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

Proceeding	91212665
Party	Defendant Rhapsody International Inc.
Correspondence Address	GIA L CINCONI KILPATRICK TOWNSEND & STOCKTON LLP TWO EMBARCADERO CENTER, 8TH FLOOR SAN FRANCISCO, CA 94111-3833 UNITED STATES mmchugh@kilpatricktownsend.com;vcordial
Submission	Motion to Suspend for Civil Action
Filer's Name	Gia L. Cincone
Filer's e-mail	gcincone@kilpatricktownsend.com, ltan@kilpatricktownsend.com
Signature	/Gia L. Cincone/
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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. 91212665

Serial No. 85/804,778

Mark: NAPSTER

**APPLICANT'S MOTION TO SUSPEND
OPPOSITION PROCEEDING PENDING
OUTCOME OF CIVIL ACTION**

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to 37 C.F.R. § 2.117, Applicant Rhapsody International Inc. ("Rhapsody") hereby requests that the above-captioned opposition proceeding be suspended pending disposition of a civil action now pending in the United States District Court for the Northern District of California. That action, *Rhapsody International Inc. v. Lester, et al.*, N.D. Cal. Case No. CV13-5489 CRB, is referred to as the "Civil Action."

Rhapsody has applied for federal registration of the mark NAPSTER depicted in Application Serial No. 85/804,778, which is the subject of this opposition proceeding. Rhapsody's rights in the NAPSTER trademark date back at least to 2003, and Rhapsody has federal registrations for the mark dating back to 2004. Notwithstanding Rhapsody's prior rights, the opposer in this proceeding, Ryan Lester ("Lester"), filed an application in September 2013 to register the mark NAPSTER.FM (Application Serial No. 86/069,735). On January 7, 2014, the

U.S. Patent and Trademark Office issued an Office Action with regard to Lester's trademark application, refusing to register NAPSTER.FM based on likelihood of confusion with Rhapsody's NAPSTER trademark. Lester has filed this Notice of Opposition to Rhapsody's application to register NAPSTER, alleging, among other things, that Rhapsody's NAPSTER trademark is confusingly similar to NAPSTER.FM.

On November 26, 2013, Rhapsody filed the Civil Action, alleging, among other things, that Lester's use of NAPSTER.FM is confusingly similar to, infringes and dilutes Rhapsody's NAPSTER trademark. On January 24, 2014, Rhapsody filed a First Amended Complaint in the Civil Action. A copy of Rhapsody's First Amended Complaint with exhibits is attached to this motion.

Lester and his company Napster.fm, LLC, also named as a defendant in the Civil Action, filed motions to dismiss the Civil Action or in the alternative, to transfer the Civil Action to the Eastern District of Virginia. Those motions were denied on February 21, 2014.

Applicable trademark rules allow this Board to suspend a proceeding if it becomes aware of a pending civil action that may have a bearing on or be potentially dispositive of the Board proceeding. 37 C.F.R. § 2.117; *see Black Box Corp. v. Better Box Communications Ltd.*, Opp. No. 107,800, 2002 WL 484956, at *2 (TTAB 2002) ("It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board case."); TBMP § 510.02(a) (citing cases). The civil action "does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board." *New Orleans Louisiana Saints LLC v. Who Dat?, Inc.*, 99 U.S.P.Q.2d 1550 (TTAB 2011). Thus, "It is standard procedure for the Trademark Board to stay

administrative proceedings pending the outcome of court litigation between the same parties involving related issues.” 6 *McCarthy on Trademarks and Unfair Competition* § 23.47.

In particular, the Board will suspend an opposition or cancellation proceeding where a civil action is pending that involves use and/or registration of the same trademark that is at issue in the Board proceeding. This is because a district court decision “may be binding on the Board whereas a determination by the Board as to a defendant’s right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court.” *New Orleans, supra* (citation omitted). For example, a court’s finding on trademark infringement “may dispose of the likelihood of confusion claim before the Board. If the court enjoins applicant’s use of its marks, applicant will be unable to maintain the registration or application which are the subject of the Board proceeding.” *Arcadia Group Brands Ltd. v. Studio Moderna SA*, Opp. No. 91169226, 2011 WL 3218630 (TTAB Jan. 6, 2011). Even where the parties are in reverse positions in the Board and court proceedings, suspension is warranted because the court decision would, at a minimum, have a bearing on the Board proceedings. *New Orleans, supra*.

Moreover, suspension also avoids any risk of “duplication of effort and possible inconsistency in result,” *Arcadia Group Brands, supra*, and promotes prompt adjudication of the plaintiff’s infringement claims. *See Goya Foods, Inc. v. Tropicana Products, Inc.*, 846 F.2d 848, 853-54 (2d Cir. 1988) (where “a district court suit concerns infringement, the interest in prompt adjudication far outweighs the value of having the views of the PTO... [Litigant] is entitled to have the infringement issue resolved promptly so that it may conduct its business affairs in accordance with the court’s determination of its rights.”).

Here, the outcome of the Civil Action clearly will have a bearing on or be dispositive of the instant opposition proceeding. Rhapsody alleges in the Civil Action that NAPSTER.FM is

confusingly similar to NAPSTER and that Lester's use of NAPSTER.FM infringes and dilutes its NAPSTER trademark. Rhapsody has asked the district court to enjoin Lester's use of NAPSTER.FM. At the same time, Lester claims in his Notice of Opposition that Rhapsody's use of its NAPSTER mark will confuse consumers, alleging, "[Rhapsody's] NAPSTER mark so resembles [Lester's] NAPSTER.FM mark and the goods/services thereof as to likely [sic], when used in connection with the services set forth in [Rhapsody's] Application, to cause confusion, or to cause mistake, or to deceive."

Thus, the outcome of the Civil Action will, at a minimum, have a bearing on this opposition proceeding. Under these circumstances, the Board routinely suspends its pending proceeding. *See, e.g., PHC, Inc. v. Pioneer Healthcare, Inc.*, 75 F.3d 75, 80-81 (1st Cir. 1996) (noting that the TTAB had suspended its proceedings even though the federal court action was filed *after* the TTAB proceedings began); *Cornerstone Sys., Inc. v. Cornerstone Logistics USA L.P.*, Case No. 09-2361, 2010 WL 2594296, at *2 (W.D. Tenn. June 23, 2010) ("the TTAB regularly stays its proceedings until related district court actions conclude"). Rhapsody respectfully requests that the Board do so here, and that this proceeding be suspended pending disposition of the Civil Action.

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

Dated: February 21, 2014

By: /s/ Gia L. Cincone
GIA L. CINCONE
Attorneys for Applicant
RHAPSODY INTERNATIONAL INC.

1 KILPATRICK TOWNSEND & STOCKTON LLP
2 MEHRNAZ BOROUMAND SMITH (SBN 197271)
3 GIA L. CINCONI (SBN 141668)
Two Embarcadero Center, 8th Floor
4 San Francisco, California 94111
Telephone: (415) 576-0200
5 Facsimile: (415) 576-0300
Email: mboroumand@kilpatricktownsend.com
gcincone@kilpatricktownsend.com

6 Attorneys for Plaintiff
7 RHAPSODY INTERNATIONAL INC.

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 RHAPSODY INTERNATIONAL INC.,
12 Plaintiff,
13 v.
14 RYAN LESTER and NAPSTER.FM, LLC,
15 Defendants.
16

Case No. 3:13-cv-05489-CRB

**FIRST AMENDED COMPLAINT
FOR TRADEMARK
INFRINGEMENT, DILUTION,
CYBERSQUATTING, AND UNFAIR
COMPETITION (INJUNCTIVE
RELIEF SOUGHT)**

JURY TRIAL DEMAND

17
18 Plaintiff Rhapsody International Inc. (“Rhapsody”) complains against defendants Ryan Lester
19 and Napster.fm, LLC as follows:

20 **PRELIMINARY STATEMENT**

21 1. Rhapsody is the owner of the famous NAPSTER® trademark. The original Napster
22 service is well known as a pioneer in the field of music file sharing services. After its early years in
23 the peer-to-peer file sharing business, the Napster brand was acquired and put to use as the face of a
24 fully licensed subscription music service. Napster’s then-owners invested millions of dollars and
25 considerable energy to grow and protect the Napster brand as a legitimate force in the music industry.
26 The investment paid off, and over the next several years Napster acquired several hundred thousand
27 loyal subscribers.

1 2. In 2011 Rhapsody acquired the Napster business, NAPSTER® trademarks and
2 associated goodwill to integrate with its own paid music subscription service. Rhapsody operates its
3 own Rhapsody-branded music service in addition to its operations of the revitalized Napster service.
4 Rhapsody takes pride in operating both licensed music services that respect the intellectual property
5 rights of artists, publishers, and record labels. Rhapsody has continued its use of the NAPSTER®
6 mark and owns a number of federal trademark registrations for the mark, including several that have
7 become incontestable.

8 3. In April 2013, Rhapsody discovered that an individual named Ryan Lester, through his
9 company Napster.fm, LLC, was operating a music service branded as “Napster.fm” (www.napster.fm)
10 which, according to Lester, pulls its content from YouTube. Rhapsody immediately contacted Lester
11 and asked that he cease and desist his infringement of the NAPSTER® trademark. After receiving
12 Rhapsody’s letter and accompanying trademark registrations, Lester agreed that Rhapsody’s request
13 was fair and rebranded his service “Peer.fm” (www.peer.fm).

14 4. If Lester had adhered to the April 2013 arrangement, this case would not be necessary.
15 But instead of trying to build a brand of his own, Lester demanded over three quarters of a million
16 dollars from Rhapsody for his poached domain. When that effort failed, Lester did an about-face, and
17 contrary to his stated promise, he re-launched the Napster.fm site and resumed his infringing and
18 diluting use of the NAPSTER® mark. To make matters worse, Lester then tried to appropriate the
19 goodwill associated with the NAPSTER® mark for himself by filing an application to register
20 “Napster.fm.” Moreover, despite Rhapsody’s unquestionable prior rights to the NAPSTER®
21 trademark in the field of music services, Lester has opposed Rhapsody’s pending application for
22 NAPSTER® (which builds on Rhapsody’s prior use and incontestable registration of its mark),
23 claiming – without a trace of irony – that it will cause confusion with his nascent Napster.fm service.

24 5. Thus, it has now become clear that Lester and Napster.fm, LLC intend to continue their
25 infringing conduct. Accordingly, Rhapsody is filing this complaint stating claims under federal and
26 California law for violation of its trademark rights, unfair competition, and unfair business practices.

JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT

1
2 6. Rhapsody's first, second, third, and fourth claims arise under the Trademark Act of
3 1946 (the Lanham Act), as amended by the Trademark Dilution Revision Act of 2006 (15 U.S.C. §§
4 1051, *et seq.*). This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and
5 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331 (federal question) and 15 U.S.C. § 1121
6 (Lanham Act). This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. §
7 1367. Because the parties are diverse in citizenship and more than \$75,000 exclusive of costs and
8 interest are at stake, this Court also has jurisdiction under 28 U.S.C. § 1332(a)(2) (diversity). This
9 Court has personal jurisdiction over the Defendants.

10 7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Rhapsody has offices
11 in this district, Defendants transact business in this district, and a substantial part of the events giving
12 rise to the claims asserted arose in this district.

13 8. Intra-district assignment to any division of the Northern District is proper under Local
14 Rule 3-2(c) and the Assignment Plan of this Court as an "Intellectual Property Action."

PARTIES

15
16 9. Rhapsody International Inc. is a Delaware corporation with offices at 500 3rd Street,
17 #460, San Francisco, California 94107. Rhapsody is the longest tenured provider of subscription
18 streaming music service to members in this judicial district and throughout the United States. Along
19 with its predecessors, Rhapsody has been offering an all-you-can-eat on-demand music service for
20 over a decade. Rhapsody secures licenses and pays substantial royalties to hundreds of record labels
21 and music publishers in order to offer its catalog of nearly twenty million songs to over one million
22 subscribers.

23 10. Rhapsody is informed and believes that defendant Ryan Lester is an individual with an
24 address at 2041 Gallows Tree Court, Vienna, Virginia 22182. Rhapsody is further informed and
25 believes that Lester has authorized, directed, and/or actively participated in the wrongful conduct
26 alleged herein.

27 11. Rhapsody is informed and believes that defendant Napster.fm, LLC is a Virginia
28 limited liability company with an address at 2041 Gallows Tree Court, Vienna, Virginia 22182, and

1 that Lester is the President and CEO of Napster.fm, LLC. Rhapsody is further informed and believes
 2 that Napster.fm, LLC has authorized, directed, and/or actively participated in the wrongful conduct
 3 alleged herein.

4 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

5 **The NAPSTER® Trademark**

6 12. Napster gained fame as a peer-to-peer file sharing service used primarily in the
 7 distribution of music content. Following years of legal disputes with rights holders, the old peer-to-
 8 peer business was shut down and its intellectual property portfolio was sold in bankruptcy to Roxio
 9 Inc. (which later changed its name to Napster Inc.).

10 13. The new Napster continued to use the original brand name and logo, but the business
 11 was restructured into a fully licensed and paid on-line music subscription service. Napster Inc.
 12 invested significant time, money, and energy to build a legitimate enterprise and strengthen the
 13 Napster brand: filing several registrations for the NAPSTER® mark, negotiating hundreds of licenses
 14 with rights holders, and generating thousands of paying subscribers. These efforts were a success, and
 15 in 2008 Best Buy, Inc. acquired the Napster business and brand for a reported \$121 million. For three
 16 years, Best Buy continued to operate the Napster subscription business, pouring further resources into
 17 strengthening the Napster brand and marks. In 2011, Rhapsody acquired the NAPSTER® mark and
 18 its associated goodwill in an asset purchase agreement with Best Buy.

19 14. The NAPSTER® trademark has been federally registered since 2004, and has been
 20 used continuously in interstate commerce at least since that date. The NAPSTER® mark is in full
 21 force and effect, valid and protectable, famous, and exclusively owned by Rhapsody.

