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

Proceeding	91203192
Party	Plaintiff Beats Electronics, LLC
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Signature	/Dale M. Cendali/
Date	09/08/2015
Attachments	9-8-15 Declaration of Bonnie Jarrett with Exhibit A-D.pdf(3923002 bytes)

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

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

**DECLARATION OF BONNIE L. JARRETT IN SUPPORT OF
BEATS ELECTRONICS, LLC'S OPPOSITION TO
MERKURY INNOVATIONS, LLC'S MOTION TO COMPEL
THE DEPOSITION OF ANDRE YOUNG**

I, Bonnie L. Jarrett, declare as follows:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel of record for Beats Electronics, LLC ("Beats") in the above-captioned proceedings. I submit this declaration in support of and concurrently with Beats' Electronics, LLC's Opposition to Merkury Innovation, LLC's Motion to Compel the Deposition of Andrew Young.

2. I have reviewed the pleadings, correspondence between the parties, written discovery, documents produced by the parties, and deposition transcripts in connection with this matter, as well as publicly-available records from the website of the U.S. Patent & Trademark Office ("PTO").

3. The facts set forth in this declaration are based on my review of the materials described above, as well as on my personal knowledge.

4. Attached hereto as Exhibit A are excerpts from the March 6, 2014 transcript of the deposition Tyler Williamson, Beats' Senior Director for Global Sales and Channel Strategy, who testified on behalf of Beats pursuant to Fed. R. Civ. P. 30(b)(6) and 37 C.F.R. § 2.119(c).

5. Mr. Williamson was designated to testify on behalf of Beats regarding its "conception, creation and/or adoption of each of [its] Marks." Based on my review of the transcript of Mr. Williamson's deposition in this case, counsel for Merkury Innovation, LLC ("Merkury") never objected during the deposition that Mr. Williamson was an inappropriate witness or unprepared to testify on that topic.

6. Attached hereto as Exhibit B is an excerpt from Beats' Responses to Applicant's First Set of Document Requests, dated July 5, 2012.

7. Attached hereto as Exhibit C are mock-ups of the BEATS marks, which are responsive to Merkury's request documents related to Beats' "conception, creation and/or adoption of each of [its] Marks."

8. Beats also produced trademark search reports for BEATS and certain other BEATS-formative marks in response to Merkury's request documents related to Beats' "conception, creation and/or adoption of each of [its] Marks."

9. Based on my review of the transcript of Mr. Williamson's deposition in this case, counsel for Merkury did not ask Mr. Williamson about any of the documents attached hereto as Exhibit C during his deposition, or any of the trademark search reports that Beats produced.

10. Publicly-available PTO records show that Pentagram Design, Inc. had assigned its rights and goodwill in a BEATS trademark to Beats in November 2008.

11. Attached hereto as Exhibit D is an excerpt from Beats' Responses to Applicant's First Set of Requests to Admit, dated July 5, 2012.

12. Mr. Williamson did not testify about that assignment during his deposition because Beats designated another Rule 30(b)(6) witness, Negin Saberi, to testify about the prosecution history of the so-called first BEATS registration.

13. Based on my review of the transcript of Ms. Saberi's deposition in this case, when Merkury later deposed Ms. Saberi, however, counsel for Merkury did not ask her about the Pentagon assignment.

Respectfully submitted,

Date: September 8, 2015


Bonnie L. Jarrett

Exhibit A

In The Matter Of:

BEATS ELECTRONICS, LLC

v.

