 2.120(e)(1), Applicant may seek to compel Mr. Young's attendance at a deposition.

The Trademark Trial and Appeal Board Practice and Procedure Manual ("TBMP") confirms that a motion to compel is available in the event of a failure to provide required discovery requested by means of discovery deposition. TBMP § 523.01.

TBMP § 404.06(b) provides that a party's Rule 30(b)(6) witness must provide all relevant information known or reasonably available to the organization. A party served with a Fed. R. Civ. P. 30(b)(6) notice of deposition has an obligation not only to pick and produce persons that have knowledge of the subject matter identified in the notice, but also to prepare those persons so that they can give complete, knowledgeable, and binding answers as to matters known or reasonably available to the organization.

In this case, Mr. Williamson was not knowledgeable and was unable to give complete and knowledgeable answers regarding conception, creation and adoption of the BEATS mark by Opposer. [redacted] Thus, it is proper to compel Mr. Young to attend a deposition to testify regarding these topics.

B. Testimony Sought From Mr. Young is Relevant

Applicant has asserted an affirmative defense that Opposer's BEATS mark is descriptive and/or highly suggestive in relation to headphones, and has asserted a counterclaim to cancel Opposer's registrations on that basis. (Dkt. 4, ¶¶ 11, 26-31.) In addition, the basis of Opposer's opposition, and the overarching issue in the proceeding, is whether there is a likelihood of confusion between Opposer's BEATS mark and Applicant's URBAN BEATZ mark. Mr.

Young's testimony regarding his conception, creation and adoption of the term "beats" for use as his company's mark is highly relevant to these issues.

Applicant believes that Mr. Young's testimony regarding selection of the term "beats," as well as his knowledge of other uses of the term, will support Applicant's contention that "beats" is descriptive or highly suggestive of headphones and the fact that the term, in the current vernacular, is synonymous with the word "music." Indeed, Applicant believes that Opposer's mark was selected because of its descriptiveness and suggestiveness, and because of its association with headphones. Applicant must be permitted to explore this area of inquiry -- and Mr. Young is clearly the person with the relevant knowledge [redacted]

The inquiry into the descriptiveness/suggestiveness of the BEATS mark is critical to the likelihood of confusion analysis. *See, e.g., Safer, Inc. v. OMS Investments, Inc.*, 94 U.S.P.Q.2D (BNA) 1031 (T.T.A.B. 2010). In *Safer*, the Board recognized that the applicant's mark DEER-B-GON was similar to opposer's marks DEER AWAY and DEER AWAY PROFESSIONAL in that they all started with the word "Deer," and they all gave the commercial impression of eliminating of deer. However, the Board also noted that the marks were highly suggestive since eliminating deer was the purpose of the parties' deer repellant. The Board then held that the fact that the marks have a similar highly suggestive meaning is insufficient to support a likelihood of confusion finding where the marks otherwise differed in appearance and sound.

In *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 U.S.P.Q.2d 1404, 1407 ((T.T.A.B. 1988), the Board held that marks will not be found confusingly similar if the shared element is a common, suggestive element. *Id., citing Tektronix, Inc. v. Daktronics, Inc.*, 189 U.S.P.Q. 693 (C.C.P.A. 1976).

This holding was reiterated in *In re Nycomed Amersham PLC*, 2002 TTAB LEXIS 79 (T.T.A.B. 2002), where the Board reversed the Examining Attorney's refusal to register TOMOJET for a medical device related to x-rays based on a registration for TOMOSCAN for a similar medical device. The Board held that since the dictionary defines "tomography" as a technique for making detailed x-rays, the shared element, TOMO, was deemed highly suggestive, and an insufficient basis upon which to find the marks confusingly similar. *See also Arrowhead Mills, Inc. v. Good Health Natural Foods, Inc.*, 2004 TTAB LEXIS 268 (T.T.A.B. 2004) (no likelihood of confusion between GARDEN CHIPS for vegetable based snack food and GARDEN GRAINS for grain based snack foods, bean dips, corn chips, tortillas and bread since GARDEN is "is a highly suggestive term indicating that the food item is fresh or natural, and comes from the garden.").