22 15. Rhapsody owns the following federal registrations for its NAPSTER® trademark:

23 Trademark	Reg. No. / Date	Class / Products	Date of First Use
24 NAPSTER	25 3,055,515 Jan. 31, 2006	26 Class 9: Portable and handheld digital 27 electronic devices for recording, organizing, and reviewing text, data, and audio files; computer software for 28 use in organizing, transmitting, manipulating, and reviewing text, data, and audio files on portable and handheld digital electronic devices	Oct. 19, 2003

1	NAPSTER	3,054,773 Jan. 31, 2006	Class 9: Computer software for use in organizing, transmitting, manipulating, and reviewing audio, video, and data files on portable and handheld digital electronic devices	Oct. 16, 2003
2				
3	NAPSTER	2,841,431 May 11, 2004	Class 9: computer software for the transmission of audio, graphics, text, and data over communications networks; computer software for the streaming transmission of audio, video, graphics, text and data over communication networks; computer software for storage of audio, video, graphics, text and data on communications networks users; computer software for secure, encrypted electronic transfer of audio, video, graphics and data over communications networks; Class 42: licensing of intellectual property, computer services, namely, providing customized webpages featuring user-defined information, which includes search engines and online web links to news, weather, current events, reference materials, and customized email messages, all in a wide range of user-defined fields; computer services, namely, providing search engines for obtaining data via electronic communications network	Oct. 29, 2003
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15	NAPSTER	2,843,786 May 18, 2004	Class 35: Product merchandising; licensing of computer software and of entertainment products and services; retail store services featuring entertainment products and apparel; retail store services provided via communications networks featuring entertainment products and apparel; Class 38: Electronic transmission of audio and video files via communications networks; providing electronic bulletin boards; chat rooms and community for a transmission of messages among users concerning music, news, current events, entertainment and arts and leisure; Class 41: Providing databases and directories in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and	Oct. 29, 2003
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		video works via communications networks; matching users for the transfer of music, video, and audio recordings via communications networks; Class 42: Licensing of intellectual property; providing search engines for obtaining data via communications networks	
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5  mapster</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</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>26</p> <p>27</p> <p>28</p>	<p>2,843,405 May 18, 2004</p>	<p>Class 9: Computer software for the transmission of audio, graphics, text, and data over communications networks; computer software for the streaming transmission of audio, video, graphics, text and data over communications networks; computer storage to enable communications among computer or communications network users; computer software for secure, encrypted electronic transfer of audio, video, graphics and data over communications networks; Class 35: Product merchandising; licensing of computer software; retail store services featuring entertainment products and apparel; retail store services provided via communications networks featuring entertainment products and apparel; Class 38: Transmission of audio and video files via communications networks; providing electronic bulletin boards, chat rooms and community for a for the transmission of messages among users concerning music, news, current events, entertainment and arts and leisure; Class 41: Providing databases and directories in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; matching users for the transfer of music, video, and audio recordings via communications networks; Class 42: Licensing of intellectual property; providing search engines for obtaining data via communications networks</p>	<p>Oct. 29, 2003</p>

1 2 3 4 5 6 7 8 9 10 11 12	NAPSTERLINKS 3,309,551 Oct. 9, 2007	Class 9: Computer software, namely, computer software to enable the transmission of audio, graphics, text, and data over communications networks; computer software for the streaming transmission of audio, video, graphics, text and data over communication networks via hyperlinks	May 1, 2006
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As covered by these registrations, the NAPSTER® mark is valid, famous, and owned by Rhapsody. Registration Nos. 3,054,773, 2,843,786, and 2,843,405 are incontestable. Copies of the registrations are attached as Exhibit A and incorporated by reference.

16. Rhapsody also owns two trademark applications for NAPSTER® (Serial Numbers 78/431,602 and 85/804,778). In addition, Rhapsody owns over 200 domain names worldwide that incorporate the NAPSTER® mark. Rhapsody maintains these domain registrations and continually purchases domains worldwide that incorporate NAPSTER®.

17. Since its acquisition of the NAPSTER® mark, Rhapsody has continuously used the mark in the United States in connection with its products and services. Rhapsody actively uses the NAPSTER® and Napster Cat Head Logo trademarks on its website and in its communications with third parties. In addition to its domestic use, Rhapsody has been dramatically expanding its use of the NAPSTER® mark internationally, operating the Napster service in over twenty countries throughout Europe and Latin America.

18. Rhapsody also licenses certain uses of the NAPSTER® mark and actively polices unlicensed uses. Rhapsody has been approached by several third parties who have requested a license to incorporate the NAPSTER® mark into various works including television shows, books, and other educational materials. Rhapsody evaluates each request to license the NAPSTER® mark on a case-by-case basis. When third parties have tried to use NAPSTER® or confusingly similar marks without Rhapsody's consent, Rhapsody has diligently enforced its rights through cease-and-desist letters and takedown requests.

19. For years prior to the events giving rise to this Complaint and continuing to the present, Rhapsody annually has spent significant amounts of time, money, and effort advertising and promoting the products and services on which its NAPSTER® trademark is used. Through its

1 acquisition of and investment in the NAPSTER® trademark, Rhapsody has gained valuable goodwill
2 in the mark.

3 20. As a result of use and promotion of the NAPSTER® trademark, the mark is famous
4 and is recognized around the world and throughout the United States and associated by consumers
5 with Rhapsody and its products and services.

6 21. Rhapsody's NAPSTER® trademark became famous prior to any use of the mark by
7 Defendants.

8 **Defendants' Use of the NAPSTER® Trademark**

9 22. In or about April 2013, Rhapsody became aware that Lester had launched a website at
10 www.napster.fm and was operating a free web-based music streaming service called Napster.fm. The
11 Napster.fm website advertises its services as "Napster reimaged for the modern Web" and points out
12 "a few features that make Napster.fm better than Napster OG [original gangsta]." The FAQ portion of
13 Napster.fm states that the free service is "essentially just grabbing existing content on YouTube" and
14 implies that it takes advantage of "minor inefficiencies in YouTube's piracy-detection system" to
15 provide the content. Images of Lester's current use of Napster.fm are attached as Exhibit B.

16 23. The registrar of the domain name Napster.fm lists the "Registrant Name," "Admin
17 Name," and "Tech Name" as Ryan Lester and the "Registrant Organization," "Admin Organization,"
18 and "Tech Organization" as Napster.fm, LLC. On information and belief, Lester is the President and
19 CEO of Napster.fm, LLC.

20 24. On April 14, 2013, the Napster.fm website was featured in an article on the prominent
21 technology blog TechCrunch (<http://techcrunch.com>), a site which regularly follows developments in
22 the digital music business. In a perfect illustration of the likelihood of confusion caused by
23 Defendants' conduct, even the sophisticated technology blog included the NAPSTER® mark and an
24 image of Rhapsody's registered Napster Cat Head Logo at the bottom of the article, suggesting an
25 affiliation between Napster.fm and the famous Napster brand.

26 25. A follow-up article on TechCrunch dated April 21, 2013, stated, "The name alone got
27 our attention, and after using it, there were a few features that were reminiscent of its predecessor,
28 which made it even cooler." In an interview included in this article, Lester stated that he had over

1 100,000 visitors to the site and expressed the belief that “quite a few people” use his service “out of
2 nostalgia for the old Napster days.” The article concludes, “Don’t be fooled though, the service isn’t
3 paying for the music its [sic] streaming, and neither are the users, which will definitely make it a target
4 for shutdown.”

5 26. TechCrunch was not the only media outlet to be tripped up by Defendants’ conduct.
6 An article about the Napster.fm website on www.mobilemag.com dated April 15, 2013, is titled
7 “Napster returns as Napster.fm!” and also includes an image of the Napster Cat Head Logo.

8 27. Within days of becoming aware of the infringing service, Rhapsody sent a cease and
9 desist letter to Lester demanding that he stop using Napster.fm as a domain name, name, or trademark.
10 In the letter, Rhapsody explained its ownership rights in the NAPSTER® mark and included copies of
11 its federal trademark registrations for its marks. Lester responded by email that Rhapsody’s terms
12 “sound[ed] fair,” and that “[a]ccordingly, I have publicly rebranded *my service* from Napster.fm to
13 Peer.fm *and will cease any further claim to the former name/mark*” (emphasis added). Lester
14 further noted that the copyright notice appearing on the website still read Napster.fm “as that is still
15 technically the name of *my company*,” but offered to update Rhapsody’s counsel “once this has been
16 amended by the state” (emphasis added). Rhapsody’s letter and Lester’s response are attached as
17 Exhibits C and D.

18 28. In a later interview, Lester was asked whether he regretted naming the project after
19 Napster. He responded, “*Definitely don’t regret it at all; I don’t think there’s any way it would have*
20 *grabbed the same level of initial attention without the Napster association*” (emphasis added).

21 29. As part of Lester’s original agreement to rebrand his service and change his domain
22 name, he indicated that the Napster.fm site was redirecting web traffic to peer.fm and he would like to
23 continue that practice for another month to ease the transition before potentially selling the domain to
24 Rhapsody. In appreciation for Lester’s prompt rebranding, Rhapsody replied that it was amenable to
25 the short-term use of the Napster.fm redirect but that it was not interested in paying a significant
26 amount for the domain (since Rhapsody is already the owner of www.napster.com and dozens of
27 similar iterations).

1 30. After a few attempts to determine if Lester would sell the domain for a reasonable
2 price, Lester’s counsel finally responded by letter dated August 22, 2013. The letter stated that
3 counsel “have discussed this matter with our client, Mr. Ryan Lester” and proposed that “Mr. Lester
4 [would] transfer his rights in the Napster.fm domain to Rhapsody International Inc. for a purchase
5 amount of \$775,000.00 plus attorneys fees and other associated fees.” In return, Lester would agree to
6 ***“change his company name; immediately stop using NAPSTER.FM as a domain name, name or
7 mark; permanently refrain from use [sic] any domain name, name or mark that incorporates
8 NAPSTER, or any confusingly similar variation thereof including but not limited to any and all use
9 of NAPSTER.FM”*** (emphasis added). The demand was sent by counsel purporting to act on behalf of
10 Lester and referred to Napster.fm, LLC as “[Lester’s] company.” A copy of the letter is attached
11 hereto as Exhibit E. Thus, Lester and his company, Napster.fm, LLC, offered to transfer, sell or
12 otherwise assign the infringing domain name to Rhapsody for financial gain. Defendants’ registration
13 of, use of, and/or trafficking in a domain name that infringes and incorporates Rhapsody’s trademark
14 constitutes a bad faith effort to unfairly reap profits from Rhapsody’s trademark.

15 31. On September 19, 2013, Lester filed Trademark Application Serial No. 86/069,735 for
16 NAPSTER.FM in Class 38 for “Subscription audio and video broadcasting via electronic
17 communication networks, local and global computer networks and wireless communication networks;
18 audio broadcasting, namely, broadcasting music, concerts, and radio programs via electronic
19 communication networks, local and global computer networks and wireless communication networks;
20 streaming of audio content via electronic communication networks, local and global computer
21 networks and wireless communication networks; webcasting services; providing on-line chat rooms
22 and electronic bulletin boards for transmission of messages, and audio and video playlists among
23 users.” The trademark application, a copy of which is attached as Exhibit F, listed the applicant as
24 Ryan Lester acting individually. The application claimed a first use date of March 25, 2012, and first
25 use in commerce of November 29, 2012.

26 32. On January 7, 2014, the U.S. Patent and Trademark Office issued an Office Action
27 with regard to Lester’s trademark application, refusing to register NAPSTER.FM based on likelihood
28 of confusion with Rhapsody’s registrations for its NAPSTER trademark. A copy of the Office Action

1 is attached as Exhibit G. Rhapsody intends to oppose Lester’s application, if and when it passes to
2 publication.

3 33. On September 25, 2013 – despite the fact that Rhapsody’s use and registration of its
4 NAPSTER® trademark preceded his use of Napster.fm – Lester filed an opposition to Rhapsody’s
5 Trademark Application Serial No. 85/804,778 for the NAPSTER® mark. The opposition proceeding,
6 which was filed by Lester acting individually, is now pending at the Trademark Trial and Appeal
7 Board (Opp. No. 91212665). In his Notice of Opposition, Lester alleged that he was the owner of the
8 Napster.fm trademark and that Rhapsody’s use of its famous NAPSTER® mark will confuse
9 customers about *his* mark, stating: “[Rhapsody’s] NAPSTER mark so resembles [Lester’s]
10 NAPSTER.FM mark and the goods/services thereof as to likely [sic], when used in connection with
11 the services set forth in [Rhapsody’s] Application, to cause confusion, or to cause mistake, or to
12 deceive.”

13 34. Most recently, in direct contradiction to his promise and without warning or discussion,
14 Lester re-launched the infringing Napster.fm service at www.napster.fm. On information and belief,
15 Defendants are continuing to use Napster.fm as a domain name and business name for a free, open
16 source music streaming service.

17 35. Consumers in this judicial district are able to access and use the Napster.fm service. In
18 particular, consumers in this judicial district are able to create accounts on Napster.fm and use those
19 accounts to search for and listen to music and create music libraries.

20 36. Defendants’ use and potential registration of Napster.fm has caused and/or will cause a
21 likelihood of confusion among consumers regarding the source of the Napster.fm music streaming
22 service and whether Rhapsody has sponsored, authorized or is affiliated with the Napster.fm website
23 or its service.

24 37. Defendants’ actions have caused and will cause Rhapsody irreparable harm for which
25 money damages and other remedies are inadequate. Unless Defendants are restrained by this Court,
26 they will continue and/or expand their illegal activities and otherwise continue to cause great and
27 irreparable damage and injury to Rhapsody by, among other things:

28 a. Depriving Rhapsody of its statutory rights to use and control use of its

1 NAPSTER® trademark;

- 2 b. Creating a likelihood of confusion, mistake and deception among consumers
3 and the trade as to the source of his infringing service;
- 4 c. Causing the public falsely to associate Rhapsody with Defendants and/or their
5 service, or vice versa;
- 6 d. Causing incalculable and irreparable damage to Rhapsody's goodwill and
7 diluting the capacity of its famous NAPSTER® trademark to differentiate its
8 services from those of its competitors;
- 9 e. Tarnishing the famous NAPSTER® trademark; and
- 10 f. Causing Rhapsody to lose sales of its genuine NAPSTER® products and
11 services.

12 38. Accordingly, in addition to other relief sought, Rhapsody is entitled to preliminary and
13 permanent injunctive relief against Lester, Napster.fm, LLC, and all persons acting in concert with
14 them.