MERKURY INNOVATIONS, LLC

TYLER KENT WILLIAMSON 30(b)(6) and 37 CFR - Vol. 1
March 6, 2014

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EYES ONLY

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<p>1 INDEX (Continued);</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 TYLER KENT WILLIAMSON PAGE</p> <p>5</p> <p>6 Exhibit 13 Urban Beatz Opposition video, 88</p> <p>7 BEATS013195</p> <p>8</p> <p>9</p> <p>10 INFORMATION REQUESTED</p> <p>11 (None)</p> <p>12</p> <p>13</p> <p>14 QUESTION INSTRUCTED NOT TO ANSWER</p> <p>15 (None)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A Yes.</p> <p>2 Q As if you were testifying in court, correct?</p> <p>3 A Yes.</p> <p>4 Q If I ask you a question and you don't understand</p> <p>5 it, please let me know and I'll rephrase it.</p> <p>6 If you don't ask me to, I'll assume that you</p> <p>7 understand the question. Is that understood?</p> <p>8 A Understood.</p> <p>9 Q Okay. I'll ask you to testify verbally, not</p> <p>10 head nods or uh-huh, anything like that, so that the</p> <p>11 court reporter can take down your testimony.</p> <p>12 And also speak clearly and not so fast.</p> <p>13 Is that okay?</p> <p>14 A Will do.</p> <p>15 Q Okay. Are you on any medication today that</p> <p>16 might hinder your ability to testify truthfully?</p> <p>17 A No.</p> <p>18 Q Not drunk?</p> <p>19 A No.</p> <p>20 Q Okay. I'm going to ask the court reporter to</p> <p>21 mark as Exhibit 1, the notice of deposition.</p> <p>22 (Williamson Exhibit 1 was marked for</p> <p>23 identification by the court reporter</p> <p>24 and attached hereto.)</p> <p>25 BY MR. JASON:</p>
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<p>1 Los Angeles, California; Thursday, March 6, 2014</p> <p>2 9:54 a.m. - 12:47 p.m.</p> <p>3</p> <p>4 TYLER KENT WILLIAMSON,</p> <p>5 having been first duly sworn, was examined and testified</p> <p>6 as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. JASON:</p> <p>10 Q Good morning, Mr. Williamson.</p> <p>11 A Good morning.</p> <p>12 Q Please state your full name and address for the</p> <p>13 record.</p> <p>14 A Tyler Kent Williamson, 4017 Tivoli Avenue,</p> <p>15 Los Angeles, California, 90066.</p> <p>16 Q Have you ever had your deposition taken before?</p> <p>17 A No, I have not.</p> <p>18 Q First time?</p> <p>19 A Yes.</p> <p>20 Q Are you excited?</p> <p>21 A Definitely.</p> <p>22 Q Okay, I'll just set out a couple of ground</p> <p>23 rules.</p> <p>24 First, you understand that you're under oath,</p> <p>25 correct?</p>	<p>1 Q Mr. Williamson, please take a moment to review</p> <p>2 this document.</p> <p>3 Have you ever seen this document before?</p> <p>4 A Yes.</p> <p>5 Q And do you understand that you're here today to</p> <p>6 testify on behalf of Beats Electronics on certain of</p> <p>7 these topics?</p> <p>8 A Yes.</p> <p>9 Q Could you please turn to page 3.</p> <p>10 And are you here to testify on topics 2 through</p> <p>11 8?</p> <p>12 A Yes.</p> <p>13 Q And topic 10?</p> <p>14 A Yes.</p> <p>15 Q Then on the next page, topic 14?</p> <p>16 A Yes.</p> <p>17 Q And then on page 5, topics 19 and 20.</p> <p>18 A Yes.</p> <p>19 Q So you're prepared to testify on those topics on</p> <p>20 behalf of the company?</p> <p>21 A Yes.</p> <p>22 Q Mr. Williamson, first I want to go into a little</p> <p>23 bit of your background before we start the substance of</p> <p>24 the deposition.</p> <p>25 What is your educational background?</p>

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1 assortment, a different pricing model. If you're selling
 2 e-com, again, you have a different assortment, possibly a
 3 different pricing model.
 4 So from a channel assortment and strategy, you
 5 have to look at the big picture globally of where you're
 6 selling, who should you be selling to, to distributors,
 7 third parties, distribution models. So that's all part
 8 of that channel strategy.
 9 And then the global sales aspect of the role is,
 10 how does the brand -- how is it presented at shelf. So
 11 when you walk into a store, what does the brand actually
 12 look like to you as a consumer, and was the video
 13 playing? What is the music that you listened to? How
 14 does the brand look and feel to the consumer?
 15 **Q Is that all considered to be marketing?**
 16 A It is. We separate it out to more of a -- it's
 17 less on the creation side and more on the execution side
 18 of it. But everything that I was doing prior to that was
 19 marketing driven. So that was our ad campaigns, our --
 20 consumer insights driven, building our -- all the
 21 creative, the rollout plans for our creative, the brand
 22 voice, what does it look like, what does our packaging
 23 look like. All of that was -- kind of fell under the
 24 umbrella.
 25 **Q So are you the top person in terms of your**

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1 **department?**
 2 A There's a whole -- yes. There's a whole
 3 department. From when I started, I was the number two
 4 person in seniority, in marketing, and I'm now the -- I
 5 would say I'm the number one person in my role, but I
 6 report to an EVP of sales.
 7 **Q Who do you report to?**
 8 A Denise Morales.
 9 **Q And who reports to you?**
 10 A How many or all their names?
 11 **Q How many, first?**
 12 A Okay, it's a -- I have a team of 14 people.
 13 **Q Okay. We don't need to go into all of them.**
 14 A Thank you.
 15 **Q And what are these 14 people? Are they all**
 16 **marketing people? What are their titles?**
 17 A They're channel managers -- so there's a group
 18 of channel managers, there's a group in charge of global
 19 product training, and retail events. So there's three
 20 groups.
 21 **Q In your position, are you familiar with the**
 22 **Beats Electronics product line?**
 23 A Yes.
 24 **Q Are you familiar with the Beats Electronics**
 25 **trademarks?**