In the instant case, Applicant believes that Mr. Young's testimony will confirm that the "beats" term means music, and that is the reason he selected the term as his mark. This testimony would support Applicant's contention that the BEATS mark is weak, and therefore, only entitled to a very narrow scope of protection (or, indeed, cancellation), since "beats" is descriptive or highly suggestive in connection with headphones.

III. CONCLUSION

It is respectfully submitted that the Board should issue an Order compelling Opposer to

produce Andre Young for deposition on the topic of conception, creation and adoption of Opposer's BEATS mark.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
June 18, 2015

By: _____
Anthony E. Lo Cicero
Marc J. Jason

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION TO COMPEL THE DEPOSITION OF ANDRE YOUNG has been served on Opposer Beats Electronics, LLC by delivering said copy via regular U.S. Mail and email to Opposer's attorney of record, as follows:

Michael G. Kelber, Esq.
mkelber@ngelaw.com
Katherine Dennis Nye, Esq.
knye@ngelaw.com
Neal Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602

Dale Cendali, Esq.
dale.cendali@kirkland.com
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022

By: _____
Marc J. Jason

Dated: New York, New York
June 18, 2015

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

BEATS ELECTRONICS, LLC, Opposer, v. MERKURY INNOVATIONS, LLC, Applicant.	Opposition No. 91203192 Application Serial No. 85/203,076 Filing Date: December 21, 2010 Publication Date: September 6, 2011 Trademark: URBAN BEATZ
MERKURY INNOVATIONS, LLC, Petitioner, v. BEATS ELECTRONICS, LLC, Registrant.	

DECLARATION OF MARC J. JASON IN SUPPORT OF APPLICANT'S MOTION TO COMPEL THE DEPOSITION OF ANDRE YOUNG

I, Marc J. Jason, hereby declare and state as follows:

1. I am a senior counsel at Amster, Rothstein & Ebenstein LLP, attorneys for applicant Merkury Innovations, LLC ("Applicant") in this Opposition Proceeding. I make this declaration in support of Applicant's motion to compel opposer Beats Electronics LLC ("Opposer") to produce Andre Young for deposition.

2. A true and correct copy of Applicant's Notice to Take Deposition Pursuant to Fed. R. Civ. P. 30(b)(6) and 37 C.F.R. § 2.119(c), served upon Opposer, is attached hereto as Exhibit A.

3. A true and correct copy of excerpts of the deposition transcript of Tyler Kent Williamson (pages 1, 8-9, and 18-24) is attached hereto as Exhibit B.

4. A true and correct copy of the Notice of Deposition of Andre Young dated April 30, 2015 is attached hereto as Exhibit C.

5. A true and correct copy of a letter to me from Michael G. Kelber dated May 12, 2015 is attached hereto as Exhibit D.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York
June 18, 2015

Marc J. Jason

EXHIBIT A

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

BEATS ELECTRONICS, LLC, Opposer, v. MERKURY INNOVATIONS, LLC, Applicant.	Opposition No. 91203192
MERKURY INNOVATIONS, LLC, Opposer, v. BEATS ELECTRONICS, LLC, Registrant.	

NOTICE TO TAKE DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6) AND 37 C.F.R. § 2.119(c)

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30(b)(6) and 37 C.F.R. § 2.119(c), Applicant/Petitioner Merkury Innovations, LLC will take the deposition by oral examination of Opposer/Registrant Beats Electronics, LLC by the person(s) designated in writing to testify on its behalf with respect to the topics listed below, commencing at 10:00 a.m. on a date and at a location to be determined, within 100 miles of 1601 Cloverfield Blvd, Suite 5000N, Santa Monica, CA 90404, before a notary public or other person authorized to administer oaths, or at such other location as will be mutually agreed upon. The deposition shall be recorded by stenographic means. The deposition will continue from day to day until completed.

You are invited to attend and cross-examine.

