ESTTA Tracking number: **ESTTA715662**
Filing date: **12/18/2015**

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

Proceeding	91216808
Party	Plaintiff Auratone LLC
Correspondence Address	ANNE W. HULECKI SUFFOLK UNIVERSITY LAW SCHOOL 120 TREMONT STREET BOSTON, MA 02108 UNITED STATES ahulecki@suffolk.edu
Submission	Other Motions/Papers
Filer's Name	Anne W. Hulecki
Filer's e-mail	ahulecki@suffolk.edu
Signature	/Anne W. Hulecki/
Date	12/18/2015
Attachments	OPPOSER AURATONE MEMORANDUM OF OPPOSITION TO D MOTION FOR SJ.pdf(3668322 bytes)

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

Auratone LLC, Opposer,	)	Opposition No. 91216808
v.	)	Application Serial No. 85647325
MUSIC Group IP Ltd., Applicant.	)	

OPPOSER AURATONE'S MEMORANDUM OF OPPOSITION TO APPLICANT MUSIC GROUP IP LTD'S MOTION FOR SUMMARY JUDGMENT

Anne W. Hulecki
ahulecki@suffolk.edu
Suffolk University Law School
Intellectual Property & Entrepreneurship Clinic
120 Tremont Street
Boston, MA 02108
Telephone (617) 305-1641
Facsimile (617) 742-2139

Attorneys for Opposer
Auratone LLC

Table of Contents

I. INTRODUCTION AND SUMMARY OF ARGUMENT 5

II. SUMMARY OF PROCEEDINGS 5

III. STANDARD FOR SUMMARY JUDGMENT 6

IV AURATONE'S STATEMENT OF FACTS AND RESPONSE TO MUSIC GROUP'S STATEMENT OF FACTS. 7

A. Auratone Statement of Material Facts 7

B. Auratone has Raised Genuine Issues of Material Fact which Music Group Disputes 9

C. Music Group has Ignored Evidence of Continuing Use of AURATONE Trademark 10

D. Music Group Relies on Irrelevant Statements Related to Actual Sales 12

E. Auratone is the Successor-in-Interest of a Family-Run Business 12

F. Auratone Never Abandoned the AURATONE Mark, Despite Extenuating Business Circumstances 13

G. Auratone Never Abandoned the AURATONE Mark and Evidence Supports Intent to Continue AURATONE Business 14

H. Auratone has Raised Genuine Issues of Material fact that its mark, AURATONE, was Not Abandoned, was a Well-Known and Famous Mark, and Continues to be Used in Commerce. 16

I. Auratone Will Present Further Evidence of Material Issues of Fact for Trial 17

V ARGUMENTS 17

A Auratone has Not Abandoned the AURATONE mark. 17

1. Summary Judgment is Inappropriate Because Music Group Disputes Auratone's Facts of Non-Abandonment 17

2. Music Group Misstates the Standard Required to Prove Abandonment 18

3. Auratone Disputes Music Group's Claims and Shows it Used its AURATONE mark Continuously in Commerce 18

4. There is No Prima Facie Evidence of Abandonment of the AURATONE Mark by Auratone 20

5. The Record Shows Abundant Evidence of Intent to Maintain and/or Resume Use of AURATONE mark 21

B. The AURATONE mark is a Famous Mark 23

C. The AURATONE mark has Residual Goodwill 24

D. Auratone has Priority for the AURATONE mark 24

VI. CONCLUSION 25

TABLE OF AUTHORITIES

Cases

A.C. Aukerman Co. v. R.L. Chaides Constr. Co.,
960 F.2d 1020, 1038-39, 22 U.S.P.Q.2d 1321, 1333 (Fed. Cir. 1992) 6

Anderson v. Liberty Lobby,
477 U.S. 242, 261 (1986) 6, 18

Carter Wallace v. Proctor & Gamble Co.,
434 f. 2d 794, 804, 167 U.S.P.Q 713 (9th Cir 1970) 20

Celotex Corp v. Catrett,
477 U.S. 317, 322-23 (1986) 6

Copelands' Enterprises, Inc., v. CNV, Inc.,
945 F2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991 22

Daybrook-Ottawa Corp v. F.A.B. Mfg. Co.,
152 U.S.P.Q. 441 (T.T.A.B. 1966) 19

Defiance Button Machine v. C&C Metal Prods. Corps.,
759 F. 2d 1053 (2nd Cir. 1985) 24

Emergency One v. American FireEagle Ltd.,
228 F.3d 531, 56 U.S.P.Q 2d 1343 (4th Cir. 2000) 21, 22

Giant Food, Inc. v. Standard Terry Mills, Inc.,
229 USPQ 955, 962 (TTAB 1986) 22

Glow Indus. v. Lopez,
273 F.Supp.2d 1095, 1106 (C.D. Cal. 2003) 6

H. Marvin Ginn Corp v. Int'l Ass'n of Fire Chiefs, Inc.,
782 F.2d 987, 989-90, 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986) 6
Hamilton v. Keyston Tankship Corp.,
539 F.2d 684, 686 (9th Cir. 1976) 7
In re Sones,
590 F.3d 1282, 93 U.S.P.Q.2d 1118 (Fed. Cir. 2009) 20
Lloyd's Food Prods. Inc. v. Eli's Inc.,
987 F.2d 766, 767, 25 U.S.P.Q.2d 2027, 2029 (Fed. Cir. 1993) 7, 17
Meyers v. Brooks Shoe Inc.,
912 F.2d 1459, 1461, 16 U.S.P.Q.2d 1055, 1056 (Fed. Cir. 1990) 6
Old Tyme Food Inc. v. Roundy's Inc.,
961 F.2d 200, 2002, 22 U.S.P.Q.2d 1542, 1544 (Fed. Cir. 1992) 7
Opryland USA Inc. v. Great Am. Music Show Inc.,
970 F.2d 847, 850, 23 U.S.P.Q.2d 1471, 1472-73 (Fed. Cir. 1992) 7, 18
Peter Lugar v. Silver Star Meats, Inc.,
63 U.S.P.Q. 2d 1555 (W.D. Pa. 2002) 24
Seidelman Yachts, Inc. v. Pace Yacht Corp.
13 U.S.P.Q. 2d 2025 (4th Cir. 1990) 23
T.W. Elect. Serve. v. Pacific Elec. Contractors Ass'n.,
809 F.2d. 626, 630-31 (9th Cir. 1978) 6, 18
Visa Int'l Serv. Ass'n v. Life-Code Sys., Inc.,
220 U.S.P.Q. 740, 742 (T.T.A.B. 1983) 7
Walters Gardens, Inc. v. Pride Of Place Plants, Inc.,
Opp'n No. 91153755, 2004 WL 1149499, at 6 (T.T.A.B. May 4, 2004) 6

Statutes, Regulations, Rules, and Treatises

15 U.S.C. §1127 ..... 18, 20
Fed. R. Civ. P. 56(c) 6, 17
Fed. R. Civ. P. 56(d) 17
Fed. R. Civ. P. 56(e) 6

2 *McCarthy on Trademarks and Unfair Competition* § 11:73 (4th ed.) 23

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Opposer, Auratone LLC, ("Auratone") presents this Memorandum of Opposition to Applicant Music Group IP LTD,'s Motion for Summary Judgment. Auratone's Memorandum is supported by evidence of triable issues of fact in dispute with regard to claims by Music Group IP LTD. ("Music Group") that Auratone abandoned its AURATONE trademark. The long-standing and well-known AURATONE trademark was not abandoned by Auratone or by its predecessors-in-interest. The AURATONE trademark has been owned and used by the same family business for three generations, in connection with its well-known audio equipment and speakers, which have been sold worldwide since 1959 and continue to be sold today. Auratone, the current company, and the preceding family business, established priority of use of its mark, AURATONE, well before Music Group's filing date of the identical mark for use with nearly identical goods. During the illness and death of the founder of the Auratone business, the registration for the AURATONE trademark lapsed unintentionally.

The heirs to the family business continued to use the AURATONE mark on their speaker products and to advertise the sale of the AURATONE speakers worldwide. Therefore, Auratone has superior rights over Music Group and Music Group does not have standing to register the mark. Music Group's Motion for Summary Judgment should be dismissed and its application for trademark registration of the identical mark, AURATONE, for use with similar goods, should be refused. Auratone has a reasonable basis to believe it will be seriously damaged by Music Group's registration of the same mark in connection with loudspeakers and similar products, because Auratone would be deprived of the right to use its well-established AURATONE brand in connection with its goods and services.

II. SUMMARY OF PROCEEDINGS

On June 8, 2012, Music Group filed an intent-to-use application for registration of the mark, AURATONE, for goods and services described as "Apparatus for recording, transmission, and reproduction of sound; apparatus for creating, processing, retrieval, and manipulation of sound, namely, speakers and loudspeakers; headphones." (Application Serial No. 85/647325.) On June 11, 2014, Auratone LLC filed a Notice of Opposition, based on priority of use, likelihood of confusion, deception, mistake, and a reasonable

basis for its belief that it will be seriously damaged by Music Group's registration of the mark, AURATONE. Discovery in this Opposition has since been stayed. (D.I. 15.)

III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is only appropriate where there is no genuine issue as to any material fact in dispute, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). The Board does not resolve issues of fact on summary judgment; it only determines whether a genuine issue exists. *Meyers v. Brooks Shoe Inc.*, 912 F.2d 1459, 1461; 16 U.S.P.Q.2d 1055, 1056 (Fed. Cir. 1990), overruled on other grounds by *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1038-39; 22 U.S.P.Q.2d 1321, 1333 (Fed. Cir. 1992).

To prevail on its motion, Music Group must establish there is no genuine issue of fact regarding the issues at hand by clear and convincing evidence. *See H. Marvin Ginn Corp v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90; 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986). Music Group is held to a "stringent standard," for summary judgment is "not a substitute for the trial of disputed issues of fact." *Walters Gardens, Inc. v. Pride Of Place Plants, Inc.*, Opp'n No. 91153755, 2004 WL 1149499, at 6 (T.T.A.B. May 4, 2004) (non-precedential).

The moving party bears the responsibility of informing the Board of "the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp v. Catrett*, 477 U.S. 317, 322-23 (1986). To determine whether any genuine factual dispute exists, the Board must look beyond the pleadings and assess the proof as presented in the evidentiary record. Fed. R. Civ. P. 56(e), Advisory Committee Notes. The evidence presented by the moving party *must be admissible – conclusory, self-serving, and speculative testimony is insufficient. See Glow Indus. v. Lopez*, 273 F.Supp.2d 1095, 1106 (C.D. Cal. 2003.) The Board views all evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 261 (1986); *T.W. Elect. Serve. v. Pacific Elec. Contractors Ass'n.*, 809 F.2d. 626, 630-31 (9th Cir. 1978.) The non-moving party need not file any

contravening affidavits or other material, but is entitled to a denial of the motion where the movant's papers are insufficient on their face. *Hamilton v. Keyston Tankship Corp.*, 539 F.2d 684, 686 (9th Cir. 1976.)

