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

Proceeding	91206211
Party	Defendant Mophie, Inc.
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Attachments	2015-02-02 Applicant_s Submission of Pleadings as Filed in Civil Action - MOPHIT.026M.PDF(49065 bytes) 2015-02-02 Copy of Pleading as Filed in Civil Action - MOPHIT.026M.PDF(78174 bytes)

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

ABM Wireless, Inc. d/b/a Mobileistic,)	Opposition No.: 91206211
Opposer/Counterclaim Registrant,)	
)	Mark: M and Design
)	App. No.: 85/448,268
)	
v.)	
)	
mophie, Inc.,)	
Applicant/Counterclaim Petitioner.)	
)	

APPLICANT’S SUBMISSION OF PLEADINGS AS FILED IN CIVIL ACTION

In the Board Order dated January 13, 2015, the Board allowed 20 days from the mailing date of the order to file a copy of the pleadings as filed in the United States District Court for the Central District of California (Case No. 14-cv-01422-JLS-RNB). Applicant and Counterclaim Petitioner mophie, Inc. (“mophie”) hereby submits a copy of the pleadings.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 2, 2015

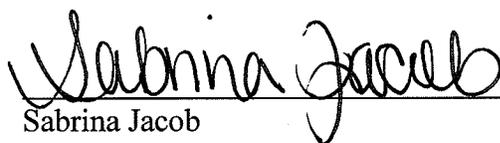
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S SUBMISSION OF PLEADINGS AS FILED IN CIVIL ACTION** upon Opposer's counsel via first class mail and email, on February 2, 2015, addressed as follows:

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12

13 MOPHIE, INC., a California
corporation,
14 Plaintiff,
15 v.
16 ABM WIRELESS, INC. d/b/a
MOBILEISTIC, a New York
17 corporation.
18 Defendant.
19

Civil Action No. 8:14-cv-01422

**COMPLAINT FOR
DECLARATORY JUDGMENT
OF NON-INFRINGEMENT OF
TRADEMARK RIGHTS**

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1 Plaintiff mophie, Inc. (“mophie”) brings this Complaint for Declaratory
2 Judgment of Non-Infringement of Trademark Rights against Defendant ABM
3 Wireless, Inc. d/b/a Mobileistic (“ABM”) and alleges as follows:

4 **I. NATURE OF THE ACTION**

5 1. This declaratory judgment action seeks to clarify mophie’s right to
6 use its  mark. This action is filed in response to ABM’s threats to engage
7 in litigation to stop such use based on its alleged rights in the marks  and
8 . ABM should not be permitted to enforce its
9 purported marks against mophie, and mophie is entitled to a declaration that its
10 mark does not infringe ABM’s rights.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction over this action pursuant
13 to 28 U.S.C. § 1331, 1332, and 2201 and 15 U.S.C. §§ 1114 and 1125.

14 3. This Court has personal jurisdiction over ABM because ABM has a
15 continuous, systematic, and substantial presence within this judicial district
16 including by enforcing its trademark rights against companies that reside in this
17 District and by having a business address within this district.

18 4. Venue is proper in this judicial district under 28 U.S.C. §1391.

19 **III. THE PARTIES**

20 5. Plaintiff mophie, Inc. is a corporation organized and existing under
21 the laws of the State of California, having its principal place of business at
22 15101 Red Hill Avenue, Tustin, CA 92780.

23 6. mophie is informed and believes, and thereon alleges, that
24 Defendant ABM Wireless, Inc. d/b/a Mobileistic is a corporation organized and
25 existing under the laws of the State of New York, having its principal place of
26 business at 205 Marcus Blvd., Hauppauge, New York 11788. Upon information
27 and belief, ABM also has an office within this district at 905 Columbia St. in
28 Brea, California.

1 **IV. GENERAL ALLEGATIONS**

2 **A. mophie is an innovator and market leader in battery cases**

3 7. mophie designs and develops innovative products in the consumer
4 electronics area. These products include several protective battery case designs
5 for the iPhone sold by Apple, Inc. (“Apple”) and other smartphones, which
6 provide both a protective case and a portable backup battery source that can
7 recharge the phone if its internal battery is drained of power.

8 8. Since at least as early as 2007, mophie has marketed and sold its
9 high quality consumer electronics products in connection with the mark 
10 (the “mophie Mark”).

11 9. mophie has invested a considerable amount of time and money in
12 establishing the mophie Mark in the minds of consumers as a source of high
13 quality products. As a result of mophie’s substantial use and promotion of the
14 mophie Mark in connection with consumer electronics and other products, the
15 mark has acquired great value as an identifier of mophie’s products and serves
16 to distinguish mophie’s products from those of others. According to third party
17 industry estimates, mophie has consistently held a dominant market share in the
18 charging case market and currently holds a market share of approximately 90%.

19 **B. ABM’s improper threats of infringement**

20 10. After mophie and its mophie Mark became well-established in the
21 consumer electronics industry, ABM began contacting mophie to assert a claim
22 of trademark infringement.