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1 A Yes.
 2 **Q How did you prepare for today's deposition?**
 3 MR. JAMES: Objection. I'd like to mention to
 4 the witness not to disclose the substance of any
 5 privileged conversations.
 6 THE WITNESS: Uh-huh.
 7 BY MR. JASON:
 8 **Q Yeah. And I don't want you to talk about any**
 9 **substance of discussions with your attorneys.**
 10 A Sure.
 11 **Q But just, basically, what you did.**
 12 A Yeah. So knowing what I was -- would be
 13 covering as part of this deposition, I made sure to --
 14 number one, that I could speak to each of these, and so I
 15 looked over these. And because I've been directly
 16 involved and the team has been so small, I've been
 17 directly involved with these items, and so really, it was
 18 a matter of just kind of refreshing my memory as to the
 19 different campaigns that we participated in, different --
 20 you know, trying to keep -- trying to sort through the
 21 last couple of years and everything that we've done, and
 22 just making sure that there was clarity as to some of the
 23 dates when things were executed and when products might
 24 have been launched.
 25 So it was really just kind of a refresher of

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1 what are the items that I'm supposed to be speaking to,
 2 and then ensuring that I actually could speak to them.
 3 **Q Did you speak to people on your team?**
 4 A No. I have more of the information than the
 5 people on my team. I've been there longer, so...
 6 **Q Did you educate yourself as to any events that**
 7 **may have occurred prior to March 2001?**
 8 A I did review as much as was available, you know,
 9 in the records. Prior to me coming to the team, I
 10 couldn't speak to how the records were kept, so I did my
 11 best with what was available.
 12 **Q First I want to talk about the conception,**
 13 **creation, and adoption of Beats trademarks, okay?**
 14 A Okay.
 15 **Q That's one of the topics, correct?**
 16 **Actually, step back one step.**
 17 **When was Beats Electronics founded?**
 18 MR. JAMES: Objection to form.
 19 What do you mean by "founded"?
 20 BY MR. JASON:
 21 **Q Well, when did the company start?**
 22 A I will only speak to it from the product
 23 introduction. There may have been certain, you know,
 24 papers filed for the corporation. But for all intents
 25 and purposes, for me, Beats Electronics started in the

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1 summer of 2008, when we launched our Studio headphone.
 2 And so to the consumer, that would have been when they
 3 first saw the product.
 4 **Q And that was the first product, the Studio**
 5 **headphones?**
 6 A The Beats Studio headphone, yes.
 7 **Q And that was my next question: What was the**
 8 **trademark on the first product?**
 9 A The Beats Studio.
 10 **Q Beats Studio?**
 11 A Yes.
 12 **Q Do you know when the mark Beats by Dr. Dre was**
 13 **first used?**
 14 A In what sense? Used in -- on product --
 15 **Q Used on a product.**
 16 MR. JAMES: Objection to the extent you're
 17 asking for a legal conclusion about use.
 18 You can answer.
 19 THE WITNESS: Okay. At the same time. They
 20 would have appeared on the packaging at that same time.
 21 BY MR. JASON:
 22 **Q At that time? Okay.**
 23 **Do you know how the Beats mark came about?**
 24 A I'm not familiar with how it was actually filed,
 25 the creation of the name itself. I know that -- as it

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1 has been told to me, when the company was founded, and
 2 Jimmy and Dre were discussing what types of products that
 3 they would be interested in creating, that it was Dre who
 4 had had the name of Beats, as you know. It was his idea
 5 to call the company Beats.
 6 MR. JASON: I'd like the court reporter to
 7 please mark Exhibit 2.
 8 (Williamson Exhibit 2 was marked for
 9 identification by the court reporter
 10 and attached hereto.)
 11 BY MR. JASON:
 12 **Q Please take a look at this document.**
 13 **Do you recognize this document?**
 14 A Not the one with this actually with Beats, but I
 15 know the U.S. Patent and Trademark Office -- I'm familiar
 16 with these searches.
 17 **Q I'll represent to you that this is a printout**
 18 **from the trademark office records.**
 19 **Are you familiar with this registration of the**
 20 **Beats --**
 21 A Are you pointing to Beats?
 22 **Q -- of --**
 23 A Yes.
 24 **Q -- the Beats mark?**
 25 **Yes?**

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1 A Yes. Sorry.
 2 **Q And do you see, if you go down about**
 3 **three-quarters of the page, it has the registration**
 4 **number?**
 5 A Yes.
 6 **Q And it's 3532627. Do you see that?**
 7 A Yes.
 8 **Q Do you also see, a little bit below the**
 9 **registration number, it has an owner. Do you see that?**
 10 A (No audible response.)
 11 **Q And it says -- do you see it?**
 12 A "Last listed owner"?
 13 **Q Above that.**
 14 **Do you see where it says "Registrant"?**
 15 MR. JAMES: I'm going to interject an objection.
 16 You're welcome to ask Mr. Williamson some questions about
 17 this document, but Ms. Saberi has been designated for
 18 topic number 17, which is the prosecution history for
 19 registration number 3532627. It suggests that these
 20 questions fall more within the purview of what she has
 21 been designated for.
 22 MR. JASON: Okay. I'm actually going to ask him
 23 more about -- when we talk about the conception,
 24 creation, and adoption of the marks. So I want to get
 25 into the background of how this was adopted.