The evidence should be viewed in a light most favorable to Auratone as the non-moving party, and all justifiable inferences should be drawn in Auratone's favor *See Lloyd's Food Prods. Inc. v. Eli's Inc.*, 987 F.2d 766, 767, 25 U.S.P.Q.2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA*, 970 F.2d at 850, 23 U.S.P.Q.2d at 1472. Therefore, Auratone need only show that, on the evidence of record, a reasonable fact finder could resolve the matter in its favor by finding a material fact in dispute. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 850, 23 U.S.P.Q.2d 1471, 1472-73 (Fed. Cir. 1992); *Old Tyme Food Inc. v. Roundy's Inc.*, 961 F.2d 200, 2002, 22 U.S.P.Q.2d 1542, 1544 (Fed. Cir. 1992); *See Also Visa Int'l Serv. Ass'n v. Life-Code Sys., Inc.*, 220 U.S.P.Q. 740, 742 (T.T.A.B. 1983) (on summary judgment motion, "nonmoving party is not required to adduce evidence sufficient to prove its case…"; it need only show "that there is a genuine issue as to a material fact and that, therefore, there is a need for a trial.")

A fact is material if it "may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings." *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 U.S.P.Q.2d 2027, 2029-30 (Fed. Cir. 1993) (impermissible inferences against nonmovant); *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 850, 23 U.S.P.Q.2d 1471, 1472 (Fed. Cir. 1992) (evidence submitted by non-movant is to be believed and all justifiable inferences drawn in its favor). Therefore, Music Group must establish by clear and convincing evidence, that there is no genuine issue of fact regarding Auratone's Opposition based on priority of use, likelihood of confusion, deception, mistake, and its reasonable belief that it will be damaged by Music Group's registration of the mark, AURATONE.

IV. AURATONE'S STATEMENT OF FACTS AND RESPONSE TO MUSIC GROUP'S STATEMENT OF FACTS

A. Auratone Statement of Material Facts

Auratone presented its statement of facts in the Notice of Opposition. In addition, Auratone will address several of Music Group's misstatements and omissions in their Motion for Summary Judgment, and will present its Statement of Facts below.

The same family has produced and sold the handmade AURATONE speakers and has been recognized as the source for authentic AURATONE speakers for three generations. Auratone, is a limited liability company, which is owned solely by Alex Jacobsen, who is the grandson and heir of Jack Wilson, the inventor of AURATONE speakers and founder of the Auratone business. (Auratone's Response to Interrogatories 38) Auratone will show that AURATONE speakers have been sold throughout the United States and internationally since 1959 and that the AURATONE brand is associated with high quality and with the Auratone family business.

In 1959 Jack Wilson invented Auratone speakers and founded the Auratone speaker business in Chula Vista, California, producing audio speakers for home use, and the recording industry, by hand out of his own garage. (Auratone's Response to Interrogatories 6-7) In February 28, 1963, Jack Wilson filed a 1(a) trademark application for AURATONE and was granted registration on October 1, 1963. (Exhibit A, Registration No. 757789) The family business sold Auratone speakers both to the general public for use with stereo systems, and to recording studios.

Auratone speakers gained worldwide recognition as studio reference monitors, which means they are used in the recording studio to hear how the music will sound in real consumer play-back applications, such as radio, television, and other consumer playback systems. *InSync* online magazine says, "In the 1970s and '80s, these unassuming little Auratone speakers were a fixture on every professional studio console's meter bridge." (Exhibit B, www.sweetwater.com/*InSync*, Dec. 16, 2015; and Exhibit C, www.instagram.com, photograph of AURATONE speakers in studio for illustration) The AURATONE Super Cube has been called "one of the most iconic reference monitors in the audio industry," by the *Sonicscoop* online newsletter. (Exhibit D, www.Sonicscoop.com/2015/10/27) This feature was and still is uniquely different from that of other speakers on the market.

Jack Wilson incorporated Auratone Corporation in California on October 22, 1976. (Exhibit E, www.businesscalifornia.com) Both Jack Wilson and his wife, Harriet Elaine Wilson, worked arduously to produce quality speakers, and keep control of the company within the family, as the sole shareholders of Auratone Corporation. (MAH 44:8; Auratone's Response to Interrogatories 3-4.)

Mr. Wilson submitted the first renewal for his U.S. trademark Registration No. 757789 for AURATONE in 1983. (Exhibit F, registration renewal.) Old and new AURATONE products prominently display the mark in the same manner. (Exhibit G, www.auratonesoundcubes.com old and new product photographs) In 2004, Jack Wilson fell ill and, it is undisputed that on June 26, 2005, he died. On July 3, 2004, his trademark registration lapsed unintentionally. Manufacturing stopped momentarily. But advertising and sales of inventory continued. Despite the extenuating circumstances due to the death of Mr. Wilson, the successors in interest of his family business never intended to abandon, or actually abandoned, the AURATONE trademark. Rather, they intended to continue use of the mark, as shown through their actions, as documented in the record, and as Auratone will show herein.

B. Auratone has Raised Genuine Issues of Material Fact which Music Group Disputes

A principal fact in dispute, Music Group alleges that Auratone abandoned use of its mark and did not use its mark for a period of time, which constitutes *prima facie* evidence of abandonment. Therefore, Music Group argues that it has the right to file an intent-to-use application to register AURATONE. (MSJ 2.) Yet, in its advertising, Music Group acknowledges the fame of the AURATONE mark and says that its audio equipment tries to imitate the original AURATONE products: "The BEHRITONE C5A is our homage to the legendary company Auratone and their 5C loudspeaker, which literally shook up the recording industry in the 1970s and 80s" (Exhibit H, Music Group website, www.behringer.com); and "Vintage-style studio monitor modeled after a famous model form the 70s" and "our homage to a now-defunct company and the legendary 5D loudspeakers," referring to Auratone's 5C model speakers. (Exhibit I, Amazon.com/Behringer, ad for Music Group products).

The record contains numerous facts in dispute, which are material to the determination of the issues: (1) whether Music Group has standing to register AURATONE; (2) whether Music Group's claims that Auratone abandoned its AURATONE mark are true and relevant; and (3) whether the fame, residual goodwill, and strength of the AURATONE mark support continuing use. The following list illustrates Music Group's misstatements and false claims, which Auratone will show, are contradicted by the evidence: Music Group falsely states that the predecessors in interest of Auratone Products abandoned

the AURATONE mark and had no intent to continue using the AURATONE mark in commerce (MSJ 7). Music Group inaccurately states that after the inventor of Auratone speakers, Jack Wilson, suddenly passed away, his company Auratone Products ceased the use of the AURATONE mark in commerce. (MSJ 2.) Music Group falsely states that between 2007 and 2012, there were no sales or promotions of AURATONE products. (MSJ 2.) Music Group inaccurately states that the www.Hysellstuff.com website did not contain contact information for consumers to order the AURATONE speakers. (MSJ 3.) Music Group claims that there were no written agreements, assignments, or instruments regarding Jack Wilson's heirs and beneficiaries, which is false because Jack Wilson had a written will which bequeathed the family business to his heirs. (MSJ 5; Exhibit J, Will of Jack Wilson)

Furthermore, Music Group incorrectly states that because there may not have been a formal written business plan, the family intended to abandon the business. (MSJ 5) To the contrary, there is tangible evidence Auratone intended to, and did, continue selling AURATONE products through: continuous online advertising of goods for sale (Exhibit K, www.hysellstuff.com); maintenance of domain names (Exhibit L, renewal of www.auratoneproaudio.com, Jul 10, 2010); and emails with customers about resuming manufacture of the Auratone speakers (Exhibit M, Email to customer Nov 30, 2012).

The substantial goodwill in the AURATONE mark, established by the quality of AURATONE products over many years of the business since 1958, still resonates, which can be seen by the recent induction of the AURATONE speakers into the 2016 NAMM Technology Hall of Fame. (Exhibit N, www.tecawards.org/technology-hall-of-fame) Although manufacturing of these hand-made speakers stopped momentarily with the death of Jack Wilson, advertising and sales of inventory continued. Sales of original AURATONE speakers continues steadily and Auratone's business will be severely damaged by the loss of its mark.

C. Music Group has Ignored Evidence of Continuing Use of AURATONE Trademark

Music Group states in its Motion that soon after the death of Jack Wilson, the inventor of Auratone speakers and founder of the Auratone business, his company, Auratone Products, stopped using the AURATONE mark in commerce. (MSJ 2.) However, this statement is false and misleading, and

contradicted by evidence in the record, as follows. Manufacturing may have stopped momentarily, but the sales and advertising of goods did not. Shortly after Jack Wilson's death, both his daughters and heirs to his business, Marlaine Hysell ("Marlaine") and Michelle Jacobsen ("Michelle"), met in California to take possession of the Auratone speaker inventory, products, prototypes, schematics, designs, client lists, business records, and all the business assets they would need to continue the manufacture and sale of Auratone sound cubes. (Exhibit X, Deposition of Michelle Jacobsen, hereinafter "MJ," MJ 14:7; Exhibit Y, Deposition of Marlaine Anette Hysell, hereinafter "MAH," MAH 45:17-46:8.) At great trouble and expense, they transported all the above business assets back to Marlaine's home in Georgia. (MJ 14:7; MAH 45:17-46:8.) In 2006, once the inventory and assets of the business were in Marlaine's possession, she created a webpage called www.Hysellstuff.com where she posted pictures and descriptions of various available AURATONE speaker models for sale, clearly designated with the AURATONE trademark. (MAH 56:11-57:24) The www.Hysellstuff.com website posted clear contact information where consumers could order the Auratone speakers. (Exhibit K.)

Music Group falsely states that the www.Hysellstuff.com website did not contain contact information for consumers to order the Auratone speakers. (MSJ 3.) Music Group's Exhibit D inaccurately depicts the www.Hysellstuff.com Web site because it cuts off part of the Web site and shows only part of the Web site. (MSJ, Music Group's Exhibit D) The actual, complete screenshot of the webpage, Auratone's Exhibit S, clearly directs customers to a webpage for Auratone speakers that are for sale, and shows the description "Auratone inventory items that are for sale can be found here: http://hysellstuff.com/auraone/auratonespeakerinventory/_speaker_inventory.php," with the instructions and email address as follows: "You may contact me at Auratone@bellsouth.net," where orders for AURATONE speakers could be placed. (Exhibit K.) For Marlaine to have created a website showing Auratone speakers without otherwise providing such contact information where Auratone speakers could be purchased, would have been pointless. In fact, Marlaine received customer inquiries at this email address. (Exhibit O, Email exchange between Marlaine and customer, Oct. 23, 2009.)

Music Group asserts that there was no electronic means to place orders online. (MSJ 3.) This is irrelevant because Marlaine's having a means to contact the seller through email to purchase available inventory is sufficient to show legitimate trademark advertising and use. Furthermore, in 2006, Marlaine created an eBay page to sell Auratone products where customers could directly purchase Auratone products. (MAH 55:13-17.) Marlaine did in fact make sales through this platform. (MAH 39:5-6.) Auratone publically displayed its speaker products with its AURATONE trademark in various websites from 2006 to the present, had available inventory for sale, and provided contact information for purchasers to buy its AURATONE speakers. (MAH 56:11-57:24; Exhibit K.) All of this was done long before Music Group filed it intent-to-use application in June 2012.

D. Music Group Relies on Irrelevant Statements Related to Actual Sales

Music Group further alleges in its Motion that between 2007 and 2012, there were no sales or promotions of Auratone products. (MSJ 2.) Auratone disputes this statement because from 2006 to the present, Marlaine continued to promote Auratone products at, www.hysellstuff.com and www.AuratoneProAudio.com, where she listed speakers for sale. (Exhibit K.) Marlaine continuously renewed the www.AuratoneProAudio.com domain from 2006 to the present with the intent to use it for a new website for AURATONE products. (Exhibit L.) She would not have paid to keep an Auratone domain name unless she intended to use it. The domain still exists with a hyperlink redirecting customers to the new current webpage, www.auratonesoundcubes.com, established by Alex Jacobsen in 2014. (Exhibit P, hyperlink redirecting customers; Exhibit Z, Deposition of Alex Jacobsen, hereinafter "AJ," AJ 35:5-36:1.)