518881.1

Beats Electronics vs Merkury
Exh By: Marc Jason

Δ π EXHIBIT 1
Deponent Williamson
Date 3-6-14 Rptr. MTV
WWW.DEPOBOOK.COM

DEFINITIONS

1. As used herein, the term "Opposer" refers to Opposer/Registrant Beats Electronics, LLC, any related persons or entities, predecessors in interest and successors in interest and any parent, subsidiary, affiliate and other related person or entities.

2. As used herein, the term "Applicant" refers to Applicant/Petitioner Merkury Innovations, LLC, its owners, members, stockholders, officers, directors, any predecessors in interest of Opposer's Marks, and any parent, subsidiary, affiliate and other related person or entities.

3. As used herein, the term "the Accused Mark" shall mean the mark URBAN BEATZ, as used by or intended to be used by or on behalf of Applicant, either alone or in combination with other words, symbols, designs or logos, as a trademark, trade name, service mark or otherwise.

4. As used herein, the term "Opposer's Marks" shall mean any mark which consists of or incorporates BEAT or BEATS, as used by or intended to be used by or on behalf of Opposer, in plain or stylized font and with or without a design element, including, without limitation, BEATS, HEARBEATS, POWERBEATS BY DR. DRE, JUSTBEATS, DIDDY BEATS, IBEATS, BEATS BY DR. DRE, CLUB BEATS, BEATS EXECUTIVE, URBEATS, BEATS STUDIO, BEATS PILL, MYBEATS, BEATS PRO, LEBRON POWERBEATS, LIVE BEATS, BEATBOX, BEATSAUDIO, BEATS SPIN PRO, BEATS PRO SPIN, BEATSBOX, and BEATS SPIN DJ.

TOPICS

1. Opposer's knowledge of Applicant and/or products sold under the Accused Mark, including, without limitation, any investigation conducted by or on behalf of Opposer regarding Applicant and/or Applicant's Mark.

2. Surveys, market research or market studies undertaken by or on behalf of Opposer in connection with Opposer's Marks.

3. For each product or service offered or sold under each of Opposer's Marks, the dates each of these products and services were first offered for sale and sold and/or provided, and if applicable, the dates each of these products and services were discontinued.

4. The methods in which products and services offered under Opposer's Marks have been and are intended to be advertised and promoted (*e.g.*, in newspaper advertisements, web sites, television commercials, *etc.*).

5. Actual and intended marketing, advertising and promotion of Opposer's products and services offered for sale or sold or otherwise provided under Opposer's Marks.

6. All third party articles (including news and entertainment articles) concerning Opposer's use of or intended use of Opposer's Marks.

7. The channels of trade through which products and services offered under Opposer's Mark are, were and are intended to be offered.

8. The type of customer to whom Opposer has sold and/or provided goods and services under Opposer's Marks, including age, sex, socioeconomic background, geographic location, *etc.*

9. Investigations such as trademark, service mark, trade name, or corporate name searches conducted by or at the direction of Opposer relating to the use and/or registration of each of Opposer's Marks in the United States.

10. Opposer's conception, creation and/or adoption of each of Opposer's Marks.

11. Instances of actual confusion between the Accused Mark and/or Applicant on the one hand, and Opposer's Marks and/or Opposer on the other hand, including, without limitation,

any misdirected mail, telephone calls, orders, inquiries or complaints that Opposer received that were intended for Applicant or which referenced the Accused Mark.

12. All agreements between Opposer and any other person, whereby either Opposer or said person was granted the right to or was prohibited from manufacturing, advertising, distributing, offering for sale or selling goods or services under Opposer's Marks, including, without limitation, manufacturing agreements, license agreements, settlement agreements, consent agreements and coexistence agreements.

13. Any agreements between Opposer and any other person which in any way involve or affect Opposer's ownership or title to Opposer's Marks.

14. The monetary expenditures on advertising and promotion for each product or service sold, offered or provided by Opposer under Opposer's Marks on an annual basis since the date the Mark was first used.

15. Correspondence or communications with third parties concerning any of the issues relevant to the instant proceeding, including, without limitation, the strength of Opposer's Marks and the likelihood of confusion between Opposer's Marks and the Accused Mark.

