

ESTTA Tracking number: **ESTTA585684**

Filing date: **02/05/2014**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Skullcandy, Inc.
Granted to Date of previous extension	02/05/2014
Address	1441 Ute Blvd.Suite 250 Park City, UT 84098 UNITED STATES

Attorney information	Andrew J. Avsec BRINKS GILSON & LIONE P.O. Box 10395 Chicago, IL 60610 UNITED STATES officeactions@brinksgilson.com, aavsec@brinksgilson.com, cdolan@brinksgilson.com, rrios@brinksgilson.com
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Applicant Information

Application No	85884443	Publication date	10/08/2013
Opposition Filing Date	02/05/2014	Opposition Period Ends	02/05/2014
Applicant	Subjekt LLC 1900 Avenue of the Stars, 25th Floor Los Angeles, CA 900674301 CANADA		

Goods/Services Affected by Opposition

Class 009. First Use: 2009/03/09 First Use In Commerce: 2009/03/09 All goods and services in the class are opposed, namely: Headphones; Audio headphones; Headphones including attached lanyard; Personal headphones for sound transmitting apparatuses; Personal headphones for use with sound transmitting systems; Stereo headphones; Earphones; Audio earphones; Earphones including attached lanyard; Personalearphones for use with sound transmitting systems; Stereo earphones; Protectivecovers and cases for cell phones, tablet computers and media players

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3168754	Application Date	02/07/2006
Registration Date	11/07/2006	Foreign Priority	NONE

		Date	
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/01/12 First Use In Commerce: 2003/01/12 Devices for hands-free use of mobile phones; Digital audio players; Digital phones; Earphones; Headphones; MP3 players; Portable listening devices, namely, MP3players; Portable media players; Protective helmets; Protective helmets for sports; Sports helmets		

Attachments	Subjekt - Notice of Opp.pdf(125842 bytes) 78809362#TMSN.jpeg(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Andrew J. Avsec/
Name	Andrew J. Avsec
Date	02/05/2014

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

<p>Skullcandy, Inc.,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>Subjekt LLC,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No.: _____</p> <p>Mark: Design Only U.S. Serial No.: 85/884,443</p>
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NOTICE OF OPPOSITION

Opposer, Skullcandy, Inc. (“Opposer”), a Delaware corporation with its principal place of business at 441 Ute Blvd. Park City, Suite 250, Utah 84098, believes that it will be damaged by registration of the design mark that is the subject of United States Trademark Application Serial No. 85/884,443 (“Opposed Mark”), filed in the name of Subjekt LLC (“Applicant”), a California Limited Liability Company, with an address of 1900 Avenue of the Stars, 25th Floor, Los Angeles, California 90067-4301, and therefore, hereby opposes such registration of the application pursuant to 15 U.S.C. § 1063. In support of its opposition, Opposer states as follows:

1. Since prior to Applicant’s filing date and Applicant’s alleged first use date of the Opposed Mark, Opposer has continuously and extensively used, in interstate commerce throughout the United States, the Skull Design mark pictured below (“Skull Design Mark”) on and in connection with the advertising, promotion, offer and sale of various goods and services, including without limitation headsets, headphones, ear buds, earphones, portable speakers, and portable listening devices (“Opposer’s Goods”):



2. Opposer has invested considerable money, time and effort into the use, advertising, and promotion of the Skull Design Mark for use in connection with Opposer's Goods. As a result of Opposer's extensive investment in the Skull Design Mark, Opposer owns strong common law rights in the Skull Design Mark, embodying very valuable goodwill, and the Skull Design Mark has become well-known in the United States.

3. In addition to its common law rights, Opposer owns, among others, the following federal trademark registration for the Skull Design Mark:

Mark	Reg. No.	Reg. Date	Goods
	3,168,754	November 07, 2006	Class 9: Devices for hands-free use of mobile phones; Earphones; Headphones

4. A copy of the certificate of registration for Registration No. 3,168,754 is attached as Exhibit A. This federal registration is valid, subsisting and in full force and effect.

Registration No. 3,168,754 is incontestable pursuant to 15 U.S.C. § 1065, and is conclusive evidence of the validity of the registered mark and of the registration of the mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the registered mark in commerce in connection with the goods referenced in the registration.

5. Notwithstanding Opposer's prior rights in and to the Skull Design Mark, Applicant filed, on March 22, 2013, an application to register the design mark for "Headphones;

Audio headphones; Headphones including attached lanyard; Personal headphones for sound transmitting apparatuses; Personal headphones for use with sound transmitting systems; Stereo headphones; Earphones; Audio earphones; Earphones including attached lanyard; Personal earphones for use with sound transmitting systems; Stereo earphones; Protective covers and cases for cell phones, tablet computers and media players” in Class 9. The Opposed Mark appears as follows on the specimen of use that Applicant submitted in connection with App. Serial No. 85/884,443 on March 22, 2013:



6. The Opposed Mark is confusingly similar, in appearance and commercial impression, to Opposer’s Skull Design Mark. The registration and use of the Opposed Mark by Applicant in association with the claimed goods is likely to cause confusion as to the source or origin of Applicant’s goods, and is likely to mislead consumers, all to Opposer’s damage.

7. The goods that Opposer provides under the Skull Design Mark, and the goods for which the Skull Design Mark is registered, are identical and, at a minimum, closely related, to the goods listed in Application Serial No. 85/884,443. Upon information and belief, Opposer’s Goods and Applicant’s applied-for goods are offered to similar or overlapping classes of purchasers.

8. The Opposed Mark, when used in connection with Applicant's applied-for goods, is likely to cause confusion, to cause mistake, and to deceive the trade and public, who, upon seeing the Opposed Mark in connection with Applicant's applied-for goods, would believe that such goods originate with, are approved, sponsored or endorsed by, or have some connection or affiliation with Opposer. Accordingly, registration of the Opposed Mark would damage Opposer, and registration, therefore, should be refused pursuant to Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes that it will be damaged by registration of the mark which is the subject of United States Trademark Application Serial No. 85/884,443 and therefore, respectfully requests that such registration be refused.

The Director hereby is authorized to charge the filing fee for this Notice of Opposition to Deposit Account No. 23-1925.

Respectfully submitted,

Skullcandy, Inc.

Dated: 2/5/2014

By: /Andrew J. Avsec/

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Attorneys for Opposer

EXHIBIT A

Int. Cl.: 9

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

Reg. No. 3,168,754

United States Patent and Trademark Office

Registered Nov. 7, 2006

**TRADEMARK
PRINCIPAL REGISTER**



SKULLCANDY, INC. (UTAH CORPORATION)
SUITE 301
1910 PROSPECTOR AVENUE
PARK CITY, UT 84060

FOR: DEVICES FOR HANDS-FREE USE OF MOBILE PHONES; DIGITAL AUDIO PLAYERS; DIGITAL PHONES; EARPHONES; HEADPHONES; MP3 PLAYERS; PORTABLE LISTENING DEVICES, NAMELY, MP3 PLAYERS; PORTABLE MEDIA

PLAYERS; PROTECTIVE HELMETS; PROTECTIVE HELMETS FOR SPORTS; SPORTS HELMETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-12-2003; IN COMMERCE 1-12-2003.

SER. NO. 78-809,362, FILED 2-7-2006.

JERI J. FICKES, EXAMINING ATTORNEY