In addition to establishing web pages dedicated to Auratone Speakers in 2006, the next year in 2007, Marlaine also promoted Auratone speakers by posting the link to the website, www.Hysellstuff.com on various discussion boards related to those interested in audio products and high-fidelity speakers. (MAH 76:17-19.) Music Group's claims of non-use of the Auratone mark are contradicted by Auratone's evidence that it and its predecessors in interest continuously promoted its Auratone speakers and made their inventory available for sale. (Exhibit K.) Whether or not the business made actual sales is irrelevant to trademark use.

E. Auratone is the Successor-in-Interest of a Family-Run Business

Music Group, claims there are no written agreements, assignments, or instruments regarding Jack Wilson's heirs and beneficiaries. (MSJ 5.) To the contrary, Jack Wilson's will, an instrument that was probated, transferred and bequeathed all right title and interest in and to the Auratone business to his heirs, Marlaine, and Michelle (Alex's mother). (Exhibit J, Will of Jack Wilson; Auratone LLC's Response to Interrogatories 3-5.)

F. Auratone Never Abandoned the AURATONE Mark, Despite Extenuating Business Circumstances

Music Group's basis for its Motion for Summary Judgment, is its statement that Auratone and the family business intended to abandon their mark because they had no written development plans or business plans describing the grandson's, Alex Jacobsen's, intended use of the mark. (MSJ 4-5.) Music Group relies on this assertion, in its attempt to prove that Auratone and the Jacobsen family intended to abandon the AURATONE mark. (MSJ 4.) Lack of written business plans proves nothing. Not only does it fail to show trademark abandonment, if written business plans were required to show evidence of intent to run a business, there would be no proof of the existence of most businesses because most businesses lack written plans. Contrary to Music Group's claims, the record holds much evidence of the family's intent to tenaciously hold onto, continue, and expand its business, even after their loss of their father, grandfather, and founder of the business. (MAH 36:22-38:7; 45:17-46:8; 70:23-71:16; MJ 20:3-21:20.) Marlaine and Michelle preserved all the business assets, schematics, product designs, prototypes, product samples, and business records, which assets are the most tangible evidence of the existence and value of a business. (MAH 48:10-25; MJ 20:3-21:20.)

After Jack Wilson died suddenly of a heart attack in 2005, Marlaine and Michelle expeditiously flew to California to handle the remaining affairs of their father. (MJ 11:6-12:6; MAH 39:16-19.) Due to the fact that that Jack and Harriet Wilson were the sole proprietors of the Auratone business, it was up to Marlaine and Michelle to fulfill existing orders, gather, organize and ship Auratone inventory from California to Marlaine's house in Georgia. (Auratone LLC's Response to Interrogatories 2; MAH 42:7-9.) Marlaine first became involved with Auratone Corporation in 1965, eventually becoming a Vice President

and staying with the company until 1984. (MAH 11:23-12:21.) Nineteen years later in 2005, Marlaine immediately took possession of Auratone products to continue her parent's legacy of selling high quality speakers while keeping the business within the family. (MAH 39:16-19.) Marlaine and her sister Michelle collected and organized Auratone inventory and used various platforms to keep the Auratone brand alive in the minds of consumers through websites, promotions, and discussion boards. (MAH 43:18-25; 55:20-56:7; 76:17-19; Auratone LLC's Response to Interrogatories 7.) If they had not intended to continue the business, Marlaine and Michelle could have sold off the inventory in California. Instead, they gathered the Auratone inventory and went through the process of shipping Auratone speakers and products from California to Georgia. This demonstrates their clear intent to continue selling Auratone Speakers and maintain control of the business.

The Parties actually agree that Michelle and Marlaine had discussions with Alex Jacobsen beginning in 2010 regarding their intentions of keeping the Auratone business in the family. (MSJ 2-3; MAH 37:11-38:4; AJ 11:7-16; 41:16-25.) Marlaine and Michelle discussed with Alex that upon graduating from college, he would officially take over the business. (AJ 11:7-16; 41:16-25; MJ 51:24-52:19; MAH 37:11-38:4.) To keep Auratone within the family, Marlaine refused offers for sale of the best samples of each and every product version, and kept them in pristine condition, to be used as models for manufacture, order placement, and sale of new AURATONE speakers. (Auratone LLC's Response to Interrogatories 7; MAH 48:10-25; 66:16-69:7.) She maintained these perfectly kept inventories for Alex until he graduated from college and was old enough to run the company. There was never an attempt to sell off Auratone inventory in bulk or to sell the business. (MAH 71:12-16) To the contrary, the family refused offers to purchase the business. (Auratone LLC's Response to Interrogatories 7; MAH 66:16-69:7.) Neither Auratone, nor the family business, ever made any statements to the public regarding the termination of Auratone products or the family business and there is nothing in the record to support such a far-fetched assertion by Music Group. Instead, Marlaine kept Auratone speakers, products, and schematics in pristine condition to keep the business alive for Alex with the intent to continue the family business and continue selling Auratone products. (MAH 71:12-16.)

G. Auratone Never Abandoned the AURATONE Mark and Evidence Supports Intent to Continue AURATONE Business

Music Group states that there were no business plans or emails concerning Alex Jacobsen's plans to continue selling Auratone products. (MSJ 4.) Auratone's evidence contradicts this statement. Alex Jacobsen (grandson and heir of founder Jack Wilson) stated in his deposition that in 2012 he sought manufacturers for the speakers, which previously had been made by his grandfather and other employees by hand and discussed product design and design plans in emails. (AJ 68:13-71:1; Exhibit M.) In 2012, Marlaine transferred perfectly kept inventory of Auratone speakers, products, equipment, schematics, drawings, paper work, designs, and contracts to Alex so that he could resume manufacturing and continue selling Auratone products. (AJ 31:13-32:6; MJ 32:7-23.) Jack Wilson's schematics, which detailed Auratone speaker designs, enabled Alex to learn how to build new speakers adhering to the same design and quality his grandfather had established and to achieve the same quality for which Auratone speakers are famous. (AJ 31:13-32:6; Exhibit M.)

In addition to keeping the manufacturing drawings, Marlaine kept the original artwork for the AURATONE trademark. The unchanged AURATONE trademark has been affixed to each speaker ever sold since 1959 until the present. (Exhibit G) In addition, Jack Wilson designed a distinctive logo, consisting of the word mark, AURATONE, inside an oval, overlaid across a circle with a black center and stars, a spinning globe and cube speaker, with the words, RECORDING MONITORS FOR THE REAL WORLD. The circle logo was used on the website and advertising, such as t-shirts, for the AURATONE speakers from 1984 to the present. (AJ 54:24-25.) Such consistent use of the same trademark and artwork indicates Auratone's reliance on the public's recognition of the AURATONE mark and its goodwill.

Both Parties actually agree that in 2012, Alex manufactured 60 cabinet enclosures with the assistance of his father Paul Jacobsen, (MSJ 5.), which contradicts Music Group's assertion that Auratone intended to abandon its mark. In December of that year, Alex graduated from college and continued to manufacture new Auratone products. (AJ 21:8-13; 33:23-25) In May 2013, Alex incorporated Auratone LLC in Tennessee to carry on the family business. (AJ 17:12-15) He sold an Auratone Super Sound Cube

and a 2 5C replacement speakers. (AJ 46:22-23) That same year, Auratone LLC manufactured 56 products and shipped 6 products (Auratone LLC's Response to Interrogatories 41-43) (two AURATONE Super Sound Cube speakers, and four replacement speakers).

In addition, it is undisputed that Auratone LLC intervened in the TTAB proceedings to cancel a third-party's' registration of the mark, AURATONE. (MSJ 4) Once the third-parties learned that the Auratone business had not died with Jack Wilson, they stepped aside. Such intervention shows that the Jacobsen family was trying to preserve its AURATONE mark for Auratone products.

H. Auratone has Raised Genuine Issues of Material fact that its mark, AURATONE, was Not Abandoned, was a Well-Known and Famous Mark, and Continues to be Used in Commerce.

Auratone speakers have been sold worldwide since 1959. They have been endorsed by famous artists such as Quincy Jones (Exhibit G) and used in famous recordings, including the music of Michael Jackson. (Exhibit Q, www.soundonsound.com., online article about use of AURATONE speakers) The family business' sales may have dwindled after the death of Jack Wilson. But the heirs never lost control of the company, never allowed anyone else outside the family to take control, and never gave up the business or stopped offering the AURATONE speakers for sale to the public. (MAH 55:8-17.) Sales continue to increase. (Exhibit R, sales records and invoices 2015.) Original customers returned based on the goodwill established in the business. (Exhibit S, letter from customer Nov 12, 2015.) All Alex had to do was increase the visibility of the Auratone products, and the brand established by his grandfather was immediately recognized throughout the United States. (AJ 42:15-23; Exhibit T, www.soundonsound.com, online article.)

Despite a minimal marketing budget in 2014, Auratone LLC manufactured 347 AURATONE branded products and shipped 253 AURATONE branded products. (Auratone LLC's Response to Interrogatories 41-43) From 2015 to date, Auratone LLC has manufactured 824 AURATONE branded products and shipped 50 AURATONE branded products. (Auratone LLC's Response to Interrogatories 41-43) The dramatic increase in manufacturing and shipping is due to the goodwill associated with Auratone speakers. Alex stated that it was not hard to find customers. (MJ 42:11-23.) It was actually very

easy for him to contact old customers, and find new customers because of the legacy of the brand and the public's association of the AURATONE brand with Alex's family business and hand-made speakers. (MJ 42:5-23, 37:20-25, 38:1-13.) Because the speakers were hand-made and are still hand-assembled, and were never mass produced, the public's identification of the family as the source of AURATONE speakers is especially important to consumers. In its advertising, Music Group acknowledges the fame of the AURATONE mark, and acknowledges the similarity of its products with Auratone's original AURATONE products. (Exhibit H, Exhibit I.)

I. Auratone Will Present Further Evidence of Material Issues of Fact for Trial

This Summary Judgment motion stayed discovery. Auratone will present more evidence in discovery. Auratone did not file a 56(d) motion to continue discovery due to the transition of Auratone's counsel from Amy Everhart to the Suffolk Law School Clinic, which occurred at the same time the Motion for Summary Judgment was filed.

V. ARGUMENTS

A. Auratone has Not Abandoned the AURATONE mark

1. Summary Judgment is Inappropriate Because Music Group Disputes Auratone's Facts of Non-Abandonment

Summary judgment is only appropriate where there is no genuine issue as to any material fact in dispute, and is not appropriate in the present case because material disputed facts abound in each claim of this case. *See* Fed. R. Civ. P. 56(c). A fact is material if it "may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings." *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 U.S.P.Q.2d 2027, 2029-30 (Fed. Cir. 1993). In particular, Music Group's claim that Auratone abandoned its mark requires proof of Auratone's intent, which by its nature is fact intensive, and about which facts the parties disagree. Music Group has the burden of proving its allegation that Auratone has abandoned its mark and, therefore, must show by clear and convincing evidence, the material facts relating to abandonment, which necessarily would show that either:

(a) Opposer discontinued, and intended not to resume, use of its mark; or

(b) that Music Group did not use its mark for such a long period of time that such non-use constituted *prima facie* evidence of abandonment, in which case the burden of proof would shift to the Opposer to show that it intended to resume use of its mark; or

(c) the absence of fame of the mark, or residual goodwill in the mark, of which Opposer offers evidence; or

(d) even if abandonment was shown, that Auratone would not be injured by the registration.