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1 THE WITNESS: I see the -- I found it, the
 2 registrant. Right here, yes.
 3 BY MR. JASON:
 4 **Q And you see it's Pentagram Design, Inc.?**
 5 A Yes.
 6 **Q What is or was Pentagram Design, Inc.?**
 7 A As I understand, Pentagram was a design company,
 8 firm, with Robert Brunner being a part of that, who has
 9 been close to the business and designing of trademarking
 10 products.
 11 **Q When you say "close to the business," what do**
 12 **you mean by that?**
 13 A As I -- I mean, I work closely with -- I've
 14 worked closely with Robert since I started, and his team,
 15 which I know it as Ammunition.
 16 **Q Is there an affiliation between Pentagram**
 17 **Design, Inc. and Beats Electronics?**
 18 A I don't personally know of Pentagram directly,
 19 with what that current relationship would be.
 20 MR. JAMES: I'm going to object to -- I mean, so
 21 Mr. Williamson has been designated for the -- I believe
 22 you're going to topic 10, "conception, creation and/or
 23 adoption of each of opposer's marks."
 24 He has knowledge of the, you know, conception,
 25 creation, and adoption of those by Beats Electronics. As

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1 you pointed out, this application was filed by Pentagram.
 2 MR. JASON: Objection duly noted.
 3 BY MR. JASON:
 4 **Q Mr. Williamson, do you see the filing date of**
 5 **this application was June 7th, 2006?**
 6 A Yes.
 7 **Q Now -- and you said that Beats Electronics was**
 8 **formed in about 2008, correct?**
 9 A No. The first product was introduced into the
 10 market then. The actual date of the company's formation
 11 and filing of the Beats Electronics, LLC, I do not know
 12 the exact date of that.
 13 **Q Okay. Do you know how Beats Electronics came to**
 14 **own this registration?**
 15 A No, not exactly how they came to own the
 16 registration.
 17 **Q You're not aware of a trademark assignment?**
 18 A No. I'm not able to speak to the legal filing
 19 or anything of that, how the trademark -- only in the
 20 concept and selection of it.
 21 **Q Do you know what happened between 2006, when the**
 22 **application was filed for this Beats registration, and**
 23 **2008, in terms of discussions between Beats Electronics**
 24 **and Pentagram?**
 25 A No, I'm not familiar with those conversations.

Page 23

1 **Q I think you testified that Dr. Dre came up with**
 2 **the Beats, in terms of a trademark.**
 3 **Do you know if he had any discussions with**
 4 **Pentagram?**
 5 A I do not know. I'm not aware of that.
 6 **Q Do you know if he was aware of this application**
 7 **when he came up with the term "beats"?**
 8 A I'm not aware of that.
 9 **Q "Beats" is not a made-up word, correct?**
 10 A What does that mean?
 11 **Q It has a meaning in the English language,**
 12 **correct?**
 13 A Yes.
 14 **Q And what does it mean?**
 15 A "Beats," it's a -- as I think of beats, it is -
 16 and in the spelling - is a series of notes.
 17 **Q It's a musical term, correct?**
 18 A Yeah. Sounds, you know, music.
 19 **Q So Dr. Dre didn't make up the word "beats,"**
 20 **correct?**
 21 A No. The name existed -- or the word existed
 22 before him.
 23 **Q Okay. And, in fact, for this Beats**
 24 **registration, there was an application pending before**
 25 **Beats Electronics was formed or came out with its first**

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1 **product, correct?**
 2 A I can't speak to that. If that's what the
 3 document states, I don't...
 4 MR. JASON: I'd like the court reporter to
 5 please mark Exhibit 3.
 6 (Williamson Exhibit 3 was marked for
 7 identification by the court reporter
 8 and attached hereto.)
 9 BY MR. JASON:
 10 **Q Mr. Williamson, you said you're familiar with**
 11 **the trademark office Web site?**
 12 A Yes.
 13 **Q Okay. And are you familiar with this type of**
 14 **printout?**
 15 A Yes.
 16 **Q I'll represent to you that we did a search of**
 17 **marks owned by Beats Electronics.**
 18 **Could you look through this document and see if**
 19 **it comports with your understanding of the trademarks**
 20 **that Beats Electronics owns.**
 21 MR. JAMES: I'm going to object to form.
 22 Are you asking if this is everything, all
 23 trademarks owned by Beats? Or what's the question?
 24 MR. JASON: I'm going to ask him if there are
 25 any missing or if there's anything on the horizon.