16. Third party use of and/or attempt to register BEAT and/or BEATS in connection with headphones and/or earphones, including, without limitation, U.S. Registration No. 1,665,731 for STREETBEAT for headphones owned by Lenoxx Electronics Corp.; U.S. Registration No. 3,750,458 for BACKBEAT for headphones owned by Plantronics, Inc.; U.S. Registration No. 4,000,272 for VOLBEAT for headphones and other goods owned by Volbeat APS; U.S. Registration No. 3,604,972 for AQUABEAT for headphones owned by Speedo Holdings BV; U.S. Registration No. 2,550,923 for LIGHT BEATS owned by Maxell Corporation Of America; published U.S. Application Serial No.

85/381,715 for TRUEBEATS for earphones and headphones owned by Jaybird Gear, LLC, published U.S. Application Serial No. 85/322,883 for DR. BEATS for earphones and headphones and other goods owned by Glen Abady, and use of BEATHOOK by Mixware, and use of MO'BEATS at http://www.ilounge.com/index.php/reviews/entry/iluv-mobeats-isp245-bluetooth-speaker-stand/.

17. The prosecution history for Registration No. 3,532,627, including, without limitation: (1) the Coexistence Agreement entered into between Opposer/Registrant Beats Electronics, LLC's predecessor-in-interest, Pentagram Design, Inc., and Maxell Corporation Of America relating to the ability of BEATS and LIGHT BEATS, both for headphones, to co-exist; and (2) statements made by Opposer/Registrant Beats Electronics, LLC's predecessor-in-interest that: (a) "'beats' is suggestive of the beat accompanying music, and, as such, this mark is not particularly strong,"; and (b) consumers of headphones are sophisticated.

18. Enforcement of Opposer's Marks, including, without limitation, notice letters, lawsuits, and proceedings before the Trademark Trial and Appeal Board.

19. Opposer's annual gross and net sales by unit and dollar amount for each product and each service sold/provided under each of Opposer's Marks since such use began.

20. All business proposals, business plans, marketing plans, advertising plans, and advertising campaigns concerning products or services sold or provided or intended to be sold or provided under Opposer's Marks.

21. All documents produced by Opposer in this Opposition

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicant/Petitioner Merkury Innovations, LLC
90 Park Avenue
New York, NY 10036
(212) 336-8000 (Telephone)
(212) 336-8001 (Facsimile)

Dated: July 27, 2012

By: _____
Anthony F. Lo Cicero
Holly Pekowsky

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE TO TAKE DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6) AND 37 C.F.R. § 2.119(c) has been served on Opposer by delivering said copy by (1) First Class U.S. Mail, postage prepaid; and (2) email, to counsel for Opposer as follows:

Michael G. Kelber, Esq.
Kate Dennis Nye, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602

Dated: July 27, 2012
New York, New York

By: _____
Holly Pekowsky

518881.1

EXHIBIT B

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

BEATS ELECTRONICS, LLC,	)	No. 91203192
	)	
Opposer,	)	
	)	
vs.	)	
	)	
MERKURY INNOVATIONS, LLC,	)	
	)	
Applicant.	)	
	)	
MERKURY INNOVATIONS, LLC,	)	
	)	
Opposer,	)	
	)	
vs.	)	
	)	
BEATS ELECTRONICS, LLC,	)	
	)	
Registrant.	)	
	)	

*** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

30(b)(6) and 37 CFR DEPOSITION OF:

TYLER KENT WILLIAMSON
Thursday, March 6, 2014
9:54 a.m.

Reported by:

MONICA T. VOGELBACHER
CSR No. 6406

EXHIBIT C

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

BEATS ELECTRONICS, LLC, Opposer, v. MERKURY INNOVATIONS, LLC, Applicant.	Opposition No. 91203192

NOTICE OF DEPOSITION OF ANDRE YOUNG

To: Kate Dennis Nye, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 26, Applicant Merkury Innovations, LLC will take the deposition by oral examination of Andre Young, commencing at 9:30 a.m. on May 13, 2015 at Merrill Corp., 1900 Avenue of the Stars, Ste. 1200, Los Angeles, CA, 90067, before a notary public or other person authorized to administer oaths, or at such other location as will be mutually agreed upon. The deposition shall be recorded by stenographic means. The deposition will continue from day to day until completed.