Auratone need only show that an issue of material fact exists and that, on the evidence of record, a reasonable fact finder could resolve the Motion for Summary Judgment in the nonmovant's favor. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 850, 23 U.S.P.Q.2d 1471, 1472-73 (Fed. Cir. 1992). The Court views all evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 261 (1986); *T.W. Elect. Serve. v. Pacific Elec. Contractors Ass'n.*, 809 F.2d. 626, 630-31 (9th Cir. 1978).

2. **Music Group Misstates the Standard Required to Prove Abandonment**

Under the Lanham Act, abandonment of a mark requires proof that the owner discontinued use of the mark "with ***intent not to resume*** such use." (with emphasis)15 U.S.C. § 1127. Music Group misstates the standard for abandonment as "no intent to resume," which is different in that it is the broader absence of intent, and the statute requires a specific intent not to resume use of the mark. The burden is on Music Group to show that Auratone discontinued, and did not intend to resume, use of the mark. "Intent not to resume use" of a trademark may be shown by an attempt to sell the company or underlying business. Music Group has offered no such evidence to meet its burden to show discontinued use with intent not to resume use. Auratone has never had the intent to discontinue its mark or an intent not to resume use of its mark.

3. **Auratone Disputes Music Group's Claims and Shows it Used its AURATONE Mark Continuously in Commerce**

Music Group makes the following unsupported claims:

(a) "Soon after [Jack Wilson's] death, Auratone Products stopped using the AURATONE mark in commerce and the corporation ceased activity." (MSJ 2.) Auratone disputes this claim; Auratone

has said the business became "inactive." (MAH 38:5-39:8, 40:24-41:19) "Inactive" means the family ceased manufacturing new speakers after Jack Wilson's death, but it does not mean the business "ceased activity." To the contrary, the business had inventory, which the business owners continued to offer for sale. Because the speakers were hand-made, the family went through a slow period while they reformulated a strategy for continuing the manufacturing business after the death of the founder and family patriarch. In fact, the parties agree that after Jack Wilson's death, his daughters and heirs took possession of all the business assets and took the trouble and expense to move them from California to Georgia. (MSJ 2.) The heirs' actions are tangible evidence of their intent to continue the business.

(b) "The use in commerce of the AURATONE mark "lapsed" from 2007 to 2012, a period when there were no sales, no promotion, no manufacturing, no marketing plans, and no trademark registration activity." (MSJ 2.) Auratone disputes this claim because it continued to offer Auratone Speakers for sale. (Exhibit K)

(c) "...there were no products offered for sale or promoted to the public during this lapse. Customers could not directly purchase inventory displayed on the Hysellstuff website, and the inventory was listed without any prices or commercial terms." (MSJ 3.) Auratone disputes this claim because it provided a means for the public to purchase Auratone speakers and Music Group misrepresents Auratone's website.

Auratone continued to use the AURATONE mark in commerce in connection with its speakers from 1959 to the present. Auratone kept inventory for sale on www.hysellstuff.com and continued to keep the website up for sales. (MAH 55:18-24; AJ 73:13-22; Exhibit U, www.hysellstuff.com.)The website, which has been depicted incorrectly by Music Group, states that the inventory is for sale. To inquiry about purchasing the inventory, a prospective purchaser clicks the link to see what inventory is for sale as well as how to contact Marlaine to purchase the goods. (Exhibit K; Exhibit U.) No abandonment was found during 4 years of non-us e where the trademark owner had quoted prices and attempted to sell the trademarked products. *Daybrook-Ottawa Corp v. F.A.B. Mfg. Co.*, 152 U.S.P.Q. 441 (T.T.A.B. 1966).

Auratone continued to use the mark in the ordinary course of trade from 2007 to 2011, the timeframe that Music Group claims nonuse occurred. In 2007, Marlaine posted the link to www.AuratoneProAudio.com to a few discussion boards to market the site to potential customers. (MAH 76:14-24.) Marlaine additionally kept the website, www.hysellstuff.com, readily available to those searching for Auratone. (Exhibit U; MAH 55:18-24.) This website allowed customers to contact her through email. (MJ 39:22-25, 40:1-7.) Marlaine continued to sell the products through hysellstuff.com and even a single instance of use may be enough to overcome an allegation of abandonment. *Carter Wallace v. Proctor & Gamble Co.*, 434 f. 2d 794, 804, 167 U.S.P.Q 713 (9th Cir 1970). The website listing the Auratone inventory is sufficient "use in the ordinary course of trade." *Carter Wallace v. Proctor & Gamble Co.*, 434 f. 2d 794, 804, 167 U.S.P.Q 713 (9th Cir 1970).

Music Group has stated that Auratone did not use the mark AURATONE "in the ordinary course of trade" because "the inventory was displayed without any price or mechanism to permit a customer to directly purchase any products." (MSJ 9.) The website is misrepresented by Music Group. In fact the website states that this is the inventory for Auratone and it lists a contact email to place orders, make purchases and to request pricing on inventory. (Exhibit K, Exhibit U) The email address used by Marlaine to take orders for AURATONE speakers constitutes "directing purchasing from a website." While mere advertising or promotion of a trademark on a web page is not "use in commerce," a website page that displays the trademark, the product, and a means to buy the product is considered to be "use in commerce." See *In re Sones*, 590 F.3d 1282, 93 U.S.P.Q.2d 1118 (Fed. Cir. 2009).

The burden is on Music Group to show that Auratone had discontinued use of the mark with an intent not to resume use of the mark. 15 U.S.C. §1127. The record shows the parties dispute material facts regarding whether the mark was discontinued and whether Auratone intended not to resume use of its mark. Therefore, Music Group has not met its burden to show abandonment of the mark.

4. **<u>There is No Prima Facie Evidence of Abandonment of the AURATONE Mark by Auratone</u>**

If Music Group proves three-years of consecutive non-use, the burden would then shift to Auratone to prove it intended to resume use within the reasonably foreseeable future. *Emergency One v. American FireEagle Ltd.*, 228 F.3d 531, 56 U.S.P.Q 2d 1343 (4th Cir. 2000). Music Group misstates the standard as "intent to resume use within the three-years of non-use." (MSJ 9.) There is a big difference between the correct standard, which is to show intent to resume use "within the reasonably foreseeable future" and Music Group's misstatement of "within the three-years of nonuse." (MSJ 9.)

What is meant by the "reasonably foreseeable future" varies depending on the industry and the particular circumstances of the case. See *Emergency One v. American FireEagle Ltd.*, 228 F.3d 531, 56 U.S.P.Q 2d 1343 (4th Cir. 2000) (Fire trucks have very long lives and good-will value of mark persists long after production of trucks ceased thus making five to six years reasonable to reintroduce brand). Similarly, speakers last a long time. (Exhibit S)

First, Music Group must show by clear and convincing evidence undisputed facts regarding non-use for three consecutive years. Auratone asserts that it continuously maintained inventory of AURATONE speakers available for sale to the public from 2006 to present. (MAH 57:3-7.) Both parties agree that Auratone maintained websites from 2006 to present advertising its AURATONE speakers. (MAH 57:3-7.) Auratone shows that its website contained contact information for customers to place orders. (Exhibit K.) So, Auratone advertised AURATONE speakers and maintained saleable inventory and provided a means for customers to place orders for AURATONE products. Yet, Music Group claims otherwise; it misrepresents evidence of Auratone's websites by cutting off the contact information and saying that Auratone advertised its speakers but failed to provide contact information where orders could be placed. (*But see*, Exhibit K, Exhibit U) It seems ludicrous for Music Group to argue that Auratone would advertise its speakers for sale and not provide contact information where customers could place orders.

5. **<u>The Record Shows Abundant Evidence of Intent to Maintain and/or Resume Use of AURATONE mark</u>**

Even if Music Group could show continuous non-use of the mark for a period of three years, and even if the burden shifted to Auratone to show it intended to resume use of its mark, Auratone could meet

such a burden because it continuously intended to use of the AURATONE mark and did resume manufacture and sale of new goods within the foreseeable future. Yet, as a general rule, the factual question of intent is particularly unsuited to disposition on summary judgment. *Copelands' Enterprises Inc. v. CNV Inc.*, 945 F2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991). Summary judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith, and other subjective feelings play dominant roles. *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 962 (TTAB 1986).

Auratone's intent to resume use is evident by the actions taken by the family to maintain control of the inventory and business assets, and to keep inventory in pristine condition. (MAH 55:8-13, 48:5-25.) Marlaine then fulfilled the outstanding orders into 2007. (MAH 61:20-23.) She then organized the remaining inventory, schematics, and museum quality speakers, for sale through the www.hysellstuff.com website. (AJ 45:21-25, 46:1-4; MAH 55:8-13, 36:16-37:1.) She also purchased and maintained the domain name, www.AuratoneProAudio.com, while she and Michelle discussed how to move forward with the family business. (MAH 34:25, 35:1-5.) Music Group states that there are no business plans to show intent to resume use. (MSJ 9.) Written business plans are unnecessary to show intent to resume use. There is no standard that requires such a showing.

Marlaine always had readily available AURATONE speaker inventory to sell on the website. She deliberately chose not to sell the inventory wholesale or to sell the business assets in bulk. (MAH 67:6-17.) Although Marlaine was approached by a prospective buyer of the AURATONE speaker family business, she refused outright and did not attempt to sell the business or the entirety of its inventory. Marlaine never made any attempt shop the company or the AURATONE mark. She also kept the original schematics of the Auratone Sound Cubes to be used for manufacturing additional speakers until she transferred them over to Alex. (AJ 44:21-25, 46:1-4; MAH 55:8-17.) These business assets are tangible evidence of the family's desire to maintain control of the speakers and continue the family business. As well, Alex contacted a distributor in 2012 to discuss the manufacturing and distribution of speakers. (Exhibit M.)

Despite the three-year nonuse presumption of abandonment, the presumption is readily rebutted by a showing that the nonuse is due to special circumstances that excuse nonuse and is not due to any intention

to abandon the mark. *Emergency One v. American FireEagle Ltd.*, 228 F.3d 531, 56 U.S.P.Q 2d 1343 (4th Cir. 2000). These special circumstances include suspension of a product line that is beyond the trademark owner's control for economic or other reasons. *Seidelman Yachts, Inc. v. Pace Yacht Corp.* 13 U.S.P.Q. 2d 2025 (4th Cir. 1990).

Jack Wilson, the inventor of AURATONE speakers, sole employee, and owner of the Auratone business, passed away suddenly in the middle of 2005. This constitutes special circumstances, under which the family business needed time to determine who would continue to run the company until Alex graduated from college. In the meantime, they took every possible step to maintain the sale of the AURATONE products to keep their valuable goodwill in the mark alive.