15 **FIRST CLAIM**
16 **FEDERAL TRADEMARK INFRINGEMENT**
17 **(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

18 39. Rhapsody realleges and incorporates by reference each of the allegations contained in
19 paragraphs 1 through 38 of this Complaint.

20 40. Defendants have used, in connection with the sale, offering for sale, distribution or
21 advertising of their music streaming service, words and symbols that infringe upon Rhapsody's
22 registered NAPSTER® trademark.

23 41. These acts of trademark infringement have been committed with the intent to cause
24 confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

25 42. As a direct and proximate result of Defendants' activities, Rhapsody is entitled to
26 recover Defendants' unlawful profits and Rhapsody's substantial damages under 15 U.S.C. § 1117(a).

27 43. Defendants' trademark infringement is an exceptional case and was intentional,
28 entitling Rhapsody to treble the amount of its damages and Defendants' profits, and to an award of
attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b). Alternatively, Rhapsody is entitled to the

1 maximum statutory damages allowed under 15 U.S.C. §§ 1117(c). Rhapsody will make its election at
2 the appropriate time before final judgment.

3 44. Rhapsody will suffer irreparable harm as a result of Defendants' infringement of
4 Rhapsody's trademark and is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

5 **SECOND CLAIM**
6 **(False Designation of Origin and False Description)**
7 **(15 U.S.C. § 1125(a); Lanham Act § 43(a))**

8 45. Rhapsody realleges and incorporates by reference each of the allegations contained in
9 paragraphs 1 through 44 of this Complaint.

10 46. Defendants' use of symbols or devices, and a combination thereof, tends falsely to
11 describe his services within the meaning of 15 U.S.C. § 1125(a)(1). Defendants' conduct is likely to
12 cause confusion, mistake, or deception by or in the public as to the affiliation, connection, association,
13 origin, sponsorship or approval of his infringing services to the detriment of Rhapsody and in
14 violation of 15 U.S.C. § 1125(a)(1).

15 47. As a direct and proximate result of Defendants' activities, Rhapsody is entitled to
16 recover Defendants' unlawful profits and Rhapsody's substantial damages under 15 U.S.C. § 1117(a).

17 48. Defendants' unfair competition is an exceptional case and was intentional, entitling
18 Rhapsody to treble the amount of its damages and Defendants' profits, and to an award of attorneys'
19 fees under 15 U.S.C. § 1117(a) and 1117(b). Alternatively, Rhapsody is entitled to the maximum
20 statutory damages allowed under 15 U.S.C. § 1117(c). Rhapsody will make its election at the
21 appropriate time before final judgment.

22 49. Rhapsody will suffer irreparable harm as a result of Defendants' infringement of
23 Rhapsody's trademark and is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

24 **THIRD CLAIM**
25 **FEDERAL DILUTION OF FAMOUS MARK**
26 **(Trademark Dilution Revision Act of 2006)**
27 **(15 U.S.C. § 1125(c); Lanham Act § 43(c))**

28 50. Rhapsody realleges and incorporates by reference each of the allegations contained in
paragraphs 1 through 49 of this Complaint.

1 Rhapsody hostage by offering to transfer, sell, or otherwise assign the infringing domain name to
2 Rhapsody for financial gain.

3 59. Accordingly, Rhapsody is entitled to injunctive relief, damages, and other remedies as
4 provided by law.

5 **FIFTH CLAIM**
6 **CALIFORNIA COMMON LAW TRADEMARK INFRINGEMENT**

7 60. Rhapsody realleges and incorporates by reference each of the allegations contained in
8 paragraphs 1 through 60 of this Complaint.

9 61. Rhapsody owns protectable rights in its NAPSTER® trademark at common law.

10 62. Defendants' conduct is likely to cause confusion, to cause mistake, or to deceive as to
11 the source of services offered by Defendants or as to affiliation, connection, association, sponsorship,
12 or approval of such services, and constitutes infringement of Rhapsody's trademark at common law.

13 63. Defendants infringed Rhapsody's trademark with knowledge and intent to cause
14 confusion, mistake, or deception.

15 64. Defendants' conduct is aggravated by that kind of willfulness, wantonness, malice and
16 conscious indifference to the rights and welfare of Rhapsody for which California law allows the
17 imposition of exemplary damages.

18 65. As a direct and proximate result of Defendants' activities, Rhapsody has suffered
19 substantial damage.

20 66. Pursuant to California common law, Rhapsody is entitled to injunctive relief and
21 compensatory and punitive damages.

22 **SIXTH CLAIM**
23 **CALIFORNIA UNFAIR COMPETITION**
(Cal. Bus. & Prof. Code § 17200)

24 67. Rhapsody realleges and incorporates by reference each of the allegations contained in
25 paragraphs 1 through 67 of this Complaint.

26 68. Defendants' conduct as alleged in this Complaint constitutes "unlawful, unfair or
27 fraudulent business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertising" within
28 the meaning of California Business & Professions Code § 17200.

- e. Otherwise competing unfairly with Rhapsody in any manner; and
- f. Continuing to perform in any manner whatsoever any of the other acts

complained of in this Complaint;

75. Adjudge that Defendants, within thirty (30) days after service of the Court's judgment, be required to file with this Court and serve upon Rhapsody's counsel a written report under oath setting forth in detail the manner in which they have complied with the judgment;

76. Adjudge that Defendants, within thirty (30) days after service of the Court's judgment, be required to transfer the domain name Napster.fm to Rhapsody;

77. Adjudge that Rhapsody recover from Defendants its damages and lost profits, and Defendants' profits, in an amount to be proven at trial, as well as punitive damages under California law;

78. Adjudge that Defendants be required to account for any profits that are attributable to their illegal acts, and that Rhapsody be awarded (1) Defendants' profits and (2) all damages sustained by Rhapsody, under 15 U.S.C. § 1117, plus prejudgment interest;

79. Adjudge that the amounts awarded to Rhapsody pursuant to 15 U.S.C. § 1117 shall be trebled;

80. Order an accounting of and impose a constructive trust on all of Defendants' funds and assets that arise out of their infringing activities;

81. Adjudge that Rhapsody be awarded its costs and disbursements incurred in connection with this action, including Rhapsody's reasonable attorneys' fees and investigative expenses; and

82. Adjudge that all such other relief be awarded to Rhapsody as this Court deems just and proper.

DATED: January 24, 2014

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Mehrnaz Boroumand Smith
MEHRNAZ BOROUMAND SMITH

Attorneys for Plaintiff
RHAPSODY INTERNATIONAL INC.

DEMAND FOR JURY TRIAL

Rhapsody demands that this action be tried to a jury.

DATED: January 24, 2014

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Mehrnaz Boroumand Smith
MEHRNAZ BOROUMAND SMITH

Attorneys for Plaintiff
RHAPSODY INTERNATIONAL INC.

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EXHIBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,055,515

United States Patent and Trademark Office

Registered Jan. 31, 2006

**TRADEMARK
PRINCIPAL REGISTER**

NAPSTER

NAPSTER, LLC (DELAWARE LTD LIAB CO)
9044 MELROSE AVE
LOS ANGELES, CA 90069

FIRST USE 10-19-2003; IN COMMERCE 10-19-2003.

FOR: PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES FOR RECORDING, ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING TEXT, DATA, AND AUDIO FILES; COMPUTER SOFTWARE FOR USE IN ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING TEXT, DATA, AND AUDIO FILES ON PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,841,431, 2,843,405 AND OTHERS.

SER. NO. 78-686,105, FILED 8-4-2005.

CATHERINE CAIN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,054,773

United States Patent and Trademark Office

Registered Jan. 31, 2006

**TRADEMARK
PRINCIPAL REGISTER**

NAPSTER

NAPSTER, LLC (DELAWARE LTD LIAB CO)
9044 MELROSE AVE
LOS ANGELES, CA 90069

FIRST USE 10-16-2003; IN COMMERCE 10-16-2003.

FOR: PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES FOR RECORDING, ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING AUDIO, VIDEO, AND DATA FILES; COMPUTER SOFTWARE FOR USE IN ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING AUDIO, VIDEO, AND DATA FILES ON PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,841,431, 2,843,405 AND OTHERS.

SER. NO. 78-561,228, FILED 2-4-2005.

CATHERINE CAIN, EXAMINING ATTORNEY

Int. Cls.: 9 and 42

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, and 101

Reg. No. 2,841,431

United States Patent and Trademark Office

Registered May 11, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

NAPSTER

ROXIO, INC. (DELAWARE CORPORATION)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATION NETWORKS; COMPUTER SOFTWARE FOR STORAGE OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA ON COMMUNICATIONS NETWORKS USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR ENCRYPTION FOR COMMUNICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY, COMPUTER CONSULTATION; COMPUTER

NETWORK DESIGN SERVICE OR OTHERS; COMPUTER SYSTEMS DESIGN AND ANALYSIS SERVICES FOR OTHERS; COMPUTER SOFTWARE DESIGN FOR OTHERS; COMPUTER SOFTWARE CONSULTATION; COMPUTER SERVICES, NAMELY PROVIDING CUSTOMIZED WEBPAGES FEATURING USER-DEFINED INFORMATION, WHICH INCLUDES SEARCH ENGINES AND ONLINE WEB LINKS TO NEWS, WEATHER, SPORTS, CURRENT EVENTS, REFERENCE MATERIALS, AND CUSTOMIZED EMAIL MESSAGES, ALL IN A WIDE RANGE OF USER-DEFINED FIELDS; COMPUTER SERVICES, NAMELY PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA ELECTRONIC COMMUNICATIONS NETWORK, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SN 78-039,019, FILED 12-12-2000.

HOWARD SMIGA, EXAMINING ATTORNEY

Int. Cls.: 35, 38, 41, and 42

Prior U.S. Cls.: 100, 101, 102, 104, and 107

Reg. No. 2,843,786

United States Patent and Trademark Office

Registered May 18, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

NAPSTER

ROXIO, INC. (DELAWARE CORPORATION)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: BUSINESS CONSULTATION; PRODUCT MERCHANDISING; LICENSING OF COMPUTER SOFTWARE AND OF ENTERTAINMENT PRODUCTS AND SERVICES; DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMMUNICATIONS NETWORKS; RETAIL STORE SERVICES FEATURING ENTERTAINMENT PRODUCTS AND APPAREL; RETAIL STORE SERVICES PROVIDED VIA COMMUNICATIONS NETWORKS FEATURING ENTERTAINMENT PRODUCTS AND APPAREL, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: ELECTRONIC TRANSMISSION OF AUDIO AND VIDEO FILES VIA COMMUNICATIONS NETWORKS; PROVIDING ELECTRONIC BULLETIN BOARDS; CHAT ROOMS AND COMMUNITY FOR A TRANSMISSION OF MESSAGES AMONG USERS CONCERNING MUSIC, NEWS, CURRENT EVENTS, POLITICS, ENTERTAINMENT AND ARTS AND LEISURE; TRANSMISSION OF PEER TO PEER NETWORKING AND FILE SHARING INFORMATION VIA COMMUNICATIONS NETWORKS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: PROVIDING DATABASES AND DIRECTORIES IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND

ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; PROVIDING INFORMATION, AUDIO, VIDEO, GRAPHICS, TEXT AND OTHER MULTIMEDIA CONTENT IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; MUSIC PUBLISHING SERVICES; PUBLISHING OF TEXT, GRAPHIC, AUDIO AND VIDEO WORKS VIA COMMUNICATIONS NETWORKS; MATCHING USERS FOR THE TRANSFER OF MUSIC, VIDEO, AND AUDIO RECORDINGS VIA COMMUNICATIONS NETWORKS; PROVIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT NEWS, POLITICS, AND ARTS AND LEISURE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORKS; PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELDS OF POLITICS AND GENERAL NEWS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SN 78-014,821, FILED 6 -28-2000.

ANDREW BENZMILLER, EXAMINING ATTORNEY

Int. Cls.: 9, 35, 38, 41, and 42

**Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, 102, 104,
and 107**

Reg. No. 2,843,405

United States Patent and Trademark Office

Registered May 18, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



ROXIO, INC. (DELAWARE CORPORATION)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: COMPUTER SOFTWARE TO ENABLE PEER-TO-PEER NETWORKING AND FILE SHARING; SEARCH ENGINE SOFTWARE; COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER STORAGE TO ENABLE COMMUNICATIONS AMONG COMPUTER OR COMMUNICATIONS NETWORK USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR ENCRYPTION OF COMMUNICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: BUSINESS CONSULTATION; PRODUCT MERCHANDISING; LICENSING OF COMPUTER SOFTWARE; DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMMUNICATIONS NETWORKS; RETAIL STORE SERVICES FEATURING ENTERTAINMENT PRODUCTS AND APPAREL; RETAIL STORE SERVICES PROVIDED VIA COMMUNICATIONS NETWORKS FEATURING ENTERTAINMENT PRODUCTS AND APPAREL, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: TRANSMISSION OF AUDIO AND VIDEO FILES VIA COMMUNICATIONS NETWORKS; PRO-

VIDING ELECTRONIC BULLETIN BOARDS, CHAT ROOMS AND COMMUNITY FORA FOR THE TRANSMISSION OF MESSAGES AMONG USERS CONCERNING MUSIC, NEWS, CURRENT EVENTS, POLITICS, ENTERTAINMENT AND ARTS AND LEISURE; TRANSMISSION OF PEER TO PEER NETWORKING AND FILE SHARING INFORMATION VIA COMMUNICATIONS NETWORKS; TELECOMMUNICATIONS SERVICES, NAMELY, PROVIDING ONLINE CHAT ROOMS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING GENERAL INTEREST TOPICS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: PROVIDING DATABASES AND DIRECTORIES IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; PROVIDING INFORMATION, AUDIO, VIDEO, GRAPHICS, TEXT AND OTHER MULTIMEDIA CONTENT IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, ENTERTAINMENT NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; MUSIC PUBLISHING SERVICES; PUBLISHING OF TEXT, GRAPHIC, AUDIO AND VIDEO WORKS VIA COMMUNICATIONS NETWORKS; MATCHING USERS FOR THE TRANSFER AND SHARING OF MUSIC, VIDEO, AND AUDIO RECORDINGS VIA COMMUNICATIONS NETWORKS; PROVIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT, NEWS, POLITICS, AND ARTS AND LEISURE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORK; PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELD OF POLITICS AND GENERAL NEWS; INTERNET SERVICES, NAMELY, CREATING INDEXES OF INFORMATION, SITES AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, PROVIDING USERS OF COMMUNICATIONS NETWORKS WITH MEANS OF IDENTIFYING, LOCATING, GROUPING, DISTRIBUTING, AND MANAGING DATA AND LINKS TO THIRD-PARTY COMPUTER SER-

VERS, COMPUTER PROCESSORS AND COMPUTER USERS; INTERNET SERVICES, NAMELY, SEARCHING, BROWSING AND RETRIEVING INFORMATION, SITES, AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, ORGANIZING CONTENT OF INFORMATION PROVIDED OVER A COMMUNICATIONS NETWORKS ACCORDING TO USER PREFERENCE, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SN 76-137,325, FILED 9-27-2000.