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1 THE WITNESS: I can't speak to the totality or
 2 if there are others that may be pending, but I recognize
 3 the majority of these. There are a couple that I am not
 4 familiar with.
 5 BY MR. JASON:
 6 **Q Which ones are you not familiar with?**
 7 A The...
 8 **Q You can refer to them -- they're numbered on the**
 9 **left side.**
 10 A Number 4.
 11 **Q Pillicopter, P-i-l-l-i-c-o-p-t-e-r.**
 12 **Okay.**
 13 A My understanding was that there was a filing for
 14 Beats MIXR. I do not see that here. I only see MIXR, I
 15 don't see Beats MIXR.
 16 **Q That's M-I-X-R?**
 17 A Yes. And I'm referring to the one that I do see
 18 is line item 31 on page 2. But I don't see a Beats MIXR
 19 accompanying it, which, again, to my knowledge, that that
 20 had been filed.
 21 So I'm just going through this. I'm trying to
 22 review all of these.
 23 **Q No problem. Take your time.**
 24 A There would be another one that I'm not seeing,
 25 that I believe has been filed, is Beats Pill XL. I see

<p style="text-align: right;">Page 26</p> <p>1 Beats Pill, number 14 on page 1, but I do not see Beats 2 Pill XL.</p> <p>3 I see Beats Pill twice. A couple of these I see 4 repeated, so I'm not sure why that might be.</p> <p>5 Q Who comes up with all of the Beats marks?</p> <p>6 A It has evolved as it -- obviously, as the team 7 has grown. When I started, it was typically a 8 conversation that would be with my boss at the time, and 9 myself, and product development would look at the 10 products and features and would propose the best name. 11 That team has grown, the product development team has 12 grown over time, and that has moved into a product 13 development and senior leadership conversation.</p> <p>14 Q What do you mean by that? Who is senior 15 leadership?</p> <p>16 A The executive team. So that's Denise Morales, 17 who's my boss, would be part of that.</p> <p>18 Q Who else is on the executive team?</p> <p>19 A Jimmy, Dre, Luke Wood, the president.</p> <p>20 Q Are you still involved in selecting marks?</p> <p>21 A It comes through me. I do not select, but I 22 offer my opinion to what I think would be best, yes.</p> <p>23 Q How does it start? Who first comes up with the 24 name?</p> <p>25 A There isn't one formula for it. It could</p>	<p style="text-align: right;">Page 28</p> <p>1 Q You don't know who at Beats Electronics?</p> <p>2 A I don't know who actually would have submitted 3 the filing for any of these, no.</p> <p>4 Q Are you familiar with the concept of a Beats 5 family of marks?</p> <p>6 A Yes.</p> <p>7 Q What does that mean?</p> <p>8 MR. JAMES: I'm going to object to the extent 9 you're asking for a legal conclusion.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: As I understand it, it would be 12 anything that would -- you know, the family of marks 13 would be anything that we are able to use, use in our 14 advertising, use in our packaging, use in communication 15 to consumers.</p> <p>16 BY MR. JASON:</p> <p>17 Q Is it your understanding that it covers all uses 18 of "beats" -- b-e-a-t-s -- or any variation of "beats"?</p> <p>19 MR. JAMES: Again, same objection.</p> <p>20 BY MR. JASON:</p> <p>21 Q But your understanding.</p> <p>22 A Yeah. As I understand it, it would cover all 23 uses, yes.</p> <p>24 Q Does the family of marks also include marks with 25 the term "beat," singular?</p>
<p style="text-align: right;">Page 27</p> <p>1 come -- because it can come from different inspirations. 2 We work with different artists that it might come from 3 something that was sparked from them. It could come from 4 the product features themselves.</p> <p>5 So, for instance, the Beats Pill, the product, 6 if you're familiar with it, is shaped and looks exactly 7 like a pill. So the name is derived from its shape.</p> <p>8 The Beats Executive derived from more of the 9 person that we would be -- the consumer that we would be 10 trying to reach with the product, an executive level 11 person.</p> <p>12 So it can come from different sources, depending 13 on what the inspiration of the product was.</p> <p>14 Q And is there one person with final say, in terms 15 of which marks are going to go forward, or is it the 16 executive committee?</p> <p>17 A The two people that would ultimately have final 18 say would be Jimmy or Dre, the two founders of the 19 company.</p> <p>20 Q They both are still involved in that type of 21 detail?</p> <p>22 A Yes.</p> <p>23 Q And then who interfaces with trademark counsel 24 to direct filings?</p> <p>25 A I couldn't answer who actually does the filing.</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. JAMES: Same objection. If you'll grant me 2 a standing objection as to this line of questioning.</p> <p>3 MR. JASON: Absolutely.</p> <p>4 BY MR. JASON:</p> <p>5 Q Your understanding.</p> <p>6 A To my understanding, it would involve the use of 7 b-e-a-t-s.</p> <p>8 Q And not "beat," singular?</p> <p>9 A Not "beat."</p> <p>10 Q But, now, Beats owns a registration for Beat 11 Box; is that correct?</p> <p>12 Actually, let me -- why don't we mark that an 13 exhibit so that you can look at it.</p> <p>14 MR. JASON: Please mark Exhibit 4. 15 (Williamson Exhibit 4 was marked for 16 identification by the court reporter 17 and attached hereto.)</p> <p>18 THE WITNESS: I'm familiar with this, yes.</p> <p>19 BY MR. JASON:</p> <p>20 Q You are?</p> <p>21 A With Beatbox, yes. And the Beatbox Portable.</p> <p>22 Q Is Beatbox Portable a different mark?</p> <p>23 A They're two different products, so you would 24 have Beatbox, and then there's another line of products 25 that would be called Beatbox portable. And it just --</p>