B. <u>The AURATONE mark is a Famous Mark</u>

It is undisputed in the record that the AURATONE mark is a "famous" and a "legendary" mark in the recording industry. (Exhibit H, Exhibit I.) The AURATONE mark remains a famous mark in consumers' perception to this day. (Exhibit B, Exhibit D, Exhibit N, Exhibit Q, Exhibit T.) Trademark strength is a product of public recognition and its commercial strength. 2 *McCarthy on Trademarks and Unfair Competition* § 11:73 (4th ed.) Music Group acknowledges the fame of the AURATONE mark, and acknowledges the similarity of its products with Auratone's original AURATONE products. (Exhibit H, Exhibit I.) Such conscious efforts to make consumers think that applicant is a new version of the original product requires "curative steps" to prevent confusion as to source, even if a mark is deemed "abandoned." *Cumulus Media, Inc. v. Clear Channel Communications, Inc.*, 304 F.3d 1167, 64 U.S.P.Q.2d 1353, 53 Fed. R. Serv. 3d 823 (11th Cir. 2002) In *Cumulus Media*, the district court had found that there was some continuing use by plaintiff of THE BREEZE, such as in a logo on business cards and on a sign at its broadcasting studio, found to be more than a token use to avoid abandonment. *Indianapolis Colts v. Metropolitan Baltimore Football Club Ltd. Partnership*, 34 F.3d 410, 31 U.S.P.Q.2d 1811 (7th Cir. 1994). The strength of the AURATONE mark, which is conceded by Music Group, makes it more likely that encroachment on it will produce confusion. *See* 2 *McCarthy on Trademarks* §11:73 (4th ed.) Music Group

is attempting to make trumped-up claims of abandonment to further its misappropriation of Auratone's mark and to take advantage of Auratone's goodwill in its mark.

C. The AURATONE mark has Residual Goodwill

Even if the AURATONE mark is not deemed to be a famous mark by the Board, it is at least a well-known mark and has retained such significant remaining value that when the owner intends to use it in connection with substantially the same business or service, the public is not deceived. See *Defiance Button Machine v. C&C Metal Prods. Corps.*, 759 F. 2d 1053 (2nd Cir. 1985). Under *Defiance*, the AURATONE mark should not be found to have been abandoned because (a) the goodwill of the business has not wholly dissipated; (b) the owner retained the intent to produce and market within a reasonable time, speakers the same in nature and quality as that with which the trademark has been associated; and (c) such resumption of operations occurred within a reasonable time under the circumstances. *Defiance Button Machine v. C&C Metal Prods. Corps.*, 759 F. 2d 1053 (2nd Cir. 1985).

Music Group has indicated that the AURATONE mark is "legendary," and has claimed their "BEHRITONE" products are successors of AURATONE products, and have even used AURAONE products' "cube design." (Exhibit H, Exhibit I.) It now wants the AURATONE trademark. Any newcomer acts outside legal boundaries when it intentionally adopts the same name for a directly competing product in the same market and uses substantially similar trade dress, thus implying that it is somehow a successor product. *Peter Lugar v. Silver Star Meats, Inc.*, 63 U.S.P.Q. 2d 1555 (W.D. Pa. 2002). To hold otherwise would result in unfair competition through intentionally creating public confusion as to the source and origin of the products they buy. *Peter Lugar v. Silver Star Meats, Inc.*, 63 U.S.P.Q. 2d 1555 (W.D. Pa. 2002). Music Group is acting outside legal boundaries, using the claim of abandonment to misappropriate the AURATONE mark from the long-time family business which established the goodwill in the mark.

D. Auratone has Priority for the AURATONE mark

Music Group's entire argument for summary judgment is based on its claim that Auratone does not have priority of use of the AURATONE mark because it didn't continuously use the AURATONE mark

since 1959, when the mark was first adopted, and, therefore, Auratone abandoned its mark. (MSJ 7.) Since the AURATONE mark has not been abandoned by Auratone, it is entitled to rely on its claim of priority of use. The record shows that between 2009 and 2012, the family Auratone business used the mark in commerce before Music Group filed its intent-to-use application. Auratone is entitled to rely on its continuous use of the AURATONE mark from the former use by Jack Wilson and the continual use of the mark by the heirs of the family business.

VI. CONCLUSION

For the reasons set forth above, Auratone respectfully requests that because the AURATONE mark did not fall into non-use, was not abandoned, and because there are material facts in dispute, that Music Group's Motion for Summary Judgment be dismissed.

Respectfully submitted,
s/Anne W. Hulecki
Anne W. Hulecki
Suffolk University Law School, IP & Entrepreneurship Clinic
120 Tremont Street, Boston, MA 02108
Telephone (617) 305-1641; Facsimile (617) 742-2139; ahulecki@suffolk.edu
Attorneys for Opposer, Auratone LLC

CERTIFICATE OF SERVICE

I hereby certify that the above **OPPPOSER'S MEMORANDUM OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT** was served via electronic mail on Opposer's counsel on December 18, 2015, addressed as follows:

E. Russell Tarleton
Seed IP Law Group PLLC
russt@seedip.com

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

Auratone LLC, Opposer,	))	Opposition No. 91216808
	))	Application Serial No. 85647325
v.	))	
MUSIC Group IP Ltd., Applicant.	))	

DECLARATION OF ANNE W. HULECKI IN SUPPORT OF OPPOSER AURATONE'S MEMORANDUM OF OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

I, Anne W. Hulecki, hereby declare and state as follows:

1. I am a citizen of the United States and of the Commonwealth of Massachusetts, over the age of eighteen (18) years, not a party to the above-entitled proceeding.

2. I am an attorney with Suffolk University Law School, Practitioner in Residence, of the Intellectual Property & Entrepreneurship Clinic, counsel for Opposer, Auratone LLC ("Auratone") in the above- captioned proceeding. I make the following statements from personal knowledge, unless otherwise noted, and am competent to testify regarding the matters herein.

3. Attached hereto as Exhibit A is a true and correct copy of Trademark Registration No. 757789 for AURATONE.

4. Attached hereto as Exhibit B is a true and correct printout of *InSync* online magazine article at www.sweetwater.com/insync, "139th AES convention: Auratone 5C Passive Monitors," Dec. 16, 2015.

5. Attached here to as Exhibit C are true and correct printout of www.instagram.com/p/9_14LhraHG/, photograph of AURATONE soundcubes in sound studio for illustration.

6. Attached here to as Exhibit D are true and correct printout of www.sonicscoop.com/2015/10/27, online article, "AES 139, NYC – Transaudio Group Re-Launches Auratone Reference Monitors."

7. Attached hereto as Exhibit E is a true and correct printout of www.businesscalifornia.com/c/business/auratone-corporation/C0787504, showing original Auratone Corporation registration.

8. Attached hereto as Exhibit F is a true and correct copy of Renewal of Registration No. 757789 for AURATONE.

9. Attached hereto as Exhibit G is a true and correct printout of www.auratonesoundcubes.com, showing old and new AURATONE speakers with identical prominent AURATONE mark.

10. Attached hereto as Exhibit H is a true and correct copy of www.behringer.com, "Copyright 2015 Music Group IP LTD," mentioning AURATONE speakers.

11. Attached hereto as Exhibit I is a true and correct copy of www.Amazon.com/Behringer, advertisement of Music Group's Behritone products.

12. Attached hereto as Exhibit J is a true and correct copy of the will of Jack Wilson.

13. Attached hereto as Exhibit K is a true and correct printout of product inventory at www.hysellstuff.com/auratone/auratonespeakerinventory/speaker_inventory.php.

14. Attached hereto as Exhibit L, on my information and belief, is a true and correct copy of renewal registration for domain, www.auratoneproaudio.com, July 10, 2010 to email "bdhysell@gmail.com."

15. Attached hereto as Exhibit M, on my information and belief, is a true and correct copy of email exchange between Alex Jacobsen and customer/distributor, Gerry Eschweiler, Sonotechnique, November 30, 2012.

16. Attached hereto as Exhibit N is a true and correct copy of printout of www.tecawards.org/technology-hall-of-fame, 2016 Technology HOF/TEC Awards to "1958 Auratone Sound Cubes."

17. Attached hereto as Exhibit O is a true and correct copy, on information and belief, of email exchange between Marlaine Hysell and customer, Oct. 23, 2009.

18. Attached hereto as Exhibit P is a true and correct printout of hyperlink redirecting customers from www.auratoneproaudio.com to www.auratonesoundcubes.com.

19. Attached hereto as Exhibit Q is a true and correct printout of www.soundonsound.com, online article, titled "Bruce Swedien: Recording Michael Jackson Legendary engineer on Thriller," about use of AURATONE speakers in recording.

20. Attached hereto as Exhibit R is a true and correct copy, on information and belief, of Auratone sales records and invoices from 2015.

21. Attached hereto as Exhibit S is a true and correct copy of letter dated Nov. 12, 2015 from Rick Perrotta, President, Royer Labs, Burbank, CA, to Brad Lunde, TransAudio Group, Las Vegas, NV, regarding purchase and use of both original and new AURATONE speakers.

22. Attached hereto as Exhibit T is a true and correct printout of www.soundonsound.com/news?NewsID=18564, online article, titled "Summer NAMM 2015: Auratone 5C (Video)."

23. Attached hereto as Exhibit U is a true and correct printout of www.hysellstuff.com/auratone/gallery/, titled "Auratone Photo Gallery."

24. Attached hereto as Exhibit X is a true and correct copy of the Deposition of Michelle Jacobsen.

25. Attached hereto as Exhibit Y is a true and correct copy of the Deposition of Marlaine Annette Hysell.

26. Attached hereto as Exhibit Z is a true and correct copy of the Deposition of Alex Jacobsen.

I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

Dated and executed this 18th day of December, 2015, at Boston, Massachusetts.

/Anne W. Hulecki/

Anne W. Hulecki

Exhibit

A

Nº 757789

THE UNITED STATES OF AMERICA

This is to certify that from the records of the Patent Office it appears that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof;

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed this first day of October, 1963.

David L. Ladd

COMMISSIONER OF PATENTS

EXHIBIT
2
Auratone vs Music Group
PENGAD 800-631-6989
TP# 9/21/08

AURA000480

United States Patent Office

757,789
Registered Oct. 1, 1963

PRINCIPAL REGISTER
Trademark

Ser. No. 163,687, filed Feb. 28, 1963

AURATONE

John A. Wilson, doing business as Jack Wilson Company
1140 Ventura Blvd., P.O. Box 1005
Thousand Oaks, Calif.

For: HIGH FIDELITY FURNITURE AND PARTS THEREOF—NAMELY, LOUDSPEAKER ENCLOSURES, LOUDSPEAKER WALL BAFFLES, EXTENSION LOUDSPEAKER ENCLOSURES, LOUDSPEAKER ENCLOSURE GRILLES AND GRILLE BOARDS, LOUDSPEAKER ENCLOSURE SPEAKER PORT COVERS, LOUDSPEAKER ENCLOSURE TUNING DUCTS, LOUDSPEAKER ENCLOSURE MOUNTING BRACKET KITS, LOUDSPEAKER ADAPTER BOARDS, HIGH FIDELITY COMPONENT EQUIPMENT CABINETS, AND RECORD CHANGER BASES; ALSO, HIGH FIDELITY LOUDSPEAKER SYSTEMS, EXTENSION LOUDSPEAKERS, AND LOUDSPEAKERS—in CLASS 36.

First use Nov. 19, 1958; in commerce Dec. 22, 1959.