ANDREW BENZMILLER, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 3,309,551

United States Patent and Trademark Office

Registered Oct. 9, 2007

**TRADEMARK
PRINCIPAL REGISTER**

NAPSTERLINKS

NAPSTER, LLC (DELAWARE LIMITED LIABILITY COMPANY)
9044 MELROSE AVE
LOS ANGELES, CA 90069

FOR: COMPUTER SOFTWARE, NAMELY, COMPUTER SOFTWARE TO ENABLE THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATION NETWORKS VIA HYPERLINKS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-1-2006; IN COMMERCE 5-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,575,170, 3,080,144, AND OTHERS.

SN 78-833,373, FILED 3-9-2006.

ESTHER A. BORSUK, EXAMINING ATTORNEY

EXHIBIT B

Napster.fm

Napster reimagined for the modern Web

A few features that make Napster.fm better than Napster OG:

Real-time syncing

Every one of your open Napster.fm windows - anywhere in the world - will keep their players synced

Alternatively, you can choose to sync with any other user and listen in on their music

Open source

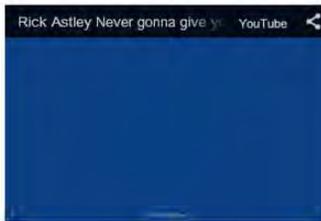
If Napster.fm were ever abandoned or shut down, the community could immediately rehost it

Web-based (exclusively, for now)

Your music collection travels with you

You won't get arrested

[Learn more »](#) (or just start using it now)



Napster.fm - Free music

www.napster.fm/#about

Napster.fm BETA Home Chat Library Search Hot List Transfer Discovery About Log in or Register

0:0 / 3:46 "Never Gonna Give You Up" by Rick Astley Sync with:

Frequently Asked Questions

Will I be sued for using this?
Absolutely.

Holy shit, seriously?
No.

Then how does this work?
As far as the streaming music, I'm essentially just grabbing existing content on YouTube based on metadata (titles, artists, etc.) from the [Discogs](#) database.

So the entire service is dependent on minor inefficiencies in YouTube's piracy-detection system?
Shhh... They probably don't hurt, but no, not necessarily; just don't be too selective about which version of a song you're after.

Cool. So why does Napster.fm vaguely resemble Windows 8?
Windows 8 introduced some interesting ideas and a nearly passable UX, but for the most part I just think the new Metro style / flat trend looks cool.
Also, I liked the idea of reimagining Napster – originally a Windows 95 desktop interface – as a Windows 8-ish modern Web application.

Speaking of the desktop, where are my native and mobile apps? When can I run this on my toaster?
Stay tuned; I have some ideas about that. If you really care, just [shoot me an email](#) and I'll let you know as soon as I have an update.

Who are you?
My alias online is buu700, but I most often go by Ryan Lester IRL. I'm a student at Carnegie Mellon, currently taking a few years off to work at SpaceX and do other stuff. In my free time, I contribute to [w3sec](#).

I'd like to make a small inquiry of you / spam you / ask you out on a date / give you money / take you to court / send you a comment. How can I contact you?
Sure, no problem; just [scroll to the bottom](#) for my contact information.

I have nothing better to do with my life; how can I contribute to Napster.fm?
As mentioned on the home page, everything is developed in the open on GitHub; any extra hands would be brilliant. Email me or something before sending any pull requests, but please don't hesitate to log any bug reports or feature requests in the [issues system](#).

If I should decide to contribute, what technical specifics regarding Napster.fm should I be aware of?
1. To manage all of our data, I'm using the fantastic real-time "serverless" data store [Firebase](#) (YC S11). As a consequence, aside from a set of Firebase validation rules, this is pure client-side engineering; grade-A JS hackers only.
2. Other than the Firebase SDK and the YouTube API, the major libraries and frameworks I'm using are: [Google Closure](#), [AngularJS](#), [Sugar](#), and [Bootstrap](#) (they're all brilliant).
3. If you're used to traversing the DOM with jQuery, my Closure-based [ClosureQuery](#) may look a bit familiar.

The screenshot shows a web browser window with the address bar displaying www.napster.fm/#about. The page title is "Napster.fm BETA". The navigation menu includes Home, Chat, Library, Search, Hot List, Transfer, Discovery, and About. A "Log in or Register" link is in the top right. A music player is at the top, showing "Never Gonna Give You Up" by Rick Astley with a progress bar at 0:00 / 3:46. The main content area contains several sections:

- Cool. So why does Napster.fm vaguely resemble Windows 3?**

Also, I liked the idea of reimagining Napster – originally a Windows 95 desktop interface – as a Windows 8-ish modern Web application.
- Speaking of the desktop, where are my native and mobile apps? When can I run this on my toaster?**

Stay tuned; I have some ideas about that. If you really care, just [shoot me an email](#) and I'll let you know as soon as I have an update.
- Who are you?**

My alias online is buu700, but I most often go by Ryan Lester IRL. I'm a student at Carnegie Mellon, currently taking a few years off to work at SpaceX and do other stuff. In my free time, I contribute to [w3sec](#).
- I'd like to make a small inquiry of you / spam you / ask you out on a date / give you money / take you to court / send you a comment. How can I contact you?**

Sure, no problem; just [scroll to the bottom](#) for my contact information.
- I have nothing better to do with my life; how can I contribute to Napster.fm?**

As mentioned on the home page, everything is developed in the open on GitHub; any extra hands would be brilliant. Email me or something before sending any pull requests, but please don't hesitate to log any bug reports or feature requests in the [issues system](#).
- If I should decide to contribute, what technical specifics regarding Napster.fm should I be aware of?**
 - To manage all of our data, I'm using the fantastic real-time "serverless" data store [Firebase](#) (YC S11). As a consequence, aside from a set of Firebase validation rules, this is pure client-side engineering; grade-A JS hackers only.
 - Other than the Firebase SDK and the YouTube API, the major libraries and frameworks I'm using are: [Google Closure](#), [AngularJS](#), [Sugar](#), and [Bootstrap](#) (they're all brilliant).
 - If you're used to traversing the DOM with jQuery, my Closure-based [ClosureQuery](#) may look a bit familiar.
- What specifically could you use help with?**

To preface, I'm open to any proposed contribution to the project. That being said:

 - Automated testing: Napster.fm currently has zero test coverage and I've no plans to write any myself in the near future; this could be a project for someone else to handle.
 - Artwork: I'm currently borrowing the [Akonadi](#) logo for the Napster.fm favicon (no special significance; KDE's just awesome).
 - User documentation: there is none at the moment.



EXHIBIT C



KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
T 415.576.0200 F 415.576.0300

Margaret C. McHugh
415.273.7509
mmchugh@kilpatricktownsend.com

April 15, 2013

By Email hacker@linux.com; Original by U.S. Mail

Ryan Lester
P.O. Box 3402
McLean, VA 22103

Re: Napster.fm
Infringement of Rhapsody International Inc.'s trademark
Our File: 94033-873442

Dear Mr. Lester:

This law firm represents Rhapsody International Inc. ("Rhapsody"), a leading on-line music subscription service, in trademark, copyright and unfair competition matters. It has recently come to Rhapsody's attention that you have launched a website at www.napster.fm and are operating a web-based music service called NAPSTER.FM. Our client has asked us to contact you because your unauthorized use of NAPSTER infringes on our client's rights, as detailed below. We are bringing Rhapsody's objections to your attention in the hope that we can obtain your immediate and voluntary agreement to cease these activities and thereby avoid further escalation of this matter.

As you undoubtedly know, the mark NAPSTER has been associated with on-line music services since at least as early as 2006. You may not be aware, however, that Rhapsody acquired the rights to the NAPSTER mark from Napster, LLC. and its parent Napster Inc. in an assignment dated November 30, 2011, following an earlier asset purchase agreement involving these companies and Best Buy, Inc. Since then, Rhapsody has been continuously using the NAPSTER mark in connection with its services in the United States and also has been gradually expanding its use as it has launched new NAPSTER music services in Europe and elsewhere. Rhapsody has earned valuable good will in the NAPSTER mark and the mark is associated exclusively with our client.

Rhapsody's NAPSTER mark also is the subject of various trademark applications and registrations in the U.S. and elsewhere, including but not limited to U.S. Reg. No. 2,843,786, 2,841,431, 3,054,773 for NAPSTER, and 2,843,405 for NAPSTER & Design, all related to

online music and computer services, and related goods and services. See attached. These registrations are live and subsisting, attesting to our client's exclusive rights to use NAPSTER in connection with its goods and services, as well as with related goods and services.

As I am sure you can appreciate, Rhapsody has invested substantial amounts of time, money and effort in connection with its NAPSTER mark. The NAPSTER mark is well-known, famous and distinctive. The mark is an extremely valuable asset of Rhapsody, and one which our client is committed to protecting from infringement and misappropriation. Rhapsody's rights are protected by federal, state and foreign laws.

Your unauthorized use of NAPSTER as part of a domain name and as the name of an online music streaming service, obviously very similar services as those offered by Rhapsody, is likely to cause consumers to mistakenly believe there is some kind of relationship between you and/or your website and Rhapsody, or that Rhapsody has approved your services, when that is not the case. The addition of the "FM" component to Rhapsody's NAPSTER mark does nothing to diminish the likelihood of consumer confusion, given that your mark incorporates our client's mark in full and because FM in a nondistinctive, generic term which is closely related to the music field. Indeed, your use of this suffix may cause consumers to mistakenly believe that Rhapsody has launched new radio services under the NAPSTER mark.

In sum, it is clear that your use of NAPSTER in connection with online music services is likely to cause consumer confusion or mistake, and violates Rhapsody's exclusive rights to NAPSTER. Further, your use of NAPSTER dilutes the distinctive quality of our client's mark in violation of the Federal Trademark Anti-Dilution Act. The law provides for injunctive relief and recovery of monetary damages and attorneys' fees by Rhapsody under these circumstances. Any continued use of Rhapsody's mark after you have been put on actual notice of our client's mark can also subject you to increased damages.

As the owner of the trademark NAPSTER, Rhapsody has a duty to protect its mark from infringement and dilution. It has not authorized your use of NAPSTER, and it cannot permit your use of its intellectual property to continue.

Rhapsody prefers to resolve this dispute amicably, if possible, and so long as its valuable trademark is adequately protected from infringement and dilution. To that end, and to resolve this matter informally, we request your confirmation that you agree as follows:

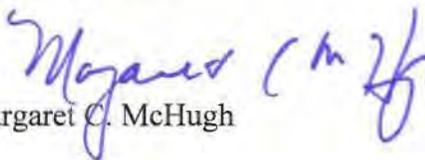
1. To stop using NAPSTER.FM as a domain name, name or mark;
2. To permanently refrain from using any domain name, name or mark that incorporates NAPSTER, or any confusingly similar variation thereof, including but not limited to any and all use of NAPSTER.FM; and
3. To destroy any written material, including but not limited to any marketing materials, using NAPSTER.FM or NAPSTER.

We ask that you contact me **no later than April 22, 2013** to confirm that you will **fully and immediately comply** with the above requests.

Ryan Lester
April 15, 2013
Page 3

I am available to discuss this with you if you have any questions. As noted above, Rhapsody is hopeful that this matter can be resolved quickly and amiably. However, nothing in this letter should be deemed to constitute a limitation on or waiver of any of Rhapsody's rights or remedies, all of which Rhapsody expressly and fully reserves.

Very truly yours,


Margaret C. McHugh

Enclosure

cc: Rhapsody International Inc.

KILPATRICK TOWNSEND 65361445 1

Int. Cls.: 35, 38, 41 and 42

Prior U.S. Cls.: 100, 101, 102, 104 and 107

Reg. No. 2,843,786

United States Patent and Trademark Office

Registered May 18, 2004

Corrected

OG Date Sep. 21, 2004

SERVICE MARK
PRINCIPAL REGISTER

NAPSTER

NAPSTER, LLC (DELAWARE LTD LIAB
CO)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: BUSINESS CONSULTATION;
PRODUCT MERCHANDISING; LICEN-
SING OF COMPUTER SOFTWARE AND
OF ENTERTAINMENT PRODUCTS AND
SERVICES; DISSEMINATION OF ADVER-
TISING FOR OTHERS VIA COMMUNI-
CATIONS NETWORKS; RETAIL STORE
SERVICES FEATURING ENTERTAIN-
MENT PRODUCTS AND APPAREL. RET-
AIL STORE SERVICES PROVIDED VIA
COMMUNICATIONS NETWORKS FEAT-
URING ENTERTAINMENT PRODUCTS
AND APPAREL, IN CLASS 35 (U.S. CLS.
100, 101 AND 102).

FIRST USE 10-29-2003; IN COMMERCE
10-29-2003.

FOR: ELECTRONIC TRANSMISSION
OF AUDIO AND VIDEO FILES VIA
COMMUNICATIONS NETWORKS; PRO-
VIDING ELECTRONIC BULLETIN
BOARDS; CHAT ROOMS AND COMMU-
NITY FOR A TRANSMISSION OF MES-
SAGES AMONG USERS CONCERNING
MUSIC, NEWS, CURRENT EVENTS, POL-

ITICS, ENTERTAINMENT AND ARTS
AND LEISURE; TRANSMISSION OF
PEER TO PEER NETWORKING AND
FILE SHARING INFORMATION VIA
COMMUNICATIONS NETWORKS, IN
CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 10-29-2003; IN COMMERCE
10-29-2003.