You are invited to attend and cross-examine.

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicant Merkury Innovations, LLC
90 Park Avenue
New York, NY 10016
(212) 336-8000 (Telephone)
(212) 336-8001 (Facsimile)

Dated: April 30, 2015

By: _____
Anthony F. Lo Cicero
Marc J. Jason

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF DEPOSITION OF ANDRE YOUNG has been served on Opposer by delivering said copy by hand to counsel for Opposer as follows:

Kate Dennis Nye, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602

Dated: April 30, 2015
New York, New York

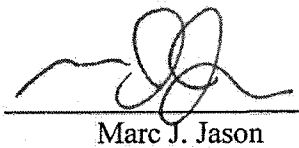
By: 
Marc J. Jason

EXHIBIT D

NEAL ▪ GERBER ▪ EISENBERG

Michael G. Kelber
Attorney at Law

Tel 312.269.5322
Fax 312.429.3580
mkelber@ngelaw.com

May 12, 2015

VIA EMAIL

Marc J. Jason
Amster, Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016

Re: Beats Electronics, LLC v. Merkury Innovations LLC; Opp. No. 91203192

Dear Marc:

We write to follow up your conversation with my colleague Kate Dennis Nye prior to the INTA annual meeting. We have now had a chance to confer with our client and write to respond regarding several discovery-related matters.

As you anticipated and we now confirm, Beats objects to Merkury's Notice of Deposition of Andre Young and will therefore not produce him. Mr. Young does not have any information relevant to the issues in the proceeding. We understand from your representations that Merkury intends to depose Mr. Young on Beats' decision to adopt the BEATS mark and Beats' approval process for approving adoption of new marks. Both of these topics are beyond the scope of discoverable information as they have no bearing on Beats' claims or defenses in this proceeding. Specifically, as the senior user of the now famous BEATS family of marks, Beats' intent in adopting and decision to adopt the BEATS mark is wholly irrelevant to whether a likelihood of confusion exists between Merkury's URBAN BEATZ mark and Beats' family of BEATS mark or whether, as Merkury asserts, Beats' BEATS mark is merely descriptive for its goods and services. Moreover, even if either of the identified topics were relevant, information can be obtained more readily through a less intrusive method of discovery, including through one of Beats' appropriate 30(b)(6) designees or through interrogatories and requests for admission. Thus, given that Mr. Young does not possess relevant information and given his prominence, fame, and high-profile status, we can only assume that rather than legitimately seeking discovery, your attempt to depose Mr. Young is simply a harassing and improper discovery strategy.

In addition, with respect to the timing for the depositions of Ki Kang and Steven Levy, if the dates you suggested, namely May 19, 2015 and May 20, 2015, still work, we will re-issue the Notices accordingly and will plan to move forward in that regard. Our client's designee can be available on June 16-19 in the Cupertino, California area for the 30(b)(6) deposition. Please let us know your availability during that window.

Finally, Merkury has committed to producing the following documents:

- A signed verification of all interrogatory responses
- Documents sufficient to show wholesale prices of all URBAN BEATZ branded products
- Documents sufficient to show suggested retail prices for all URBAN BEATZ branded products
- Representative samples of "sell sheets" promoting URBAN BEATZ branded products
- Trademark searches concerning the URBAN BEATZ mark

Additionally, responses to Beats' Second Set of Document Requests, Second Set of Requests to Admit, and Second Set of Interrogatories, served on February 17, 2014, are still outstanding. Please produce these outstanding documents and responses prior to May 18, the close of discovery. Merkury's failure to do so will force us to file a motion to compel.

Please contact me or Kate at your earliest convenience so that we may discuss these matters.

Sincerely,

Michael G. Kelber

cc: Katherine Dennis Nye, Esq.
Andrea S. Fuelleman, Esq.