(Instructions on reverse side)

APPLICATION FOR RENEWAL OF REGISTRATION OF A MARK, WITH DECLARATION	MARK (identify the mark) AURATONE
	REGISTRATION NO. 757,789
TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:	CLASS NO.(S) 36

(Check one box and fill in appropriate information[1])

☒ NAME OF INDIVIDUAL AS RENEWAL APPLICANT, AND BUSINESS TRADE NAME, IF ANY

John A. Wilson d.b.a. Auratone Products

BUSINESS ADDRESS

P. O. Box 698, Coronado, Ca. 92118

RESIDENCE ADDRESS

3 Blue Anchor Cay Rd., Coronado, Ca. 92118

CITIZENSHIP

United States

☐ NAME OF PARTNERSHIP AS RENEWAL APPLICANT

NAMES OF PARTNERS

BUSINESS ADDRESS OF PARTNERSHIP

CITIZENSHIP OF PARTNERS

☐ NAME OF CORPORATION[2] AS RENEWAL APPLICANT

STATE OR COUNTRY OF INCORPORATION

BUSINESS ADDRESS OF CORPORATION

EXHIBIT 4 Auratone vs. Musicraft

The above identified applicant for renewal requests that the above identified registration, granted to

John A. Wilson d.b.a. Auratone Products (name of original registrant) on October 1, 1963 (date of issuance),

which applicant for renewal now owns, as shown by records in the Patent and Trademark Office, be renewed in accordance with the provisions of Section 9 of the Act of July 5, 1946.

The mark shown in said registration is still in use in Inter-State (type of commerce) commerce[3]

on or in connection with each of the following: all the goods (list the goods and/or services or insert the words "all the goods" and/or "all the services" as may be appropriate.)

which are recited in the registration, the attached specimen showing the mark as currently used.[4]

John A. Wilson (name of person whose signature is to be placed below[6])

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application, declares that all statements made in this application of his /her knowledge are true and all statements made on information and belief are believed to be true.

John A. Wilson (signature)

5-26-83 (date)

PTO Form 4.13a (Renewal)

Patent and Trademark Office · U.S. DEPARTMENT of COMMERCE

(over)

AURA000526

Exhibit

B

Log In Create Account Wish List Order Status
(800) 222-4700 Cart
Email Español: (800) 222-4701
Shop DealZone News & Research Support Search
$75,000 Giveaway Holiday Financing Gift Certificates Wish List
GET IT BY CHRISTMAS for FREE! NO MINIMUM ORDER! Order by 4PM EST on Dec. 21 Learn More ›

December 16, 2015

139th AES Convention: Auratone 5C Passive Monitors

Like
+1
Tweet

By Sweetwater on Oct 30, 9:57 AM

Check out the complete **139th AES Convention** Show Report Click here »

GET THE E-MAIL!

Sign up for the inSync **weekly roundup email**
Delivered every Friday
Your E-mail Address
SUBSCRIBE NOW
Privacy Policy | Unsubscribe anytime

In the 1970s and '80s, these unassuming little Auratone speakers were a fixture on every professional studio console's meter bridge. Now they're back – and better than ever! Built in Nashville, TN, the new 5C (like the original) features a 4.5" full-range driver made from high-quality materials. Their ruggedness, flat response, impressive power handling, and portability have made the Auratone 5C an industry-standard "real-world" reference monitor for music recording, broadcasting, and television/motion picture post.

Auratone 5C Passive Monitor Features:

Passive "real-world" reference monitors
Dimensions 6-1/2" W x 6-1/2" H x 6" D
Frequency Response: 75Hz-15kHz

Exhibit

C

Search Search Get the app Log in

saschabusy FOLLOW

66 likes 3w

saschabusy #hereyougo #auratone #supersoundcubes #5c @truebusyness

saschabusy @sinch_producer @tihamerjenei 😮

tihamerjenei ☺ an welcher Endstufe hast du sie? @saschabusy

vanessamarilisa 😐

saschabusy @tihamerjenei JVC RX-230R Hifi Receiver von 1995 ca. davon habe ich 3 im Studio, da hängen in der SSL Suite auch die #yamahans10s super klang vorstufe

saschabusy @vanessamarilisa 😄😄😄

tihamerjenei Ah sehr nice! 🔌 Die ns10 werden bei mir wohl die nächsten sein

Exhibit

D

MENU

sonicscoop

AES 139, NYC – Transaudio Group Re-Launches Auratone Reference Monitors

12 Shares

October 27th, 2015 by Gabriel Lamorie

Share 15 Like 1 Tweet

Originally developed by Jack Wilson in 1958, the Super Cube quickly became one of the most iconic reference monitors in the audio industry.

The original one-way, zero crossover reference monitors weren't the most accurate or transparent on the market, but they could produce a very linear representation of whatever was pushed through them. The representation became a go-to representation for its ability to unveil red flags within a mix.

17
Shares

Alex Jacobsen, head of Auratone, made it a point keep the 5C un-altered from the original.

Alex Jackobson, Jack Wilson's grandson, has now taken the helm of Auratone and his contribution to our generation of mixers and producers is the rebuilt "5C Super Sound Cube". Alex's goal was to produce a speaker that could offer a replicated linear response, with no attempt to alter the sound of the original. According to Brad Lunde, founder and president of TransAudio Group, Auratone's new U.S. distributor, Alex has succeeded.

"It took a lot of time," said Jacobsen. "I pored over box after box of my grandfather's specs, drawings, and records. I found new suppliers in the USA and carefully tested all of the huge number of possibilities to find combinations that were repeatable and that had the exact same sound as my grandfather's vintage Sound Cubes. Our standards are strict because these ARE Auratones, they're not a knock-off! It was daunting, but I got help from other members of the family, including my mom, who remembers helping my grandfather in the shop in the 1970s."

The Auratone 5C monitors will be available for $350/pair from TransAudio Group – Release date TBA. **STOP BY AND SEE TRANSAUDIO GROUP AT AES NYC 2015 BOOTH #935.** A pair of the Sound Cubes will be given away every day of AES 139.

Check back at http://www.transaudiogroup.com/products/auratone/5c/ for updates.

Exhibit

E

Search

Nationwide

Get a quote today from:
Vincent Podmaska
(401) 400-4076

Learn More

Auratone Corporation

Like Share Be the first of your friends to like this.

Tweet

G+ Share Share this on Google+

Company Overview Auratone Corporation is a corporation based in California and it's registered under Entity number C0787504. Auratone Corporation was registered in 10/22/1976. The company's status is listed as Ftb Suspended as recorded in documents filed with California Department of State.

Entity Number C0787504

Entity Name Auratone Corporation

Date Filed 10/22/1976

Status Ftb Suspended

Address P O Box 180698,
Coronado Ca 92178

Jurisdiction California

Agent John A Wilson

Agent Address 3030 Nimitz Blvd,
San Diego Ca 92106

Are you the owner? If you are the owner of this company and wish to remove it from this site, you can submit a removal request.

Exhibit

F

The United States of America

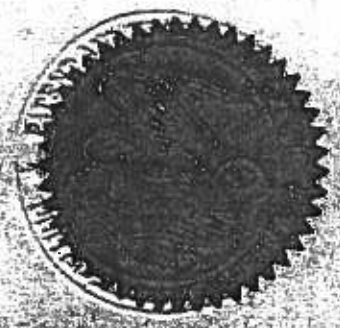
CERTIFICATE OF RENEWAL

Reg. No. 757,789

Application to renew the above identified registration having been duly filed in the Patent and Trademark Office and there having been compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

This is to certify that said registration has been renewed in accordance with the Trademark Act of 1946 to John A. Wilson d.b.a. Auratone Products, of Coronado, California

United States Citizen
and said registration will remain in force for twenty years from October 1, 1983 unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this thirtieth day of August, 1983.

COMMISSIONER OF PATENTS AND TRADEMARKS

PTO-134

EXHIBIT
2
Auratone VS. Music Group
#91211808
PENGAD 800-631-6989

AURA000482

Exhibit

G

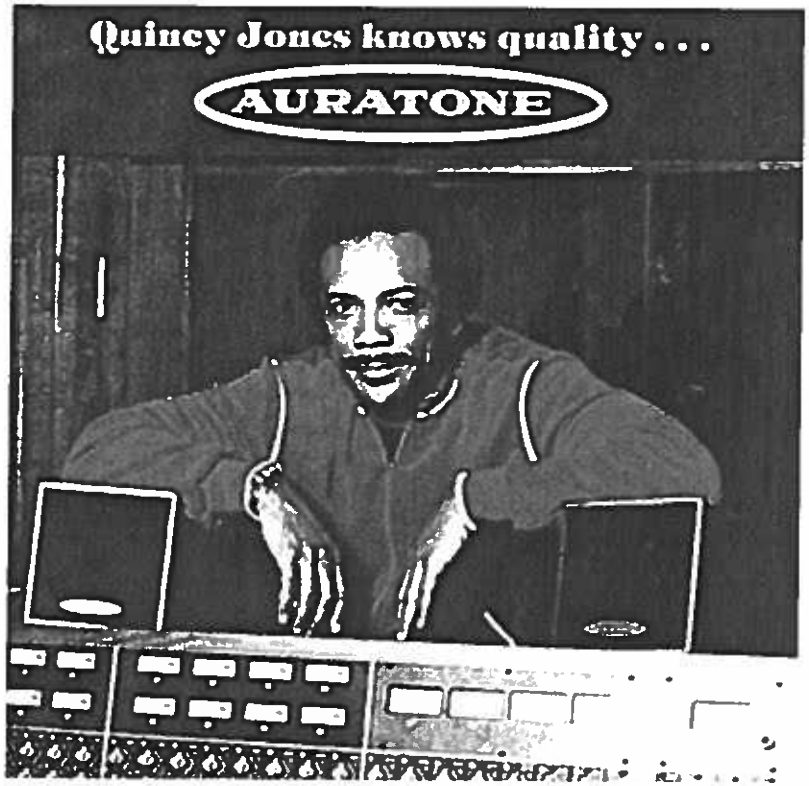
Home of the Original 5C Super Sound Cube

Family Owned for Over 50 Years

info@auratonesoundcubes.com

Introducing the New 5C Super Sound Cube

Now Available



Home of the Original 5C Super Sound Cube

Family Owned for Over 50 Years

info@auratonesoundcubes.com

HOME PRODUCTS DISTRIBUTORS ABOUT US TESTIMONIALS CONTACT

Introducing the New 5C Super Sound Cube

Now Available

Home Products Contact

Recording Monitors for the Real World

Auratone LLC, Nashville, TN
Copyright © Auratone 2014

Home of the Original 5C Super Sound Cube

Family Owned for Over 50 Years

info@auratonesoundcubes.com

HOME PRODUCTS DISTRIBUTORS ABOUT US TESTIMONIALS CONTACT

Introducing the New 5C Super Sound Cube

Now Available

Home of the Original 5C Sound Cube

Home Products Contact

Recording Monitors for the Real World

Auratone LLC. Built on the
Copyright © Auratone 2014

Exhibit

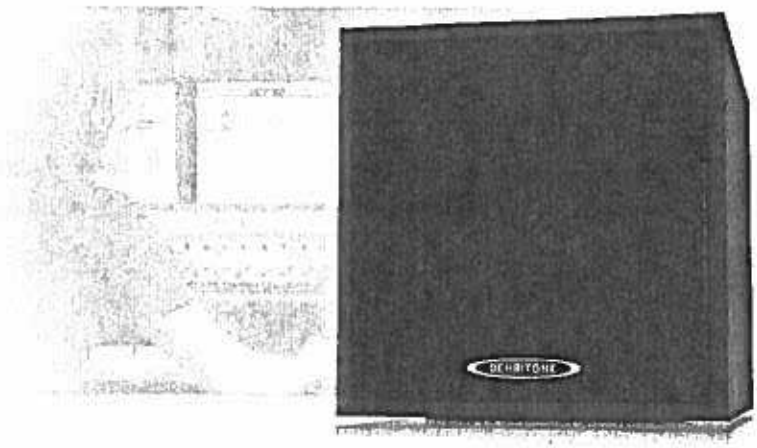
H

behringer

BEHRITONE
C5A

Vintage-Style 30-Watt
Active Full-Range
Reference Studio Monitor

Buy now! »



BEHRITONE C5A

Vintage-Style 30-Watt Active Full-Range Reference Studio Monitor

- Vintage-style studio monitor modeled after a famous model from the 70's
- High-end 30-Watt Class-D amplifier built-in to perfectly match the speaker's performance
- Full-range 5 1/4" speaker with special diaphragm and deformation-resistant chassis
- Homogeneous dispersion pattern due to singular small-diaphragm full-range driver configuration
- Magnetic shielding allows placement near computer monitors
- 6 1/2" cube cabinet with detachable acoustic foam and attractive wood laminate

More

MG 1 1/5/2015 5:49 PM

Beauty is More Than Just Skin-Deep

The BEHRITONE C5A is our homage to the legendary company Auratone and their 5C loudspeaker, which literally shook up the recording industry in the 1970s and '80s. The original version was a passive, little vinyl-clad, particle board cube that recording engineers soon came to love. The C5A is constructed of precision-milled, high-rigidity MDF for extremely low-resonance performance and sports a classic wood-grain laminate, allowing this little dynamo to fit into virtually any studio décor. A neoprene pad is included for superior acoustic isolation when your C5A is placed on a desktop, or the enclosure can be mounted on a mic stand via the built-in 5/8" adapter.