FOR: PROVIDING DATABASES AND
DIRECTORIES IN THE FIELDS OF MU-
SIC, VIDEO, RADIO, TELEVISION,
NEWS, SPORTS, GAMES, CULTURAL
EVENTS, ENTERTAINMENT, AND ARTS
AND LEISURE VIA COMMUNICATIONS
NETWORKS; PROVIDING INFORMA-
TION, AUDIO, VIDEO, GRAPHICS, TEXT
AND OTHER MULTIMEDIA CONTENT
IN THE FIELDS OF MUSIC, VIDEO,
RADIO, TELEVISION, NEWS, SPORTS,
GAMES, CULTURAL EVENTS, ENTER-
TAINMENT, AND ARTS AND LEISURE
VIA COMMUNICATIONS NETWORKS;
MUSIC PUBLISHING SERVICES; PUB-
LISHING OF TEXT, GRAPHIC, AUDIO
AND VIDEO WORKS VIA COMMUNICA-
TIONS NETWORKS; MATCHING USERS
FOR THE TRANSFER OF MUSIC, VI-
DEO, AND AUDIO RECORDINGS VIA
COMMUNICATIONS NETWORKS; PRO-

*In testimony whereof I have heretanto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Sep. 21, 2004.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

VIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT NEWS, POLITICS, AND ARTS AND LEISURE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).
FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH EN-

GINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORKS; PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELDS OF POLITICS AND GENERAL NEWS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SER. NO. 78-014,821, FILED 6-28-2000.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Sep. 21, 2004.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE



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Word Mark NAPSTER

Goods and Services IC 035. US 100 101 102. G & S: [Business consultation;] product merchandising; licensing of computer software and of entertainment products and services; [dissemination of advertising for others via communications networks;] retail store services featuring entertainment products and apparel; retail store services provided via communications networks featuring entertainment products and apparel. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 038. US 100 101 104. G & S: Electronic transmission of audio and video files via communications networks; providing electronic bulletin boards; chat rooms and community for a transmission of messages among users concerning music, news, current events, [politics,] entertainment and arts and leisure; [transmission of peer to peer networking and file sharing information via communications networks]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 041. US 100 101 107. G & S: Providing databases and directories in the fields of music, video, radio, [television,] news, [sports,] games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, [television,] news, [sports,] games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; matching users for the transfer of music, video, and audio recordings via communications networks; [providing educational symposia via communications networks in the fields of music, video, entertainment news, politics, and arts and leisure]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 042. US 100 101. G & S: Licensing of intellectual property; providing search engines for obtaining data via communications networks; [providing databases and directories via communications networks for obtaining data in the fields of politics and general news]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78014821

Filing Date June 28, 2000

Current Basis 1A

Original Filing Basis 1B

Published for Opposition October 1, 2002

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 2843786
Registration Date May 18, 2004
Owner (REGISTRANT) Roxio, Inc. CORPORATION DELAWARE 455 El Camino Real Santa Clara CALIFORNIA 95050

(LAST LISTED OWNER) RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE, SUITE 1500 SEATTLE WASHINGTON 98101
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Margaret C. McHugh
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Int. Cls.: 9 and 42

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, and 101

Reg. No. 2,841,431

United States Patent and Trademark Office

Registered May 11, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

NAPSTER

ROXIO, INC. (DELAWARE CORPORATION)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATION NETWORKS; COMPUTER SOFTWARE FOR STORAGE OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA ON COMMUNICATIONS NETWORKS USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR ENCRYPTION FOR COMMUNICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY, COMPUTER CONSULTATION; COMPUTER

NETWORK DESIGN SERVICE OR OTHERS; COMPUTER SYSTEMS DESIGN AND ANALYSIS SERVICES FOR OTHERS; COMPUTER SOFTWARE DESIGN FOR OTHERS; COMPUTER SOFTWARE CONSULTATION; COMPUTER SERVICES, NAMELY PROVIDING CUSTOMIZED WEBPAGES FEATURING USER-DEFINED INFORMATION, WHICH INCLUDES SEARCH ENGINES AND ONLINE WEB LINKS TO NEWS, WEATHER, SPORTS, CURRENT EVENTS, REFERENCE MATERIALS, AND CUSTOMIZED EMAIL MESSAGES, ALL IN A WIDE RANGE OF USER-DEFINED FIELDS; COMPUTER SERVICES, NAMELY PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA ELECTRONIC COMMUNICATIONS NETWORK, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SN 78-039,019, FILED 12-12-2000.

HOWARD SMIGA, EXAMINING ATTORNEY



United States Patent and Trademark Office

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IC 042. US 100 101. G & S: LICENSING OF INTELLECTUAL PROPERTY, [COMPUTER CONSULTATION; COMPUTER NETWORK DESIGN SERVICE OR OTHERS; COMPUTER SYSTEMS DESIGN AND ANALYSIS SERVICES FOR OTHERS, COMPUTER SOFTWARE DESIGN FOR OTHERS; COMPUTER SOFTWARE CONSULTATION;] COMPUTER SERVICES, namely, PROVIDING CUSTOMIZED WEBPAGES FEATURING USER-DEFINED INFORMATION, WHICH INCLUDES SEARCH ENGINES AND ONLINE WEB LINKS TO NEWS, WEATHER, [SPORTS,] CURRENT EVENTS, REFERENCE MATERIALS, AND CUSTOMIZED EMAIL MESSAGES, ALL IN A WIDE RANGE OF USER-DEFINED FIELDS; COMPUTER SERVICES, namely, PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA ELECTRONIC COMMUNICATIONS NETWORK. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

Mark Drawing Code (1) TYPED DRAWING**Serial Number** 78039019**Filing Date** December 12, 2000**Current Basis** 1A**Original Filing Basis** 1B**Published for Opposition** April 8, 2003**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED**Registration Number** 2841431**Registration** May 11, 2004

Trademark Electronic Search System (TESS)

Date

Owner (REGISTRANT) NAPSTER LLC LIMITED LIABILITY COMPANY DELAWARE 9044 Melrose Ave Los Angeles CALIFORNIA 90069

(LAST LISTED OWNER) RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE, SUITE 1500 SEATTLE WASHINGTON 98101

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Margaret C. McHugh

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 8 (6-YR).

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Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,054,773

United States Patent and Trademark Office

Registered Jan. 31, 2006

**TRADEMARK
PRINCIPAL REGISTER**

NAPSTER

NAPSTER, LLC (DELAWARE LTD LIAB CO)
9044 MELROSE AVE
LOS ANGELES, CA 90069

FIRST USE 10-16-2003; IN COMMERCE 10-16-2003.

FOR: PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES FOR RECORDING, ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING AUDIO, VIDEO, AND DATA FILES; COMPUTER SOFTWARE FOR USE IN ORGANIZING, TRANSMITTING, MANIPULATING, AND REVIEWING AUDIO, VIDEO, AND DATA FILES ON PORTABLE AND HANDHELD DIGITAL ELECTRONIC DEVICES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,841,431, 2,843,405 AND OTHERS.

SER. NO. 78-561,228, FILED 2-4-2005.

CATHERINE CAIN, EXAMINING ATTORNEY



United States Patent and Trademark Office

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Word Mark	NAPSTER
Goods and Services	IC 009, US 021 023 026 036 038. G & S: [Portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing audio, video, and data files;] computer software for use in organizing, transmitting, manipulating, and reviewing audio, video, and data files on portable and handheld digital electronic devices. FIRST USE: 20031016. FIRST USE IN COMMERCE: 20031016
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78561228
Filing Date	February 4, 2005
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	November 8, 2005
Registration Number	3054773
Registration Date	January 31, 2006
Owner	(REGISTRANT) Napster, LLC LIMITED LIABILITY COMPANY DELAWARE 9044 Melrose Ave Los Angeles CALIFORNIA 90069 (LAST LISTED OWNER) RHAPSODY INTERNATIONAL INC. CORPORATION DELAWARE 1420 FIFTH AVENUE, SUITE 1500 SEATTLE WASHINGTON 98101
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Margaret C. McHugh
Prior	

4/15/2013

Registrations 2841431;2843405;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Int. Cls.: 9, 35, 38, 41, and 42

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, 102, 104,
and 107

Reg. No. 2,843,405

United States Patent and Trademark Office

Registered May 18, 2004

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



ROXIO, INC. (DELAWARE CORPORATION)
455 EL CAMINO REAL
SANTA CLARA, CA 95050

FOR: COMPUTER SOFTWARE TO ENABLE PEER-TO-PEER NETWORKING AND FILE SHARING; SEARCH ENGINE SOFTWARE; COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER STORAGE TO ENABLE COMMUNICATIONS AMONG COMPUTER OR COMMUNICATIONS NETWORK USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR ENCRYPTION OF COMMUNICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: BUSINESS CONSULTATION; PRODUCT MERCHANDISING; LICENSING OF COMPUTER SOFTWARE; DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMMUNICATIONS NETWORKS; RETAIL STORE SERVICES FEATURING ENTERTAINMENT PRODUCTS AND APPAREL; RETAIL STORE SERVICES PROVIDED VIA COMMUNICATIONS NETWORKS FEATURING ENTERTAINMENT PRODUCTS AND APPAREL, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: TRANSMISSION OF AUDIO AND VIDEO FILES VIA COMMUNICATIONS NETWORKS; PRO-

VIDING ELECTRONIC BULLETIN BOARDS, CHAT ROOMS AND COMMUNITY FORA FOR THE TRANSMISSION OF MESSAGES AMONG USERS CONCERNING MUSIC, NEWS, CURRENT EVENTS, POLITICS, ENTERTAINMENT AND ARTS AND LEISURE; TRANSMISSION OF PEER TO PEER NETWORKING AND FILE SHARING INFORMATION VIA COMMUNICATIONS NETWORKS; TELECOMMUNICATIONS SERVICES, NAMELY, PROVIDING ONLINE CHAT ROOMS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING GENERAL INTEREST TOPICS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: PROVIDING DATABASES AND DIRECTORIES IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; PROVIDING INFORMATION, AUDIO, VIDEO, GRAPHICS, TEXT AND OTHER MULTIMEDIA CONTENT IN THE FIELDS OF MUSIC, VIDEO, RADIO, TELEVISION, ENTERTAINMENT NEWS, SPORTS, GAMES, CULTURAL EVENTS, ENTERTAINMENT AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; MUSIC PUBLISHING SERVICES; PUBLISHING OF TEXT, GRAPHIC, AUDIO AND VIDEO WORKS VIA COMMUNICATIONS NETWORKS; MATCHING USERS FOR THE TRANSFER AND SHARING OF MUSIC, VIDEO, AND AUDIO RECORDINGS VIA COMMUNICATIONS NETWORKS; PROVIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT, NEWS, POLITICS, AND ARTS AND LEISURE, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

FOR: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORK; PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELD OF POLITICS AND GENERAL NEWS; INTERNET SERVICES, NAMELY, CREATING INDEXES OF INFORMATION, SITES AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, PROVIDING USERS OF COMMUNICATIONS NETWORKS WITH MEANS OF IDENTIFYING, LOCATING, GROUPING, DISTRIBUTING, AND MANAGING DATA AND LINKS TO THIRD-PARTY COMPUTER SER-

VERS, COMPUTER PROCESSORS AND COMPUTER USERS; INTERNET SERVICES, NAMELY, SEARCHING, BROWSING AND RETRIEVING INFORMATION, SITES, AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, ORGANIZING CONTENT OF INFORMATION PROVIDED OVER A COMMUNICATIONS NETWORKS ACCORDING TO USER PREFERENCE, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-29-2003; IN COMMERCE 10-29-2003.

SN 76-137,325, FILED 9-27-2000.

ANDREW BENZMILLER, EXAMINING ATTORNEY

**Trademarks > Trademark Electronic Search System (TESS)**

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IC 009. US 021 023 026 036 038. G & S: [COMPUTER SOFTWARE TO ENABLE PEER-TO-PEER NETWORKING AND FILE SHARING; SEARCH ENGINE SOFTWARE;] COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER STORAGE TO ENABLE COMMUNICATIONS AMONG COMPUTER OR COMMUNICATIONS NETWORK USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; [COMPUTER SOFTWARE FOR ENCRYPTION OF COMMUNICATIONS]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 035. US 100 101 102. G & S: [BUSINESS CONSULTATION;] PRODUCT MERCHANDISING; LICENSING OF COMPUTER SOFTWARE; [DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMMUNICATIONS NETWORKS;] RETAIL STORE SERVICES FEATURING ENTERTAINMENT PRODUCTS AND APPAREL; RETAIL STORE SERVICES PROVIDED VIA COMMUNICATIONS NETWORKS FEATURING ENTERTAINMENT PRODUCTS AND APPAREL. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 038. US 100 101 104. G & S: TRANSMISSION OF AUDIO AND VIDEO FILES VIA COMMUNICATIONS NETWORKS; PROVIDING ELECTRONIC BULLETIN BOARDS, CHAT ROOMS AND COMMUNITY FORA FOR THE TRANSMISSION OF MESSAGES AMONG USERS CONCERNING MUSIC, NEWS, CURRENT EVENTS, [POLITICS,] ENTERTAINMENT AND ARTS AND LEISURE; [TRANSMISSION OF PEER TO PEER NETWORKING AND FILE SHARING INFORMATION VIA COMMUNICATIONS NETWORKS; TELECOMMUNICATIONS SERVICES, NAMELY, PROVIDING ONLINE CHAT ROOMS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING GENERAL INTEREST TOPICS]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 041. US 100 101 107. G & S: PROVIDING DATABASES AND DIRECTORIES IN THE FIELDS OF MUSIC, VIDEO, RADIO, [TELEVISION,] NEWS, [SPORTS,] GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; PROVIDING INFORMATION, AUDIO, VIDEO, GRAPHICS, TEXT AND OTHER MULTIMEDIA CONTENT IN THE FIELDS OF MUSIC, VIDEO, RADIO, [TELEVISION, ENTERTAINMENT] NEWS, [SPORTS,] GAMES, CULTURAL EVENTS, ENTERTAINMENT AND ARTS AND LEISURE VIA

COMMUNICATIONS NETWORKS; MUSIC PUBLISHING SERVICES; PUBLISHING OF TEXT, GRAPHIC, AUDIO AND VIDEO WORKS VIA COMMUNICATIONS NETWORKS; MATCHING USERS FOR THE TRANSFER AND SHARING OF MUSIC, VIDEO, AND AUDIO RECORDINGS VIA COMMUNICATIONS NETWORKS; [PROVIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT, NEWS, POLITICS, AND ARTS AND LEISURE]. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

IC 042. US 100 101. G & S: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORK; [PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELD OF POLITICS AND GENERAL NEWS; INTERNET SERVICES, NAMELY, CREATING INDEXES OF INFORMATION, SITES AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, PROVIDING USERS OF COMMUNICATIONS NETWORKS WITH MEANS OF IDENTIFYING, LOCATING, GROUPING, DISTRIBUTING, AND MANAGING DATA AND LINKS TO THIRD-PARTY COMPUTER SERVERS, COMPUTER PROCESSORS AND COMPUTER USERS;] INTERNET SERVICES, NAMELY, SEARCHING, BROWSING AND RETRIEVING INFORMATION, SITES, AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, ORGANIZING CONTENT OF INFORMATION PROVIDED OVER A COMMUNICATIONS NETWORKS ACCORDING TO USER PREFERENCE. FIRST USE: 20031029. FIRST USE IN COMMERCE: 20031029

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 03.01.04 - Cats, domestic Cats; Kittens

Serial Number 76137325

Filing Date September 27, 2000

Current Basis 1A

Original Filing Basis 1B

Published for Opposition October 1, 2002

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 2843405

Registration Date May 18, 2004

Owner (REGISTRANT) NAPSTER, LLC CORPORATION DELAWARE 9044 Melrose Ave Los Angeles CALIFORNIA 90069

(LAST LISTED OWNER) RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE, SUITE 1500 SEATTLE WASHINGTON 98101

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Margaret C. McHugh

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK, SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

EXHIBIT D

From: buu700@gmail.com on behalf of Ryan Lester <hacker@linux.com>
Sent: Monday, April 22, 2013 9:06 AM
To: McHugh, Margaret
Subject: Re: Infringement of Rhapsody International Inc.'s trademark (KTS: 94033-873422)

Dear Ms McHugh,

The terms defined in your letter sound fair. Accordingly, I have publicly rebranded my service from Napster.fm to Peer.fm and will cease any further claim to the former name/mark.