Exhibit B

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

BEATS ELECTRONICS, LLC

Opposer,

v.

MERKURY INNOVATIONS, LLC.

Applicant.

Opposition No. 91203192

**BEATS' RESPONSES TO APPLICANT'S
FIRST SET OF DOCUMENT REQUESTS**

Opposer, Beats Electronics, LLC ("Beats"), by its attorneys and pursuant to Rule 2.120 of the Trademark Rules of Practice and Federal Rule of Civil Procedure 34, hereby responds to Applicant's First Set of Requests for Production.

GENERAL OBJECTIONS

1. Beats objects to the Requests to the extent that they seek the production of documents that are subject to the attorney-client privilege, the attorney work product privilege, or any other recognized privilege. With respect to such Requests, Beats will not provide privileged information.

2. Beats objects to the Requests to the extent that they seek the production of documents that Beats considers proprietary and confidential prior to the entry of a protective order in this matter.

3. Beats objects to the Requests to the extent that they seek documents that are in the public domain or public record, are already in the possession, custody or control of Applicant, or are equally available to Applicant. Beats further objects to the Requests to the extent that they seek the discovery of documents that are in the custody or control of any third party or entity.

ANSWER: Beats objects to this Request on the grounds that the term “Opposer’s Marks” is impermissibly vague. Subject to and without waiving its objections, and subject to the protective order applicable in these proceedings, Beats will produce documents sufficient to identify the types of customers that purchase goods sold in connection with the Beats Family of Marks.

15. All documents concerning 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.

ANSWER: Beats objects to this Request on the grounds that the term “Opposer’s Marks” is impermissibly vague. Beats further objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence in that the Beats Family of Marks predate Applicant’s use of the URBAN BEATZ mark.

16. All documents concerning any opinion or advice received by Opposer, or any person(s) employed by or affiliated with Opposer, concerning whether or not a trademark or service mark conflict might arise from the adoption and use of Opposer's Marks.

ANSWER: Beats objects to this Request on the grounds that the term “Opposer’s Marks” is impermissibly vague. Subject to and without waiving its objections, and subject to the protective order applicable in these proceedings, Beats states that it has no non-privileged documents responsive to this request.

17. All documents which show or relate to Opposer's conception, creation and/or adoption of each of Opposer's Marks.

ANSWER: Beats objects to this Request on the grounds that the term “Opposer’s Marks” is impermissibly vague. Subject to and without waiving its objections, and subject to the protective

order applicable in these proceedings, Beats will produce representative documents relating to the adoption of marks in the Beats Family of Marks.

18. All documents which refer or relate to a likelihood of confusion between the Accused Mark and/or Applicant on the one hand, and Opposer's Marks and/or Opposer on the other hand.

ANSWER: Beats objects to this Request on the grounds that it is overly broad and unduly burdensome in that all documents which relate to a likelihood of confusion in this matter would encompass all documents related to the strength of Beats' Family of Marks or related to the products and services offered therewith, which would in turn potentially encompass literally every document in Beats' possession.

19. All documents which refer or relate to 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.

ANSWER: Subject to and without waiving its objections, and subject to the protective order applicable in these proceedings, Beats states that at this time, it is aware of no non-privileged documents responsive to this request, but its investigation continues.

20. All documents which reflect when Opposer's knowledge of the Accused Mark began.

ANSWER: Subject to and without waiving its objections, and subject to the protective order applicable in these proceedings, Beats states that at this time, it is aware of no non-privileged documents responsive to this request, but its investigation continues.

21. All documents which refer or relate to any investigations, shopping, market study, surveyor poll (including pretests conducted by Opposer or any person or persons acting for or on

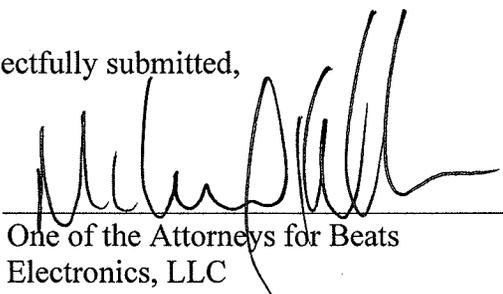
are the underlying pulsation of music. Thus, 'beats' immediately describes the sound heard through audio speakers and loudspeakers."