Discover what world-class studio and mastering engineers have known for decades - the only way to get the TRUTH about your mix is to hear it through a pair of these pint-sized beauties. BEHRITONE C5A active studio monitors are the perfect complement to your current monitoring system. Visit your authorized BEHRINGER dealer - or order yours online today!

You Are Covered

We always strive to provide the best possible Customer Experience. Our products are made in our own MUSIC Group factory using state-of-the-art automation, enhanced production workflows and quality assurance labs with the most sophisticated test equipment available in the world.

As a result, we have one of the lowest product failure rates in the industry, and we confidently back it up with a generous 3-Year Warranty program.

**Warranty details can be found at music-group.com.

© Copyright 2015 . MUSIC Group IP Ltd. All rights reserved. | Privacy Policy | Imprint & Terms of Use | Site Map | Behringer Newsletter | Product Registration

Exhibit

I

Auratone - Scanned Docu × behritone amazon - Goog × Amazon.com: BEHRINGE ×

/.amazon.com/Behringer-C5A-BEHRINGER-BEHRITONE/dp/B0051TZALE

nazon.com Today's Deals Gift Cards Sell Help

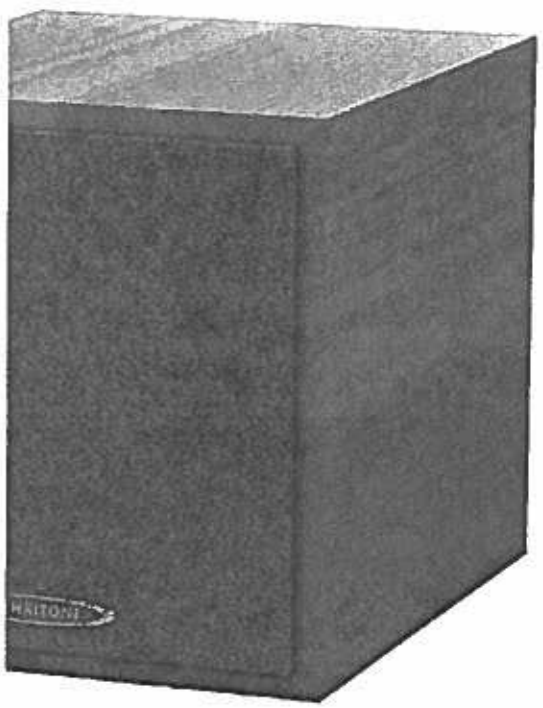
Hello. Sig
Your Ac

Drums Dj & Karaoke Recording Live Sound Accessories Band & Orchestra Deals

d BEHRINGER BEHRITONE C5A also viewed:

Avantone Pro Mono-BLOK Active MixCube Single Self Powered Mix Cube
Buy new $216.59
3 Used & new from $216.59
(22)

Avantone Active MixCube P
Buy new $469.00
7 Used & new from $469.00
(7)



BEHRINGER BEHRITONE C5A

by Behringer
5 customer reviews

Available from these sellers

- Vintage-style studio monitor modeled after a famous model from the 70's
- High-end 30-Watt Class-D amplifier built-in to perfectly match the speaker's performance
- Full-range 5 1/4" speaker with special diaphragm and deformation-resistant chassis
- Homogeneous dispersion pattern due to singular small-diaphragm full-range driver configuration
- Magnetic shielding allows placement near computer monitors

12 new from $237.02

20% Off

Save an Additional 20% on Select Musical Instruments and Accessories
Shop the Holiday Savings Event and save an additional 20% on select musical instruments and accessories sold by Amazon.com by entering the promo code MUSIC20OFF at checkout. Shop now

New tab
New wind
New incog
Bookmark
Edit
Zoom
Save page
Find...
Print...
Tools
History
Download
Sign in to
Settings
About Goo
Help
Exit

× Auratone - Scanned Docu × behritone amazon - Goog × Amazon.com: BEHRINGE ×

.amazon.com/Behringer-C5A-BEHRINGER-BEHRITONE/dp/B0051TZALE

) This Page May Be Interested In These Sponsored Links (What's this?)

ıritone C5A - Free shipping. We'll beat any price on **Behringer**! www.zzounds.com/

ınger - Shop **Behringer** Online Today. Your Band And Orchestra Authority. www.wwbw.com/**Behringer**

n

C50A full-range reference studio monitors let you hear what your mixes will sound like on real-world systems such as car stereos, computers, televisior d systems. Each 6.5" cube contains its own dedicated 30-Watt Class-D power amp and a specially designed 5-1/4" full-range speaker for crystal-clear balanced XLR and 1/4" TRS, as well as unbalanced RCA connections, and are magnetically shielded so they won't disrupt your computer video monitors RITONE loudspeakers are our homage to a now-defunct company and their legendary 5C loudspeakers, which literally shook up the recording industry in were passive little vinyl-clad, particle board cubes that recording engineers soon came to love. The C50A features a high-gloss piano lacquer finish, wl minate, allowing either model to fit into virtually any studio décor. Both are constructed of precision-milled, high-rigidity MDF for extremely low-resonar ıded for superior acoustic isolation when the speakers are placed on a desktop, or the enclosures can be mounted on mic stands via the built-in 5/8" a ıdio and mastering engineers have known for decades - the only way to get the TRUTH about your mix is to hear it through these pint-sized beauties. I ıonitors are the perfect complement to your current monitoring system.

: 7.9 x 6.5 x 6.5 inches ; 7.3 pounds

.9 pounds

Currently, item can be shipped only within the U.S. and to APO/FPO addresses. For APO/FPO shipments, please check with the manufacturer regarding

ng: This item is not eligible for international shipping. Learn More

This item must be shipped separately from other items in your order. Additional shipping charges will not apply.

: C5A

Review: ☆☆☆☆☆ (5 customer reviews)

; Rank: =79,368 in Musical Instruments (See Top 100 in Musical Instruments)

ıal Instruments > Recording Equipment > **Studio Monitors**

or warranty information about this product, please click here

Exhibit

J

Will

OF

JOHN ARCHIBALD WILSON

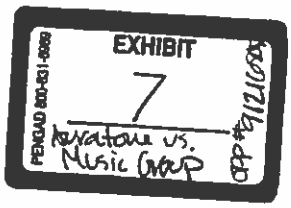
I, JOHN ARCHIBALD WILSON, a resident of San Diego County, California, declare that this is my Will and revoke all former Wills and Codicils that I have previously made.

FIRST: I declare that I am married and that my wife's name is HARRIET ELAINE WILSON, formerly known as HARRIET ELAINE OVIATT, and all references in this Will to "my wife" or "my spouse" are to her. We have three (3) now living children from said marriage whose names are as follows:

PAUL ADAM WILSON

MARLAINE ANNETTE WILSON

SUZANNE EVE WILSON



My wife was formerly married to James Carl Schneider and that marriage ended by divorce in 1953. My wife has one child by her former marriage whose name is MICHELLE ELAINE SCHNEIDER EVANS, of Long Beach, California. I have no other children or deceased children, nor issue of any deceased children.

SECOND: It is my intention in this Will to dispose of all of my property and my one-half (1/2) interest in our community property. I do not intend to exercise any power or appointment which I now have or which may hereafter be conferred

on me, unless that power is specifically referred to herein or in any Codicil hereto.

THIRD: I give any stock or interest which I may have in Auratone Corporation and Auratone Products, or any other corporation or business organization in which I am actively involved and in which I have an ownership to my wife, HARRIET ELAINE WILSON, if she survives me for thirty (30) days, and if she does not then this gift shall lapse and become a part of the residue of my estate.

FOURTH: I give all of my jewelry, clothing, household furniture and furnishings, personal automobiles, and other tangible articles of a personal nature, or my interest in any such property, not otherwise specifically disposed of by this Will or in any other manner, together with any insurance on the property, to my wife if she survives me for thirty (30) days. If she does not survive me for said period, I give all of such property to our four children, PAUL ADAM WILSON, MARLAINE ANNETTE WILSON, SUZANNE EVE WILSON and MICHELLE ELAINE SCHNEIDER EVANS, if they survive me for thirty (30) days in equal shares as they shall agree, or as my Executor, in my Executor's discretion, shall determine if our children do not agree. If none of said persons survive me, then this gift shall lapse and become a part of the residue of my estate.

FIFTH: A. I give all of my separate property interest in insurance policies on the life of HARRIET ELAINE WILSON to the Trustee of the WILSON FAMILY TRUST created by a

HC-AURA000664

Trust Agreement dated March 2, 1984, executed by my wife and myself as Co-Trustees, prior to the execution hereof, as part of the Trust to be held, divided, administered, and distributed in accordance with the terms of the Trust. However, any insurance policies on the life of my wife that are my separate property and pass under this paragraph shall go into Trust "B".

B. This gift shall not be invalid because the above Trust is amendable or revocable, or both, or because the Trust is amended after the date of this Will or after the date of my death. However, if the Trust is revoked or terminated prior to my death, or if for any other reason this gift shall lapse or is invalid, my separate property interest in said life insurance policies shall be a part of the residue of my estate and distributed in accordance with the provisions contained in this Will regarding the residue of my estate.

SIXTH: I give, devise, and bequeath the residue of my estate as follows:

A. I give the residue of the property disposed of by this Will to the Trustee of that Trust entitled the WILSON FAMILY TRUST dated March 2, 1984, executed by my wife and myself as Co-Trustees, prior to the execution hereof, as part of that Trust, and I direct that such residue shall be added to and commingled with the trust property of such living trust and shall be held, managed, administered, and distributed under the terms and provisions of such Declaration of Trust and any amend-

HC-AURA000665

ments thereto made prior to my death, it being my intention not to create a separate or testamentary trust, nor to subject such living trust to the jurisdiction of the Probate Court.

B. If for any reason the dispostion of subparagraph "A" is not operative or is invalid, or if the Trust referred to in that subparagraph fails or has been revoked, then I give the residue of the property disposed of by this Will to the Trustee of the Trust, to be held, administered, and distributed according to the terms of the WILSON FAMILY TRUST executed on March 2, 1984, prior to the execution hereof, wherein my wife and I are Co-Trustors and my wife and I are named as Co-Trustees. It is my intention to incorporate that document into this Will by this reference.