Regarding the domain name napster.fm, I currently have it set up as a redirect to peer.fm and would like to continue this arrangement until at least the end of May (so as to avoid confusing my users and/or giving the impression that my service has been acquired by Rhapsody). After that point, I would be willing to sell the domain to Rhapsody if they'd be interested.

Regarding the copyright notice at the bottom of my site, you'll notice that it still reads "Napster.fm", as that is still technically the name of my company; if you'd like, I can follow up with an update once this has been amended by the state.

Best Regards,
Ryan

On 15 April 2013 17:43, Cordial, Vivian <VCordial@kilpatricktownsend.com> wrote:

Please see attached for your immediate attention and reply to Margaret McHugh.

Thank you.



Vivian Cordial

Trademark Specialist

Kilpatrick Townsend & Stockton LLP

Eighth Floor | Two Embarcadero Center | San Francisco, CA 94111

office [415 273 4748](tel:4152734748) | fax [415 576 0300](tel:4155760300)

vcordial@kilpatricktownsend.com | www.kilpatricktownsend.com

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its

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DISCLAIMER Per Treasury Department Circular 230: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

EXHIBIT E

BRUNDIDGE & STANGER, P.C.

ATTORNEYS AT LAW

2318 MILL ROAD, SUITE 1020
ALEXANDRIA, VIRGINIA 22314

PATENT, TRADEMARK
AND COPYRIGHT LAW

FACSIMILE: (703) 684-1460
WWW.BRUNDIDGE-STANGER.COM

CARL I. BRUNDIDGE*
DANIEL J. STANGER
DAVID S. LEE*

DONNA K. MASON*
THEODORE C. SHIH*
JUN YE*
DEIDRE L. MCAULEY*

THOMAS L. PETERSON
ISAAC A. ANGRES, PH.D.**
ANDY M. HAN*
MICHELLE LIU, PH.D.*
OF COUNSEL

* Bar Membership Other Than Virginia
** Registered Patent Agent

(703) 684-1470

VIA EMAIL, FACSIMILE AND U.S. MAIL

August 22, 2013

Ms. Margaret C. McHugh
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

Re: Napster.fm
Rhapsody International Inc. Napster Trademark
Your Docket No. : 94033-873442
Our Docket No.: 1018.INFR

Dear Ms. McHugh:

Thank you for your email of July 10, 2013, please be advised that we have discussed this matter with our client, Mr. Ryan Lester, thoroughly researched this matter and prepared the following counterproposal in response to your offer in your email correspondence of April 24, 2013.

Based on our discussions with Mr. Lester, and importantly the considerable amount of research conducted, the value of the NAPSTER.FM domain has been assessed at \$775,000.00.

Thus, Mr. Lester will transfer his rights in the Napster.fm domain to Rhapsody International Inc. for a purchase amount of \$775,000.00 plus attorneys fees and other associated fees.

Upon acceptance of this counterproposal, Mr. Lester will change his company name; immediately stop using NAPSTER.FM as a domain name, name or mark; permanently refrain from use any domain name, name or mark that incorporates NAPSTER, or any confusingly similar variation thereof including but not limited to any and all use of NAPSTER.FM; and destroy any written material, including, but not limited to any marketing materials using NAPSTER.FM or NAPSTER, as requested in your letter of April 15, 2013.

Ms. M. McHugh
August 21, 2013
Page 2

Should your client, Rhapsody International Inc. find this counterproposal acceptable, we will forward a Domain Purchase Agreement to you to be signed by all parties.

As noted, Mr. Lester is willing to consider settling this matter amicably. However, nothing in this letter should be deemed to constitute a limitation on or waiver of any of Mr. Lester's rights or remedies, all of which Mr. Lester expressly and fully reserves.

We are available to discuss this matter with you if you have any questions.

Very Truly Yours,
Brundidge and Stanger, P.C.



Carl I. Brundidge



Deidre McAuley

cc: R. Lester
N. Khargie

EXHIBIT F

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register

Serial Number: 86069735

Filing Date: 09/19/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86069735
MARK INFORMATION	
*MARK	Napster.fm
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Napster.fm
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Lester, Ryan
*STREET	2041 Gallows Tree Ct.
*CITY	Vienna
*STATE (Required for U.S. applicants)	Virginia
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	22182
WEBSITE ADDRESS	www.napster.fm
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	038

*IDENTIFICATION	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.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/25/2012
FIRST USE IN COMMERCE DATE	At least as early as 11/29/2012
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\860\697\86069735\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	webpage screenshot
ATTORNEY INFORMATION	
NAME	Carl I Brundidge
ATTORNEY DOCKET NUMBER	2868TM.870BS
FIRM NAME	Brundidge and Stanger PLC
STREET	2318 Mill Road, Suite 1020
CITY	Alexandria
STATE	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22314
PHONE	703-684-1470
FAX	703-684-1460
EMAIL ADDRESS	dmcauley@brundidge-stanger.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Deidre McAuley

CORRESPONDENCE INFORMATION	
NAME	Carl I Brundidge
FIRM NAME	Brundidge and Stanger PLC
STREET	2318 Mill Road, Suite 1020
CITY	Alexandria
STATE	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22314
PHONE	703-684-1470
FAX	703-684-1460
EMAIL ADDRESS	dmcauley@brundidge-stanger.com;cbrundidge@brundidge-stanger.com; bsears@brundidge-stanger.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Carl I. Brundidge/
SIGNATORY'S NAME	Carl I. Brundidge
SIGNATORY'S POSITION	Attorney of Record (DC)
DATE SIGNED	09/19/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 86069735

Filing Date: 09/19/2013

To the Commissioner for Trademarks:

MARK: Napster.fm (Standard Characters, see [mark](#))

The literal element of the mark consists of Napster.fm.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Ryan Lester, a citizen of United States, having an address of
2041 Gallows Tree Ct.
Vienna, Virginia 22182
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 038: 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.

In International Class 038, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 03/25/2012, and first used in commerce at least as early as 11/29/2012, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) webpage screenshot.

[Specimen File 1](#)

For informational purposes only, applicant's website address is: www.napster.fm

The applicant's current Attorney Information:

Carl I Brundidge and Deidre McAuley of Brundidge and Stanger PLC
2318 Mill Road, Suite 1020
Alexandria, Virginia 22314
United States

The attorney docket/reference number is 2868TM.870BS.

The applicant's current Correspondence Information:

Carl I Brundidge

Brundidge and Stanger PLC

2318 Mill Road, Suite 1020

Alexandria, Virginia 22314

703-684-1470(phone)

703-684-1460(fax)

dmcauley@brundidge-stanger.com;cbrundidge@brundidge-stanger.com; bsears@brundidge-stanger.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Carl I. Brundidge/ Date: 09/19/2013

Signatory's Name: Carl I. Brundidge

Signatory's Position: Attorney of Record (DC)

RAM Sale Number: 86069735

RAM Accounting Date: 09/20/2013

Serial Number: 86069735

Internet Transmission Date: Thu Sep 19 18:39:28 EDT 2013

TEAS Stamp: USPTO/BAS-70.108.249.114-201309191839284

59804-86069735-500b5abb0b8a647ba35e94228

32926c16c28444d0dc8e3bde2cf714462f1db495

3-CC-5898-20130919180332225447

Napster.fm

Napster.fm

Napster reimagined for the modern Web

A few features that make Napster.fm better than Napster OG:

Real-time syncing

Every one of your open Napster.fm windows – anywhere in the world – will keep their players synced

Alternatively, you can choose to sync with any other user and listen in on their music

[Open source](#)

If Napster.fm were ever abandoned or shut down, the community could immediately rehost it

Web-based (exclusively, for now)

Your music collection travels with you

You won't get arrested

[Learn more »](#) (or just start using it now)

EXHIBIT G

To: NAPSTER.FM LLC (dmcauley@brundidge-stanger.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86069735 - NAPSTER.FM - 2868TM.870BS

Sent: 1/7/2014 6:47:24 PM

Sent As: ECOM113@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86069735

MARK: NAPSTER.FM

86069735

CORRESPONDENT ADDRESS:

CARL I BRUNDIDGE

BRUNDIDGE AND STANGER PLC

2318 MILL RD STE 1020

ALEXANDRIA, VA 22314-6834

CLICK HERE TO RESPOND TO

<http://www.uspto.gov/trademarks/teas/r>

APPLICANT: NAPSTER.FM LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

2868TM.870BS

CORRESPONDENT E-MAIL ADDRESS:

dmcauley@brundidge-stanger.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 1/7/2014

OPEN APPLICATION ISSUES THAT MUST BE ADDRESSED IN RESPONSE TO OFFICE ACTION:

The following are the open application issues that the applicant must address in order to have a complete response to this Office action:

-Refusal to Register Under Section 2(d) of the Trademark Act –Likelihood of Confusion

-Suspension Advisory

-Requirement for Submission of an Acceptable Specimen of Use

The assigned trademark attorney has reviewed the referenced application and has determined the following:

Refusal to Register Under Section 2(d) of the Trademark Act –Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in **U.S. Registration Nos. 2841431, 2843405, 2843786, 3054773 and 3309551**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* All of the cited prior registrations are owned by Rhapsody International Incorporated. *See* the enclosed registrations.

Registration Number 2841431 is NAPSTER for:

“Computer software for the transmission of audio, graphics, text, and data over communications networks; computer software for the streaming transmission of audio, video, graphics, text and data over communication networks; computer software for storage of audio, video, graphics, text and data on communications networks users; computer software for secure, encrypted electronic transfer of audio, video, graphics and data over communications networks” and “Licensing of intellectual property; Computer services, namely, providing customized webpages featuring user-defined information, which includes search engines and online web links to news, weather, current events, reference materials and customized e-mail messages all in a wide ranges of user-defined fields; Computer services, namely, providing search engines for obtaining data via electronic communications network.”

Registration Number 2843405 is NAPSTER plus design for:

“Computer software for the transmission of audio, graphics, text and data over communications networks; Computer software for the streaming transmission of audio, graphics, text and data over communications networks; Computer storage to enable communications among computer or communications network users; Computer software for secure, encrypted electronic transfer of audio, video, graphics and data over communications networks,” “Transmission of audio and video files via communications networks;

Providing electronic bulletin boards, chat rooms and community for the transmission of messages among users concerning music, news, current events, entertainment and arts and leisure” and “Providing databases and directories in the fields of music, video, radio, news, games, cultural events, entertainment and arts and leisure via communications networks; Music publishing services; Publishing of text, graphic, audio and video works via communication networks; Matching users for the transfer and sharing of music, video and audio recordings via communications networks,”

Registration Number 2843786 is NAPSTER for:

“Electronic transmission of audio and video files via communications networks; providing electronic bulletin boards; chat rooms and community for a transmission of messages among users concerning music, news, current events, entertainment and arts and leisure;” and “Providing databases and directories in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, news, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; matching users for the transfer of music, video, and audio recordings via communications networks.”

Registration Number 3054773 is NAPSTER for: “computer software for use in organizing, transmitting, manipulating, and reviewing audio, video, and data files on portable and handheld digital electronic devices.”

Registration Number 3309551 NAPSTERLINKS for: “Computer software, namely, computer software to enable the transmission of audio, graphics, text, and data over communications networks; computer software for the streaming transmission of audio, video, graphics, text and data over communication networks via hyperlinks.”

The mark sought in this application is NAPSTER.FM for:

“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.”

In any likelihood of confusion determination, two key considerations are similarity of the marks and

similarity or relatedness of the goods and/or services. *Syndicat Des Proprietaires Viticulteurs De Chateauf-neuf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression.

In re Viterra Inc., 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Comparison of the Marks

Cited Registration Numbers 2841431 [NAPSTER], 2843786 [NAPSTER] & 3054773 [NAPSTER]

The marks at issue are nearly identical, with all of the marks at issue sharing the identically spelled wording NAPSTER. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. See *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

Attached to this Office action are pages from the online reference resource Wikipedia.org that shows the wording “.FM” is a Top Level Domain (“TLD”) whose significance is merely descriptive, indicating that the applicant’s identified services are provided via an online presence. It is well-established Trademark Law that the addition of TLDs is insufficient to differentiate marks in determining a likelihood of confusion analysis under Section 2(d). Top-level domains (TLDs), such as “.com” and “.net” (or “.fm” as in this case) are generic locators for Internet website addresses and provide no meaningful source-identifying significance. See *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1055, 50 USPQ2d 1545, 1558 (9th Cir. 1999); TMEP §§1215.02, 1215.09; cf. *In re Hotels.com, L.P.*, 573 F.3d 1300, 1301, 1304, 91 USPQ2d 1532, 1533, 1535 (Fed. Cir. 2009). Thus, a TLD is less significant in creating a commercial impression in the minds of consumers, and is generally given little weight when comparing marks. See TMEP §1215.09.