ANSWER: Beats objects to this Request on the grounds that it seeks documents that are in the public domain or public record, are already in the possession, custody or control of Applicant, are equally available to Applicant, or are in the custody or control of a third party or entity.

36. All documents which tend to support or refute Opposer's denial, in its Answer to Counterclaim, that "headphones are audio equipment."

ANSWER: Beats objects to this Request on the grounds that it seeks documents that are in the public domain or public record, are already in the possession, custody or control of Applicant, are equally available to Applicant, or are in the custody or control of a third party or entity.

Respectfully submitted,

By: 

One of the Attorneys for Beats
Electronics, LLC

Michael G. Kelber
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000

Dated: July 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing BEATS' RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES has been served on Opposer by delivering said copy by First Class U.S. Mail, postage prepaid, and email to counsel for Opposer as follows:

Holly Pekowsky, Esq.
Amster, Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016

Respectfully submitted,

BEATS ELECTRONICS, LLC

By: Katherine Dennis Nye
One of Its Attorneys

Michael G. Kelber
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000

Dated: July 5, 2012



beatsaudio



boeatsradio

 **beats**audio

 beatsaudio

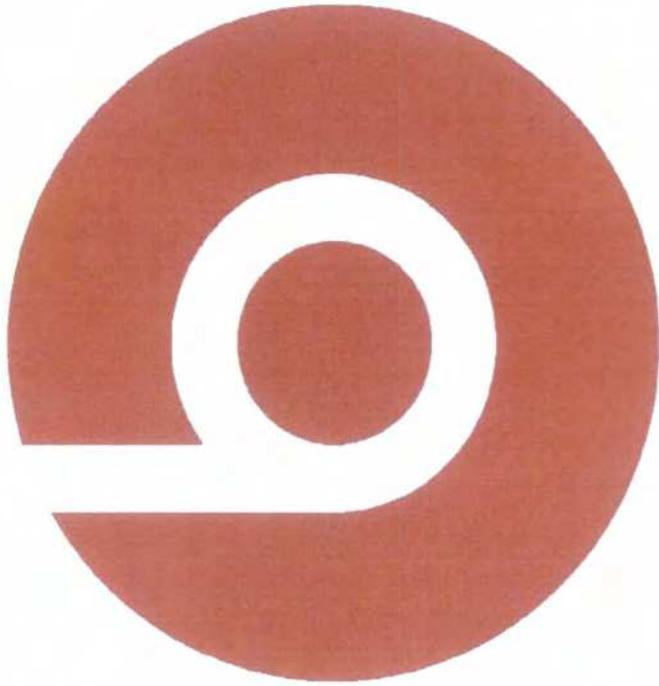


beatsaudio





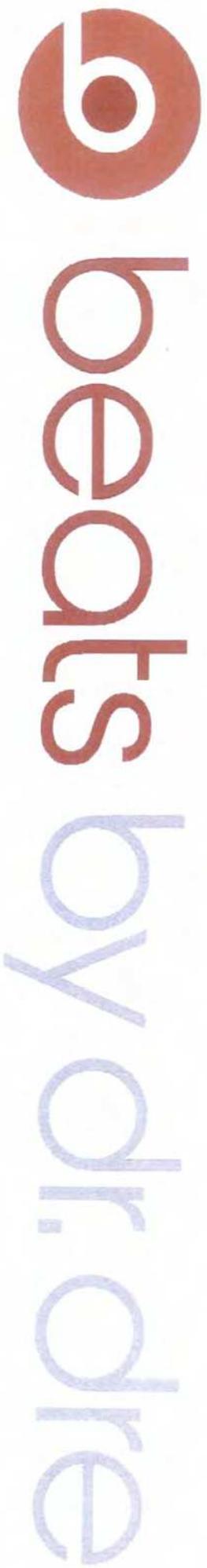
beats by dr. dre



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beats executive

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beats executive



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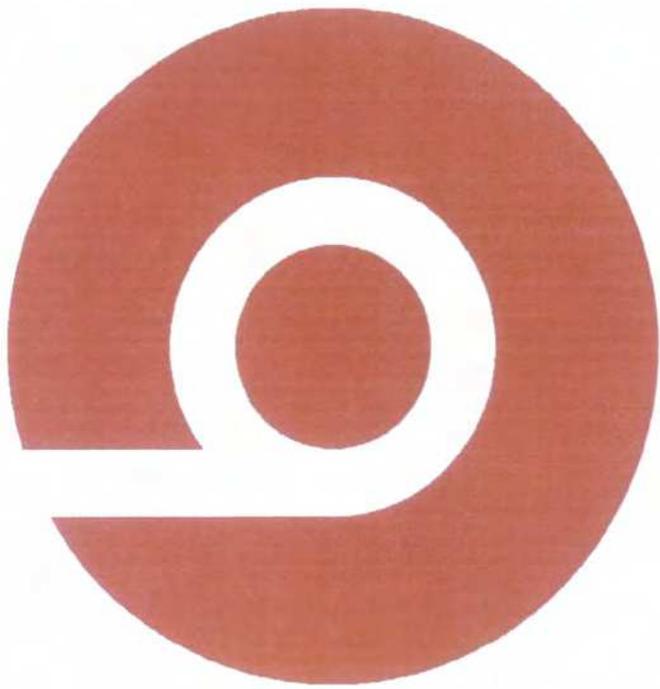
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Exhibit D