23 11. On or about March 19, 2012, ABM wrote to mophie and asserted
24 that mophie infringes ABM’s trademarks, including U.S. Trademark
25 Registration Nos. 4,011,446 and 4,051,955 (collectively, the “Alleged ABM
26 Marks”) through use of the mophie Mark. In its letter, ABM alleged that
27 mophie has been trading on the name, goodwill and reputation of ABM and that
28 mophie’s actions constitute trademark, trade dress and trade name infringement,

1 as well as unfair competition under 15 U.S.C. § 1125(a).

2 12. Subsequent to this initial correspondence, ABM has continued to
3 communicate with mophie in writing and in person regarding ABM's
4 accusations of trademark infringement.

5 13. Upon information and belief, ABM did not begin using the Alleged
6 ABM Marks in connection with consumer electronics products until 2012, years
7 after the mophie Mark became a well-known mark in the industry due to
8 mophie's efforts to use and promote the mophie Mark.

9 14. There is no likelihood of confusion between the Alleged ABM
10 Marks and the mophie Mark, and there are several differences between the
11 Alleged ABM Marks and the mophie Mark. Upon information and belief, ABM
12 has consistently used the Alleged ABM Marks in commerce as shown below
13 with a purple background and purple lettering.



18 15. In contrast, mophie has consistently used the mophie Mark with a
19 black background.

20 16. In addition, several other parties use "Circle M" marks in
21 connection with batteries, battery chargers, headsets or other related goods,
22 including but not limited to U.S. Registration No. 1792437 owned by Multiplier
23 Industries Corp., shown on the left, a mark used by MyCharge for charging
24 banks, shown in the middle, and U.S. Registration No. 3477883 to Motorola,
25 shown on the right:

26 ///

27 ///

28 ///



U.S. Registration No. 1792437



MyCharge logo



U.S. Registration No. 3477883

17. The fact that other parties in the industry use a Circle M logo for battery and charging-related products further emphasizes the lack of any confusion between the Alleged ABM Marks and the mophie Mark.

18. mophie has obtained its own registrations for the mophie Mark, including U.S. Registration Nos. 3681443 and 3958080, demonstrating that the Patent and Trademark Office did not identify any likelihood of confusion between the mophie Mark and the Alleged ABM Marks.

19. Despite the lack of any confusion between the Alleged ABM Marks and the mophie Mark, ABM has maintained its position that mophie infringes the Alleged ABM Marks.

20. In July 2014, the president of ABM attended an in-person meeting at mophie's facilities in Tustin, California to further discuss ABM's assertions and mophie's continued use of the mophie Mark and has had continued discussions with mophie.

21. In these discussions, ABM has demanded that mophie pay an exorbitant monetary sum to resolve this matter short of litigation. The amounts demanded by ABM appear to be an effort to extract a large financial payout from mophie, rather than a good-faith effort to resolve the parties' dispute.

22. ABM's actions and conduct create a reasonable apprehension of litigation and a justiciable controversy between the parties regarding mophie's right to continue using the mophie Mark. Unless mophie agrees to the unreasonable demands made by ABM, mophie will continue to face a threat that

1 ABM will assert infringement of the Alleged ABM Marks.

2 **V. CLAIM FOR RELIEF**

3 (Declaratory Judgment of Non-Infringement of Trademark Rights)

4 (15 U.S.C. §§ 1114 and 1125)

5 23. mophie repeats and re-alleges the allegations of Paragraphs 1-22 of
6 this Complaint as if set forth fully herein.

7 24. There is no likelihood of confusion between the Alleged ABM
8 Marks and the mophie Mark.

9 25. mophie has not infringed and does not infringe any of ABM's
10 rights. mophie is entitled to use the mophie Mark without any interference by
11 ABM.

12 26. A judicial declaration is necessary and appropriate so that mophie
13 may ascertain its rights with respect to the mophie Mark.

14 **WHEREFORE**, mophie prays for judgment in its favor against ABM for
15 the following relief:

16 A. This Court enter a judgment declaring that mophie has not infringed
17 and is not infringing any of ABM's Alleged Marks;

18 B. This Court enter a judgment declaring that mophie has the lawful right
19 to continue to use the mophie Mark in connection with the manufacture, display,
20 advertising, marketing, promotion, sale, offer for sell, and/or importation into
21 the United States of its products without threat or interference by ABM;

22 C. ABM and its agents, representatives, attorneys, and those persons in
23 active concert or participation with them who receive actual notice hereof, be
24 preliminarily and permanently enjoined from threatening or initiating
25 infringement litigation against mophie or any of its customers, distributors,
26 dealers, or suppliers, or any prospective customers, distributors, dealers, or
27 suppliers of mophie, or charging any of them with infringement of any of
28 ABM's Alleged Marks;

1 D. This Court award mophie its reasonable attorneys' fees and costs
2 under 15 U.S.C. § 1117;

3 E. mophie be awarded relief under 28 U.S.C. § 2202; and

4 F. mophie be awarded such other and further relief as this Court deems
5 just.

6 Respectfully submitted,

7 KNOBBE, MARTENS, OLSON & BEAR, LLP

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9 Dated: September 5, 2014 By: /s/ Sheila N. Swaroop

10 Steven J. Nataupsky
11 Sheila N. Swaroop

12 Attorneys for Plaintiff MOPHIE, INC.

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