Registration Serial Number 2843405 [NAPSTER + design]

As discussed above, the marks at issue share the identical dominant wording NAPSTER and the applicant’s proposal to add the TLD “.FM” is non-distinctive, thus is insufficient to differentiate the

marks at issue here.

Additionally, the registrant's use of the design elements in the cited registration is insufficient to differentiate the nearly identical marks here. The word portions of the marks are nearly identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

Although marks must be compared in their entireties, the word portion is generally considered the dominant and most significant feature of a mark because consumers will request the goods and/or services using the wording. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010). For this reason, greater weight is often given to the word portion of marks when determining whether marks are confusingly similar. *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)); TMEP §1207.01(c)(ii).

Registration Serial Number 3309551[NAPSTERLINKS]

The applicant's proposal to substitute the non-distinctive wording "LINKS" used in the cited registration with the equally non-distinctive wording ".FM" is insufficient to differentiate the otherwise identical marks at issue here.

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The nearly identical sound, appearance and commercial meaning shared by the marks at issue combine to create an overall confusingly similar commercial impression that is shared by the marks in this case.

Comparison of the Goods and Services

Services Comparison for Registration Numbers 2843405 & 2843786

The registrant has broadly recited its services as the “transmission of audio and video files via communications network.” The scope of the registrant’s broadly-worded identification encompasses *all methods of* transmission of audio and video, including the applicant’s more narrowly listed “audio and video broadcasting” and “streaming of” audio services.”

The registrant has also broadly listed its services as “Providing ...chat rooms ...for the transmission of messages among users concerning music, news, current events, entertainment, arts and leisure.” The “chat room ...transmission of messages concerning music” language encompasses the more narrowly listed chat messages regarding “audio and video playlists” listed in the application. ***Accordingly, these services legally identical in this case.***

With respect to applicant’s and registrant’s services, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Absent restrictions in an application and/or registration, the identified services are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Additionally, unrestricted and broad identifications are presumed to encompass all services of the type described. *See In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identification set forth in the application and registration has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these services travel in all normal channels of trade, and are available to the same class of purchasers. Further, the registration uses broad wording to describe the services and this wording is presumed to encompass all services of the type described, including those in applicant’s more narrow identification.

Goods/Services Comparison for Registration Serial Numbers 2841431, 3054773 & 3309551

All of the cited registrations list their goods as “Computer software for the transmission of audio,

graphics, text and data over communications networks” and “Computer software for the streaming transmission of audio, video, graphics, text and data over communication networks;

Computer software for the secure, encrypted electronic transfer of audio, video, graphics and data over communications networks” are used in support of the type of audio and video broadcasting and streaming services recited in this application.

Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. TMEP §1207.01(a)(ii); *see In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (holding BIGG’S for retail grocery and general merchandise store services likely to be confused with BIGGS for furniture); *In re United Serv. Distributions, Inc.*, 229 USPQ 237 (TTAB 1986) (holding design for distributorship services in the field of health and beauty aids likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (holding 21 CLUB for various items of men’s, boys’, girls’ and women’s clothing likely to be confused with THE “21” CLUB (stylized) for restaurant services and towels); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (holding CAREER IMAGE (stylized) for retail women’s clothing store services and clothing likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (holding STEELCARE INC. for refinishing of furniture, office furniture, and machinery likely to be confused with STEELCASE for office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (holding similar marks for trucking services and on motor trucks and buses likely to cause confusion).

Additionally, the software goods recited in the registrations are the type of goods that are used in support of and to enable the delivery of the type of services identified in this application, making the goods and services closely related in this case.

A likelihood of confusion results when the confusingly similar marks are used in the market for the legally identical services and closely related goods and services at issue here. Accordingly, registration of the mark sought in this application is hereby refused under Section 2(d) of the Trademark Act in this case. Applicant should note the following ground for suspension.

Search and Suspension Advisory –One Earlier-Filed Pending Application

Information regarding pending Application Serial No. 78431602 is enclosed, this listed owner of this earlier-filed application is Rhapsody International Incorporated. The filing date of the referenced application precedes applicant’s filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point. Although applicant's mark has been refused registration, applicant may respond to the Refusals to Register Under Section 2(d) of the Trademark Act and Suspension Advisory by submitting evidence and arguments in support of registration. The applicant must respond to the requirements set forth below.

Requirement for Submission of an Acceptable Specimen of Use

Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the services specified in the application. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Specifically, the applicant describes the specimen of record as a "webpage screenshot." The specimen of record consists of advertising for what appears to be a hosted peer-to-peer audio and and/or video digital content sharing portal. The specimen of record shows no description of any type of services, but does show the applicant stating that it provides "real-time synching" of the users' digital content and that the users' "music collection travels with you."

The applicant has identified its services as audio broadcasting, subscription audio and video broadcasting, webcasting and chat rooms. There is nothing in the specimen of record that would show any type of association between the identified services and the proposed mark. Thus registration is refused because the specimen does not show a direct association between the applied-for mark and the identified services; thus the specimen fails to show the applied-for mark in use in commerce. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Specimens consisting of advertising or promotional materials generally must show a direct association between the mark and the services for which registration is sought. See *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ 456, 457 (C.C.P.A. 1973); *In re HSB Solomon Assocs.*, 102 USPQ2d 1269, 1274 (TTAB 2012); TMEP §1301.04(b). While the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the service. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)); see *In re Osmotica Holdings, Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for services may include advertising and marketing materials, brochures, photographs of business signage and billboards, and website printouts that show the mark used in the actual sale, rendering, or advertising of the services. See TMEP §§1301.04 et seq.

Applicant may respond to this refusal by satisfying one of the following:

- (1) Submit a different specimen (a verified “substitute” specimen) that (a) Was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) Shows the mark in actual use in commerce for the services identified in the application.

- (2) Amend the filing basis to intent to use under Section 1(b), for which no specimen is required. This option will later necessitate additional fee and filing requirements such as providing a specimen at a subsequent date.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

If applicant has any questions about its application or needs assistance in responding to this Office Action please telephone the assigned trademark examining attorney directly at the number listed below.

/Amy C. Kean/

Trademark Attorney, Law Office 113

U.S. Patent & Trademark Office

Amy.Kean@USPTO.gov

Phone: 571-272-8854

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online

forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Jan 7, 2014

76137325

DESIGN MARK

Serial Number

76137325

Status

REGISTERED

Word Mark

NAPSTER

Standard Character Mark

No

Registration Number

2843405

Date Registered

2004/05/18

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: [COMPUTER SOFTWARE TO ENABLE PEER-TO-PEER NETWORKING AND FILE SHARING; SEARCH ENGINE SOFTWARE;] COMPUTER SOFTWARE FOR THE TRANSMISSION OF AUDIO, GRAPHICS, TEXT, AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER SOFTWARE FOR THE STREAMING TRANSMISSION OF AUDIO, VIDEO, GRAPHICS, TEXT AND DATA OVER COMMUNICATIONS NETWORKS; COMPUTER STORAGE TO ENABLE COMMUNICATIONS AMONG COMPUTER OR COMMUNICATIONS NETWORK USERS; COMPUTER SOFTWARE FOR SECURE, ENCRYPTED ELECTRONIC TRANSFER OF AUDIO, VIDEO, GRAPHICS AND DATA OVER COMMUNICATIONS NETWORKS; [COMPUTER SOFTWARE FOR ENCRYPTION OF COMMUNICATIONS]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: LICENSING OF INTELLECTUAL PROPERTY; PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA COMMUNICATIONS NETWORK; [PROVIDING DATABASES AND DIRECTORIES VIA COMMUNICATIONS NETWORKS FOR OBTAINING DATA IN THE FIELD OF POLITICS

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76137325

AND GENERAL NEWS; INTERNET SERVICES, NAMELY, CREATING INDEXES OF INFORMATION, SITES AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, PROVIDING USERS OF COMMUNICATIONS NETWORKS WITH MEANS OF IDENTIFYING, LOCATING, GROUPING, DISTRIBUTING, AND MANAGING DATA AND LINKS TO THIRD-PARTY COMPUTER SERVERS, COMPUTER PROCESSORS AND COMPUTER USERS;] INTERNET SERVICES, NAMELY, SEARCHING, BROWSING AND RETRIEVING INFORMATION, SITES, AND OTHER RESOURCES AVAILABLE ON COMMUNICATIONS NETWORKS FOR OTHERS; INTERNET SERVICES, NAMELY, ORGANIZING CONTENT OF INFORMATION PROVIDED OVER A COMMUNICATIONS NETWORKS ACCORDING TO USER PREFERENCE. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: [BUSINESS CONSULTATION;] PRODUCT MERCHANDISING; LICENSING OF COMPUTER SOFTWARE; [DISSEMINATION OF ADVERTISING FOR OTHERS VIA COMMUNICATIONS NETWORKS;] RETAIL STORE SERVICES FEATURING ENTERTAINMENT PRODUCTS AND APPAREL; RETAIL STORE SERVICES PROVIDED VIA COMMUNICATIONS NETWORKS FEATURING ENTERTAINMENT PRODUCTS AND APPAREL. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE. IC 038. US 100 101 104. G & S: TRANSMISSION OF AUDIO AND VIDEO FILES VIA COMMUNICATIONS NETWORKS; PROVIDING ELECTRONIC BULLETIN BOARDS, CHAT ROOMS AND COMMUNITY FORA FOR THE TRANSMISSION OF MESSAGES AMONG USERS CONCERNING MUSIC, NEWS, CURRENT EVENTS, [POLITICS,] ENTERTAINMENT AND ARTS AND LEISURE; [TRANSMISSION OF PEER TO PEER NETWORKING AND FILE SHARING INFORMATION VIA COMMUNICATIONS NETWORKS; TELECOMMUNICATIONS SERVICES, NAMELY, PROVIDING ONLINE CHAT ROOMS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING GENERAL INTEREST TOPICS]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: PROVIDING DATABASES AND DIRECTORIES IN THE FIELDS OF MUSIC, VIDEO, RADIO, [TELEVISION,] NEWS, [SPORTS,] GAMES, CULTURAL EVENTS, ENTERTAINMENT, AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; PROVIDING INFORMATION, AUDIO, VIDEO, GRAPHICS, TEXT AND OTHER MULTIMEDIA CONTENT IN THE FIELDS OF MUSIC, VIDEO, RADIO, [TELEVISION, ENTERTAINMENT] NEWS, [SPORTS,] GAMES, CULTURAL EVENTS, ENTERTAINMENT AND ARTS AND LEISURE VIA COMMUNICATIONS NETWORKS; MUSIC PUBLISHING SERVICES; PUBLISHING OF TEXT, GRAPHIC, AUDIO AND VIDEO WORKS VIA COMMUNICATIONS NETWORKS; MATCHING USERS FOR THE TRANSFER AND SHARING OF MUSIC, VIDEO, AND AUDIO RECORDINGS VIA COMMUNICATIONS NETWORKS; [PROVIDING EDUCATIONAL SYMPOSIA VIA COMMUNICATIONS NETWORKS IN THE FIELDS OF MUSIC, VIDEO, ENTERTAINMENT, NEWS, POLITICS, AND ARTS AND LEISURE]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Colors Claimed

Color is not claimed as a feature of the mark.

Print: Jan 7, 2014

76137325

Filing Date

2000/09/27

Examining Attorney

BENZMILLER, ANDREW

Attorney of Record

Margaret C. McHugh



Print: Jan 7, 2014

78014821

DESIGN MARK

Serial Number

78014821

Status

REGISTERED

Word Mark

NAPSTER

Standard Character Mark

No

Registration Number

2843786

Date Registered

2004/05/18

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Licensing of intellectual property; providing search engines for obtaining data via communications networks; [providing databases and directories via communications networks for obtaining data in the fields of politics and general news]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: [Business consultation;] product merchandising; licensing of computer software and of entertainment products and services; [dissemination of advertising for others via communications networks;] retail store services featuring entertainment products and apparel; retail store services provided via communications networks featuring entertainment products and apparel. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

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78014821

Goods/Services

Class Status -- ACTIVE, IC 038, US 100 101 104, G & S: Electronic transmission of audio and video files via communications networks; providing electronic bulletin boards; chat rooms and community for a transmission of messages among users concerning music, news, current events, [politics,] entertainment and arts and leisure; [transmission of peer to peer networking and file sharing information via communications networks]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Goods/Services

Class Status -- ACTIVE, IC 041, US 100 101 107, G & S: Providing databases and directories in the fields of music, video, radio, [television,] news, [sports,] games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, [television,] news, [sports,] games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; matching users for the transfer of music, video, and audio recordings via communications networks; [providing educational symposia via communications networks in the fields of music, video, entertainment news, politics, and arts and leisure]. First Use: 2003/10/29. First Use In Commerce: 2003/10/29.

Filing Date

2000/06/28

Examining Attorney

BENZMILLER, ANDREW

Attorney of Record

Margaret C. McHugh

NAPSTER

Print: Jan 7, 2014

78039019

TYPED DRAWING

Serial Number

78039019

Status

REGISTERED

Word Mark

NAPSTER

Standard Character Mark

No

Registration Number

2841431

Date Registered

2004/05/11

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Name Change

BY ASSIGNMENT; BY ASSIGNMENT

Original Owner

NAPSTER, INC. CORPORATION REDWOOD CITY CALIFORNIA 94063

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
computer software for the transmission of audio, graphics, text, and
data over communications networks; computer software for the streaming
transmission of audio, video, graphics, text and data over
communication networks; computer software for storage of audio, video,
graphics, text and data on communications networks users; computer
software for secure, encrypted electronic transfer of audio, video,
graphics and data over communications networks [; computer software
for encryption for communications]. First Use: 2003/10/29. First
Use In Commerce: 2003/10/29.