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

BEATS ELECTRONICS, LLC

Opposer,

v.

MERKURY INNOVATIONS, LLC.

Applicant.

Opposition No. 91203192

**BEATS' RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS TO ADMIT**

Opposer Beats Electronics, LLC ("Beats"), by its attorneys and pursuant to Rule 2.120 of the Trademark Rules of Practice and Federal Rule of Civil Procedure 36, hereby responds to Applicant's First Set of Requests to Admit.

GENERAL OBJECTIONS

1. Beats objects to the Requests to the extent that they seek the admission of matters that are subject to the attorney-client privilege, the attorney work product privilege, or any other recognized privilege. With respect to such Requests, Beats will not provide privileged information.

2. Beats objects to the Requests to the extent that they seek the admission of matters that Beats considers proprietary and confidential prior to the entry of a protective order in this matter.

3. Beats objects to the Requests to the extent that they seek the admission of matters that are not relevant to the instant proceedings or that are not reasonably calculated to lead to the discovery of admissible or pertinent information.

7. During prosecution of the Application which subsequently matured into Registration No. 3,532,627, Opposer Beat Electronics, LLC's predecessor-in-interest, Pentagram Design, Inc. entered into a Coexistence Agreement with Maxell Corporation of America dated October 23, 2007, in which the parties agreed that the trademarks BEATS and LIGHT BEATS, both for headphones, can co-exist.

ANSWER: Beats objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence in that the mark LIGHT BEATS has been cancelled. Subject to and without waiving its objections, Beats admits that its predecessor in interest, Pentagram Design, Inc. ("PDI") entered into a Coexistence Agreement with Maxell Corporation of America dated October 23, 2007. Answering further, Beats admits that the agreement specifies means of avoiding a likelihood of confusion between the marks BEATS and LIGHT BEATS, including for example using different logos/imagery, presentations, typestyles and other indicia of origin, and that, with those protections in place, PDI agreed to coexist with Maxell Corporation of America. Beats denies any remaining matter in this Request.

8. During prosecution of the Application which subsequently matured into Registration No. 3,532,627, Opposer Beat Electronics, LLC's predecessor-in-interest, Pentagram Design, Inc. stated that "'beats' is suggestive of the beat accompanying music, and, as such, this mark is not particularly strong."

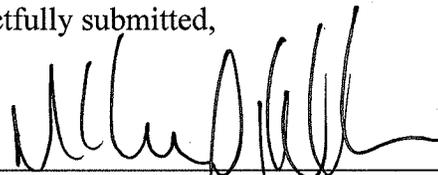
ANSWER: Subject to and without waiving its objections, Beats admits that, in a Response to Office Action Dated November 15, 2006 during the prosecution of the application that subsequently matured into Registration No. 3,532,627, PDI stated "'beats' is suggestive of the beat accompanying music, and, as such, this mark is not particularly strong." Answering further, Beats states that since that Response was filed, Beats has invested enormous time, effort, and resources into marketing and promoting its goods under and in connection with the BEATS mark, and that it has therefore become significantly stronger. Beats denies all remaining matter in this Request.

9. During prosecution of the Application which subsequently matured into Registration No. 3,532,627, Opposer Beat Electronics, LLC's predecessor-in-interest, Pentagram Design, Inc. stated that consumers of headphones are sophisticated.

ANSWER: Subject to and without waiving its objections, Beats admits that, in a Response to Office Action Dated November 15, 2006 during the prosecution of the application that subsequently matured into Registration No. 3,532,627, PDI stated "In this particular instance...the consumers are sophisticated." Beats denies all remaining matter in this Request.

Respectfully submitted,

By:



One of the Attorneys for Beats
Electronics, LLC

Michael G. Kelber
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000

Dated: July 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing BEATS' RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES has been served on Opposer by delivering said copy by First Class U.S. Mail, postage prepaid, and email to counsel for Opposer as follows:

Holly Pekowsky, Esq.
Amster, Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016

Respectfully submitted,

BEATS ELECTRONICS, LLC

By: _____


One of Its Attorneys

Michael G. Kelber
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000

Dated: July 5, 2012

NGEDOCs: 1899257.1