

ESTTA Tracking number: **ESTTA561309**

Filing date: **09/25/2013**

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	Ryan Lester		
Entity	Individual	Citizenship	UNITED STATES
Address	2041 Gallows Tree Ct Vienna, VA 22182 UNITED STATES		

Correspondence information	Carl I. Brundidge Attorney of Record Brundidge and Stanger PC 2318 Mill Road, Suite 1020 Alexandria, VA 22314 UNITED STATES cbrundidge@brundidge-stanger.com Phone:703-684-1470
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Applicant Information

Application No	85804778	Publication date	09/24/2013
Opposition Filing Date	09/25/2013	Opposition Period Ends	10/24/2013
Applicant	Rhapsody International Inc. 1420 5th Avenue, Suite 1500 Seattle, WA 98101 UNITED STATES		

Goods/Services Affected by Opposition

Class 038. All goods and services in the class are opposed, namely: Subscription audio broadcasting via electronic communication networks, local and global computer networks and wireless communication networks; audio broadcasting, namely, broadcasting music, concerts, and radio programs via electronic communication networks, local and global computer networks and wireless communication networks; streaming of audio content via electronic communication networks, local and global computer networks and wireless communication networks; webcasting services; providing on-line chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86069735	Application Date	09/19/2013
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NAPSTER.FM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2012/03/25 First Use In Commerce: 2012/11/29 Subscription audio and video broadcasting via electronic communication networks, local and global computer networks and wireless communication networks; audio broadcasting, namely, broadcasting music, concerts, and radio programs via electronic communication networks, local and global computer networks and wireless communication networks; streaming of audio content via electronic communication networks, local and global computer networks and wireless communication networks; webcasting services; providing on-line chat rooms and electronic bulletin boards for transmission of messages, and audio and video playlists among users		

Attachments	Notice_Of_Opposition-asfiled.pdf(180422 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	/Carl I. Brundidge/
Name	Carl I. Brundidge
Date	09/25/2013

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

RYAN LESTER,
Opposer,

v.

RHAPSODY INTERNATIONAL INC.
Applicant.

Opposition No. _____

Application Serial No.: 85/804,778

Mark: NAPSTER (standard character mark)

Published for Opposition: September 24, 2013

Attorney Docket No: 2868TM.870BS

NOTICE OF OPPOSITION

Commissioner of Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Ryan Lester (“Opposer”) is an individual whose address is 2041 Gallows Tree Ct. Vienna, Virginia 22182. Opposer believes that he is and will be damaged by the registration on the Principal Register of Application Serial No. 85/804,778 (the “Application”), allegedly owned by Rhapsody International Inc. “Applicant”, and Opposer hereby opposes registration of the foregoing mark.

As grounds for this Opposition, Opposer alleges that:

1. The Grounds for this Opposition are based on (1) Priority and Likelihood of Confusion under Trademark Section 2(d); and (2) Fraud.
2. On the information and belief, Applicant is a Delaware Corporation with a principal place of business at 1420 5th Avenue, Suite 1500 Seattle, Washington 98101.

3. The Application was filed on or about December 17, 2012, based on their intent to use the mark (“NAPSTER”).

4. In the Application, Applicant alleges use in connection with the following goods and services as outlined below:

Computer software for use in the storage, organizing, review, delivery, distribution and transmission of digital music and entertainment-related audio, video, text and multimedia content; computer software that enables users to play and program music and entertainment-related audio, video, text and multimedia content; downloadable prerecorded digital, textual, audio and visual content via electronic communications networks, local and global computer networks and wireless communication devices; downloadable electronic publications over electronic communication networks, local and global computer networks and wireless communication devices, namely, newsletters in the field of entertainment. (Class 009)

Online retail store services featuring pre-recorded audio, musical, and audiovisual works and related merchandise provided via electronic communication networks, local and global computer networks and wireless communication devices; advertising and marketing services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium. (Class 035)

Subscription audio broadcasting via electronic communication networks, local and global computer networks and wireless communication networks; audio broadcasting, namely, broadcasting music, concerts, and radio programs via electronic communication networks, local and global computer networks and wireless communication networks; streaming of audio content via electronic communication networks, local and global computer networks and wireless communication networks; webcasting services; providing on-line chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest. (Class 038)

Providing online databases in the field of music, radio, and entertainment; providing online information in the field of music, radio, and entertainment; providing online newsletters in the field of music, concerts, radio, news, and entertainment; Entertainment services, namely, providing non-downloadable prerecorded digital, textual, audio and visual content in the field of music, video, online radio, entertainment and cultural events via electronic communication networks, local and global computer networks and wireless communication devices and providing non-downloadable prerecorded digital, textual, audio and visual content in the field of music, video, online radio, entertainment and cultural events via electronic communication networks, local and global computer networks and wireless communication devices; providing electronic publications over electronic communication networks, local and global computer networks and wireless communication devices, namely, providing online magazines and newsletters in the field of music and entertainment. (Class 041)

Providing an online network, via electronic communication networks, local and global computer networks and wireless communication devices, to enable users to program audio, video, movies, text and other multimedia content; providing a website featuring non-downloadable software to enable users to program audio, video, movies, text and other multimedia content in the field of music, video, online radio, entertainment and cultural events; providing search engines and search platforms for obtaining data and content via electronic communication networks, local and global computer networks and wireless communication devices; internet services, namely, creating indexes of information, sites and other resources available on electronic communication networks, local and global computer networks and wireless communication devices; searching, browsing and retrieving information, sites, and other resources available on electronic communication networks, local and global computer networks and wireless communication devices. (Class 042)

5. The Application was published for opposition on September 24, 2013.

6. Opposer is the owner of the mark (“NAPSTER.FM”) Application Serial No.: 86/069,735 having a first use date of March 25, 2012 and a first-in-commerce date of November 29, 2012.

7. Opposer owns the NAPSTER.FM mark and has been using the NAPSTER.FM mark in connection with the following goods and services since prior to the filing date of the Application:

Subscription audio and video broadcasting via electronic communication networks, local and global computer networks and wireless communication networks; audio broadcasting, namely, broadcasting music, concerts, and radio programs via electronic communication networks, local and global computer networks and wireless communication networks; streaming of audio content via electronic communication networks, local and global computer networks and wireless communication networks; webcasting services; providing on-line chat rooms and electronic bulletin boards for transmission of messages, and audio and video playlists among users (Class 038).

8. Opposer alleges that Applicant’s NAPSTER mark so resembles Opposer’s NAPSTER.FM mark and the goods/services thereof as to likely, when used in connection with the services set forth in the Application, to cause confusion, or to cause mistake, or to deceive.

9. Opposer alleges fraud on the part of the Applicant in applying for registration of NAPSTER mark for the above-identified services in that the Applicant, with the intent to deceive the U.S. Patent and Trademark Office, knew or should have known the falsity of its statement regarding its entitlement to use of the mark in commerce, knowledge regarding others use of the mark in commerce, and likelihood of causing confusion or mistake.

WHEREFORE, and in accordance with Section 13 of the Trademark Act, Opposer prays that this Opposition be sustained and the Application Serial No. 85/804,778 be refused registration.

Respectfully Submitted

Date: September 25, 2013

By: /Carl I. Brundidge/_____

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