Print: Jan 7, 2014

78039019

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: LICENSING OF INTELLECTUAL PROPERTY, [COMPUTER CONSULTATION; COMPUTER NETWORK DESIGN SERVICE OR OTHERS; COMPUTER SYSTEMS DESIGN AND ANALYSIS SERVICES FOR OTHERS, COMPUTER SOFTWARE DESIGN FOR OTHERS; COMPUTER SOFTWARE CONSULTATION;] COMPUTER SERVICES, namely, PROVIDING CUSTOMIZED WEBPAGES FEATURING USER-DEFINED INFORMATION, WHICH INCLUDES SEARCH ENGINES AND ONLINE WEB LINKS TO NEWS, WEATHER, [SPORTS,] CURRENT EVENTS, REFERENCE MATERIALS, AND CUSTOMIZED EMAIL MESSAGES, ALL IN A WIDE RANGE OF USER-DEFINED FIELDS; COMPUTER SERVICES, namely, PROVIDING SEARCH ENGINES FOR OBTAINING DATA VIA ELECTRONIC COMMUNICATIONS NETWORK. First Use: 2003/10/29, First Use In Commerce: 2003/10/29.

Filing Date

2000/12/12

Examining Attorney

SMIGA, HOWARD

Attorney of Record

Margaret C. McHugh

Print: Jan 7, 2014

78431602

DESIGN MARK

Serial Number

78431602

Status

THIRD EXTENSION - GRANTED

Word Mark

NAPSTER MOBILE

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

RHAPSODY INTERNATIONAL, INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer software for the transmission of audio, graphics, text, and
data over communications networks; computer software for the streaming
transmission of audio, video, graphics, text and data over
communication networks; computer software for storage of audio, video,
graphics, text and data on communications networks users; computer
software for secure, encrypted electronic transfer of audio, video,
graphics, text and data over communications networks; computer
software for encryption for communications.

Filing Date

2004/06/08

Examining Attorney

SOMERVILLE, ARETHA

Attorney of Record

Margaret C. McHugh

NAPSTER MOBILE

Print: Jan 7, 2014

78561228

DESIGN MARK

Serial Number

78561228

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

NAPSTER

Standard Character Mark

Yes

Registration Number

3054773

Date Registered

2006/01/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

RHAPSODY INTERNATIONAL INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: [Portable and handheld digital electronic devices for recording, organizing, transmitting, manipulating, and reviewing audio, video, and data files;] computer software for use in organizing, transmitting, manipulating, and reviewing audio, video, and data files on portable and handheld digital electronic devices. First Use: 2003/10/16. First Use In Commerce: 2003/10/16.

Prior Registration(s)

2841431;2843405;AND OTHERS

Filing Date

2005/02/04

Examining Attorney

CAIN, CATHERINE

Print: Jan 7, 2014

78561228

Attorney of Record
Margaret C. McHugh

NAPSTER

Print: Jan 7, 2014

78686105

DESIGN MARK

Serial Number

78686105

Status

SECTION 8-ACCEPTED

Word Mark

NAPSTER

Standard Character Mark

Yes

Registration Number

3055515

Date Registered

2006/01/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

RHAPSODY INTERNATIONAL INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Portable and handheld digital electronic devices for recording,
organizing, transmitting, manipulating, and reviewing text, data, and
audio files; computer software for use in organizing, transmitting,
manipulating, and reviewing text, data, and audio files on portable
and handheld digital electronic devices. First Use: 2003/10/19.
First Use In Commerce: 2003/10/19.

Prior Registration(s)

2841431;2843405;AND OTHERS

Filing Date

2005/08/04

Examining Attorney

CAIN, CATHERINE

Print: Jan 7, 2014

78686105

Attorney of Record
Margaret C. McHugh

NAPSTER

Print: Jan 7, 2014

78833373

DESIGN MARK

Serial Number

78833373

Status

REGISTERED

Word Mark

NAPSTERLINKS

Standard Character Mark

Yes

Registration Number

3309551

Date Registered

2007/10/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

RHAPSODY INTERNATIONAL INC. CORPORATION DELAWARE 1420 FIFTH AVENUE,
SUITE 1500 SEATTLE WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer software, namely, computer software to enable the
transmission of audio, graphics, text, and data over communications
networks; computer software for the streaming transmission of audio,
video, graphics, text and data over communication networks via
hyperlinks. First Use: 2006/05/01. First Use In Commerce:
2006/05/01.

Prior Registration(s)

2575170;2843405;3080144;AND OTHERS

Filing Date

2006/03/09

Examining Attorney

BORSUK, ESTHER A.

Print: Jan 7, 2014

78833373

Attorney of Record
Margaret C. McHugh

NAPSTERLINKS

Print: Jan 7, 2014

85804778

DESIGN MARK

Serial Number

85804778

Status

OPPOSITION PENDING

Word Mark

NAPSTER

Standard Character Mark

Yes

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Rhapsody International Inc. CORPORATION DELAWARE 1420 5th Avenue,
Suite 1500 Seattle WASHINGTON 98101

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: 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.

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: 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.

Print: Jan 7, 2014

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Goods/Services

Class Status -- ACTIVE. IC 038. US 100 101 104. G & S: 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.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: 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.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: 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.

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Prior Registration(s)

2843405;2843786;3054773;AND OTHERS

Filing Date

2012/12/17

Examining Attorney

FAIRBANKS, RON

Attorney of Record

Margaret McHugh

NAPSTER



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.fm

From Wikipedia, the free encyclopedia



This article includes a list of references, related reading or external links, but **its sources remain unclear because it lacks inline citations**. Please improve this article by introducing more precise citations. *(January 2013)*

.fm is the **country code top-level domain** (ccTLD) for the **Federated States of Micronesia**, a group of islands located in the **Pacific Ocean**.

Except for reserved names like *.com.fm*, *.net.fm*, *.org.fm* and others, any person in the world can register a *.fm* domain for a fee, much of the income from which goes to the government and people of the islands. The domain name is popular (and thus economically valuable) for **FM radio stations** and **streaming audio** websites (other similar ccTLDs are *.am*, *.tv*, *.cd*, *.dj* and *.mu*); a notable example is *Last.fm*, a social music website.

Social media use [edit]

The *.fm* domain extension has also been used by various companies outside of the audio streaming industry or the **Federated States of Micronesia**. Examples include:

- *Ping.fm*, centralized tool for users to manage social media
- *FastMail.FM*, email provider
- *Last.fm*, Internet radio streaming and statistics service
- *Smart.fm*, online education tool
- *Tastebuds.fm*, dating website for music fans
- *Turntable.fm*, social media site for interactively sharing music
- *Ask.fm*, a website through which people ask and answer questions.
- *favstar.fm*, a website listing people's most favorited and retweeted twitter posts.
- *clarity.fm*, a website providing on demand advice from proven entrepreneurs.

Many **commercial radio** stations also use the domain extension.

.fm



Introduced	1995
TLD type	Country code top-level domain
Status	Active
Registry	dotFM (BRS Media Inc.)
Sponsor	FSM Telecommunications Corporation
Intended use	Entities connected with Federated States of Micronesia
Actual use	Much use related to FM radio; little related to FSM
Registration restrictions	None
Structure	Registrations are available directly at second level
Website	dotFM

- Чӕвашна
- Čeština
- Cymraeg
- Dansk
- Deutsch
- Eesti
- Ελληνικά
- Español
- Esperanto
- Euskara
- فارسی
- Føroyskt
- Français
- Galego
- Халыг
- 한국어
- Հայերեն
- Hrvatski
- বিক্ৰমিয়া মণিপুরী
- Bahasa Indonesia
- Ирон
- Íslenska
- Italiano
- עברית
- Къарачай-малкъар
- ქართული
- Latviešu
- Lëtzebuergesch
- Magyar
- Македонски
- مصرى
- Bahasa Melayu
- Nederlands
- 日本語
- Нохчийн

many commercial radio stations also use the domain extension.

External links [edit]

- IANA .fm whois information
- dotFM, the domain registrar for .fm names

V·T·E	Country code top-level domains	[hide]
	ISO 3166-1	[hide]
<p>A .ac .ad .ae .af .ag .ai .al .am .ao .aq .ar .as .at .au .aw .ax .az B .ba .bb .bd .be .bf .bg .bh .bi .bj .bm .bn .bo .br .bs .bt .bw .by .bz C .ca .cc .cd .cf .cg .ch .ci .ck .cl .cm .cn .co .cr .cu .cv .cw .cx .cy .cz D .de .dj .dk .dm .do .dz E .ec .ee .eg .er .es .et .eu F .fi .fj .fk .fm .fo .fr G .ga .gd .ge .gf .gg .gh .gi .gl .gm .gn .gp .gq .gr .gs .gt .gu .gw .gy H .hk .hm .hn .hr .ht .hu I .id .ie .il .im .in .io .iq .ir .is .it J .je .jm .jo .jp K .ke .kg .kh .ki .km .kn .kp .kr .kw .ky .kz L .la .lb .lc .li .lk .lr .ls .lt .lu .lv .ly M .ma .mc .md .me .mg .mh .mk .ml .mm .mn .mo .mp .mq .mr .ms .mt .mu .mv .mw .mx .my .mz N .na .nc .ne .nf .ng .ni .nl .no .np .nr .nu .nz O .om P .pa .pe .pf .pg .ph .pk .pl .pm .pn .pr .ps .pt .pw .py Q .qa R .re .ro .rs .ru .rw S .sa .sb .sc .sd .se .sg .sh .si .sk .sl .sm .sn .so .sr .ss .st .su .sv .sx .sy .sz T .tc .td .tf .tg .th .tj .tk .tl .tm .tn .to .tr .tt .tv .tw .tz U .ua .ug .uk .us .uy .uz V .va .vc .ve .vg .vi .vn .vu W .wf .ws Y .ye .yt Z .za .zm .zw</p>		
	Internationalized (IDN) ccTLD	[show]
	Proposed ccTLDs	[show]
	Others	[show]
See also Generic top-level domains		

Categories: [Country code top-level domains](#) | [Communications in the Federated States of Micronesia](#) | [Domain hacks](#)

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[Edit links](#)

To: NAPSTER.FM LLC (dmcauley@brundidge-stanger.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86069735 - NAPSTER.FM - 2868TM.870BS
Sent: 1/7/2014 6:47:25 PM
Sent As: ECOM113@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **1/7/2014** FOR U.S. APPLICATION SERIAL NO. 86069735

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **1/7/2014** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

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From: ECF-CAND@cand.uscourts.gov
To: efiling@cand.uscourts.gov
Subject: Activity in Case 3:13-cv-05489-CRB Rhapsody International Inc. v. Lester Amended Complaint
Date: Friday, January 24, 2014 4:47:03 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Boroumand Smith, Mehrnaz on 1/24/2014 at 4:45 PM PST and filed on 1/24/2014

Case Name: Rhapsody International Inc. v. Lester
Case Number: [3:13-cv-05489-CRB](#)
Filer: Rhapsody International Inc.
Document Number: [21](#)

Docket Text:

AMENDED COMPLAINT against Ryan Lester and NAPSTER.FM, LLC against Ryan Lester. Filed by Rhapsody International Inc.. (Attachments: # (1) Exhibit A - Registrations, # (2) Exhibit B - Use of Napster.fm, # (3) Exhibit C - Rhapsody ltr, # (4) Exhibit D - Lester email response, # (5) Exhibit E - Brundidge ltr, # (6) Exhibit F - Lester Application, # (7) Exhibit G - Napster fm Office Action)(Boroumand Smith, Mehrnaz) (Filed on 1/24/2014)

3:13-cv-05489-CRB Notice has been electronically mailed to:

Carl I. Brundidge cbrundidge@brundidge-stanger.com, dmcauley@brundidge-stanger.com

Deidre L McAuley dmcauley@brundidge-stanger.com

Gia L. Cincone gcincone@kilpatricktownsend.com, ltan@kilpatricktownsend.com

Joseph Alvin Sawyer , Jr sawyer@sawyerlawgroup.com

Mehrnaz Boroumand Smith mboroumand@kilpatricktownsend.com,

ecasillas@kilpatricktownsend.com

3:13-cv-05489-CRB Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\First Amended Complaint.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-0] [68a2befe2e4829fcd7fc5895482d4a12bb1894d8d76a57a8cbc158a0052044197b26cb4646a05744d98b7ca423e80c8725ef078c8bf8ecb9d80ec771fd44f380]]

Document description:Exhibit A - Registrations

Original filename:C:\fakepath\Ex. A - Registrations.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-1] [885a6ba70baf3fcb937cc64b9c8e963e6cde6ba4270cabad98344b1c0dc43619b8b1e0425374453fc735e42ee1a7cd5e892b6df6738e8f9662f3d0284506bcc]]

Document description:Exhibit B - Use of Napster.fm

Original filename:C:\fakepath\Ex. B - Use of Napster.fm.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-2] [1f4ba3fdfd13254bbae061e1e81fab65aad0038ae57217fb861c496ac845db10b2dd27cdb29a1f077eb7aea436b310d307536fb294d5cedae770c5325f9aa5c]]

Document description:Exhibit C - Rhapsody ltr

Original filename:C:\fakepath\Ex. C Rhapsody ltr.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-3] [6615d39e0128abc48ac264e0cae473dc2ce1972d7d2ead979ac66964b9dc39b60aed0a9f778580c94f372d56c3aa032a63791e6ba263fbca6eb41dfc75b1bdd]]

Document description:Exhibit D - Lester email response

Original filename:C:\fakepath\Ex. D - Lester email response.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-4] [06fb52de03f30b6f6e2d70578afd1475410aef535c1484150164ae9ec3f81a2649b70a6234783a148518e81238cfec9333e651060ebdb1916c06c71ee4232f]]

Document description:Exhibit E - Brundidge ltr

Original filename:C:\fakepath\Ex. E - Brundidge ltr.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-5] [9d6d6b787c7d4178c00d641fe40498e9da5c7d5f1c45283e125b75d1c4cbad3245ee312edbdb0268e2ff689f297f8e77bc0b93982bb56da82a7ef5c52a21cb2e]]

Document description:Exhibit F - Lester Application

Original filename:C:\fakepath\Ex. F - Lester Application.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-6] [61b9dc58d5e3a90a32c76686b904cfb9ca1d1a0635873146693b073c4fff8e1de3f80910a74c1ea247451e6d0f6a2638616fdc943311293c46079d1a20fcd3aa]]

Document description:Exhibit G - Napster fm Office Action

Original filename:C:\fakepath\Ex. G - Napster fm Office Action.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/24/2014] [FileNumber=10341536-7]

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