SEVENTH: As used in this Will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child", "children", and "issue" shall include adopted persons; and the terms "my child" and "my children" shall include my children named hereinabove, and my other children hereafter born to or adopted by me.

EIGHTH: No interest shall be paid on any legacy given under this Will or any Codicil to it.

NINTH: I direct that all inheritance, estate or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, or to any property or transfers of property outside my probate estate, including any inheritance taxes and/or estate taxes on any joint tenancy

HC-AURA000666

property, shall be equitably prorated among persons to whom such property may be transferred or to whom any benefits accrue.

TENTH: A. I nominate my wife, HARRIET ELAINE WILSON as Executor of this Will. If she shall for any reason fail to qualify or cease to act as Executor, I nominate CALIFORNIA FIRST BANK, a banking corporation, as Executor. All Executors named herein shall serve without bond.

B. I authorize my Executor to sell, with or without notice, at either public or private sale, and to lease, any property of my estate, subject only to such confirmation as may be required by law.

C. I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell, or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operaton, sale or liquidation by my Executor, in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

D. My Executor shall determine, in a manner which would minimize taxes, whether any or all expenses of administration of my estate shall be used as Federal estate tax deductions or as Federal income tax deductions, and whether the values as of the date of death or alternate valuation date should be used for estate tax purposes. No beneficiary under this Will,

HC-AURA000667

whether an income beneficiary or a remainderman of any trust or other beneficiary, shall have any right to recoupment or restoration of any losses the beneficiary suffers as a result of the use of any such deductions for one or the other of such purposes.

E. I further authorize my Executor, on any preliminary or final distribution of the property of my estate, to partition, allot, and distribute my estate in kind or entirely in cash, in my Executor's sole discretion. My Executor shall have the sole discretion to select property to be allocated to any share created by this Will or to be distributed in satisfaction of any bequest provided for herein without regard to any potential income tax consequences to any distributee. However, my Executor shall not exercise this discretion in a manner that will result in the loss of, or decrease in, any marital or charitable deductions otherwise allowable in determining my Federal estate tax.

ELEVENTH: The term "Executor" shall include any personal representative of my estate.

TWELFTH: I have not entered into either a contract to make Wills or a contract not to revoke Wills.

THIRTEENTH: As used in this Will, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

FOURTEENTH: If any provision of this Will is unenforceable, the remaining provisions shall be carried into effect.

FIFTEENTH: If any beneficiary under this Will in any

HC-AURA000668

manner, directly or indirectly, contests or attacks this Will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this Will is revoked and shall be disposed of in the same manner provided for herein as if that contesting beneficiary had predeceased me without issue.

I SUBSCRIBE MY NAME to this Will this 2nd day of March, 1984, at San Diego, California.

JOHN ARCHIBALD WILSON

THE FOREGOING INSTRUMENT, consisting of eight (8) pages, including the page signed by us as witnesses, was at the date hereof by JOHN ARCHIBALD WILSON, signed as and declared to be his Will, in the presence of us, who, at his request, and in his presence and in the presence of each other, have subscribed our names as witnesses thereto. Each of us observed the signing of this Will by JOHN ARCHIBALD WILSON, and by each other subscribing witness and knows that each signature is the true signature of the person whose name was signed.

Each of us is now more than eighteen (18) years of age and a competent witness and resides at the address set forth after his name.

We are acquainted with JOHN ARCHIBALD WILSON. At this time he is over the age of eighteen (18) years, and to the best of our knowledge, he is of sound mind and is not acting under duress, menace, fraud, misrepresentation, or undue influence.

HC-AURA000669

Executed on the 2nd day of March, 1984, at San Diego, California.

[illegible] residing at [illegible]

Coleen Callahan residing at San Diego, Calif.

Sally Anne Cadirci residing at Lemon Grove CA

We declare under penalty of perjury that the foregoing is true and correct. Executed on the 2nd day of March, 1984, at San Diego, California.

[illegible]

Coleen Callahan

Sally Anne Cadirci

Exhibit

K

EXHIBIT
Auratone vs. Music Group

hysellstuff.com/auratone/auratonespeakerinventory/speaker_Inventory.php

Descriptions of Auratone speaker inventory. I have described these speakers as best I can but I am sure that there are some errors.

If any of the descriptions don't seem to match the photo please ask me for further details. You may contact me at Auratone {AT} bellsouth [dot] net

Box 1
1 - 7" Peerless 8 ohm w/ bucking magnet

Box 1
1 - 7" Peerless 911219 8 ohm

Box 1
1 - 7" Peerless 911219 8 ohm

Box 2
4 - 5" Peerless 910321 4 ohm w/large magnet

Box 2
4" -7" Auratone 940623 z8 ohm (one of them is unlabeled but was in same box and is identical)

Group 4
30 - 7" Auratone (Peerless) 940623 z8 ohm (QC) *{5 boxes, 6 in each}*

Box 5
24 - 3" X 4" tweeters w/ straight sides 6 ohm, made in Norway

Box 6
2" - 5" Lyeco 8 ohm round shielded, very heavy

Box 6
1" - 5" s/087/97/2, poly

Box 6
1 - 4½" round unmarked, marked large "dust cap"

Box 6
1 - 4½" mhi square big magnet, sample

Box 6
2 - 4 ¾ " s/165/97/1 100wfr 8 ohm

Box 6
1 - 5" mii-09-08, round Vifa

Box 6
1 - 5" c13 wg-22-08

Box 6
2 - 5" m11 mg""09-08, 1 round

Box 6
wg-08-08, "stock woofer"

000788

round vifa

05, 1 round

"stock woofer" marked on box

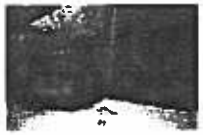
Box 6
1" - 4"cij wg-09-04, square, Vifa

Box 6
1" - 4-7/8" unmarked square w/ small magnet

Box 6
8 - 1" Peerless SR butterfly tweeters (?)

Box 6
1 - 4½" s/038/97/8 100 wfr 4 ohm

Box 6
2" - 1½" buttons (?)



Box 6
2" - 5½" Focal technology 5koi31 (noir) square w/ black bullet dome

Box 6
1" - 4½" TB speakers round w/ sliver bullet dome 8 ohm

Box 6
2" - 4 ¾ " PFR8 square pin-cushion Utah-Oxford

Box 6
1 - 5" c13 wg-08, 8 ohm

Box 7
1 - 4½" mhi sample w/ big magnet

Box 7
1 - 4½" Pioneer sample, marked "acceptable"

Box 7
1 - 4½" Pioneer sample shielded, marked "acceptable"

Box 7
2 - 4½" square shielded speakers, shielded, one w/ Auratone label

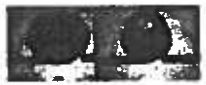
Box 7
1 - 4½" s/165/97/2- wfr 8ohm, shielded

Box 7
1" - 4½" s/038/97/9 4ohm, screen, shielded, basket cover

Box 7
1 - 4½" s/087/97/2 poly 8 ohm, not in good shape, shielded

HC-AURA000789

Box 7
3 - 4½" s/087/97/1 poly, shielded, cropped (1 in another box, a total of 4) ????



Box 7
4 - 4½" Auratone/Pioneer apcfrv8 - blk/sample 8 ohm, sample, a11ec80-53fj, sq., magnet scuffed on one

Box 7
1 - 4½" Pioneer shielded a11ec80-02a

Box 7
1" - 5" Pioneer sample, shielded

Box 7
1 - 4½" s/245/97/1 8 ohm, shielded

Box 7
1" - 4 ½ "~ Pioneer, shielded, A11EC80-57F/301090

Box 8
2 - 7" Peerless 900504 8 ohm

Box 8
7 - 5 ½" Peerless 910321 8 ohm w/big magnets

Box 9
2 - 8" Peerless 8 ohm

Box 9
2 - 6" Peerless 16 ohm

Box 9
2 - 4 ½" Pioneer Sample (matched) 8 ohm square

Box 9
1" - 4 ½" Audax HM100G0 ver. 17704

Box 9
5 - 4" Polydax 1227 4 ohm, note that one is bent but I can"™ t see it

Box 10
4 - 5" Audax Two 34X0 ver.4601, plain

Box 10
3 - 5" Audax Two 34X0 ver.4602

Box 10
2 - 6" Audax HM130G0 ver.26904 w/cut-off corners

Box 10
2 - 6" Audax HM130C0 ver.

Box 10
2" - 4 ¼ Audax HM100G0 ver.

Box 11
20 - 3" tweeters 0102

Group 12
630 - 2" tweeters

000790

[redacted] 17802

[redacted] 17704

[redacted] made in Germany Square Unknown manufacturer

[redacted] TW154 8 ohm square Unknown manufacturer

Box 15
1" - 4½ " CTS/PC rough shape was pulled from box, 5804301_?_1377549

Box 15
1 - 4½ " Pioneer 57F, square

Box 15
2 - 4" Audax, square, 8 ohm, S4FR8 for 5MC & 5RMC

Box 15
1" - 4¼ " TB SpeakersW4-6165, square bullet dome, also 1 in another box, total of 2

Box 15
1 - 5" TB Speakers W4-656 SB gold, translucent, shielded

Box 15
2" - 7" Peerless 180WF 33102, 8 ohm, 1 damaged, suspension very dry on other one, QC 910321

Box 16
2 - 4½ " Pioneer, yellow shielded, T10ER75-51D/301084

Box 16
1" - 4¾ " unmarked

Box 16
2 - 5 " Pioneer PE-12 16 ohm, heavy duty, full range

Box 16
1" - 5" Lyeco rubber, black, 8 ohms, other notes illegible

Box 16
1 - 4½ " ABC lab, woofer, D13 WA-xx-G8//ABC Labnr 38/4 4 8 ohms 2

Box 16
1 - 4½ " APC-FRV8, Shielded, no marking on speaker

Box 16
1" - 7 " Peerless Denmark, 8 ohm, shielded

Box 16
1 - 5" Unmarked sample, black, rubber #1-2 7.10.6, 4ohms F077

Box 16
3 - 4½ " Square, "4" pic says # 8 s/b

Box 16
2"" 5" Peerless 8 ohm

4ohms HU77

Box 16
2" - 3" clipped, 1" dome, Norway

Box 16
1" - 3" Tweeter

Box 16
1" - 1" dome, made in Germany, shielded, tweeter, 4" metal surround, Quality Loudspeakers

Box 16
4½ " ABC Poly woofer big magnet

Box 16
1 - 4½" CIIWG-09-04 square

Box 17
6"" 5½" Vifa Denmark

Box 17
13" - 5¼ " 32/89 , no other marking

Box 17
1 - 4½ " ROC" - Taiwan 8 ohm shielded, rubbing voice coil, not heard w/ signal tester

Box 17
1 - 4½ " ROC" - Taiwan 8 ohm shielded, rubbing voice coil, not heard w/ signal tester

Box 17
1 - 4½ " RD26 sample tweeter

Group 18
36 cases of 120 pieces each of 5CTV crossovers

Group 19
204 - 5C speakers
[17 boxes, 12 pieces each

Wall hangers

Rack mounts

Tree Locks

HC-AURA000792

Exhibit

L

---------- Forwarded message ----------
From: **DreamHost Registration Service** <support@dreamhost.com>
Date: Sat, Jul 10, 2010 at 11:09 AM
Subject: [marhys 36362729] auratoneproaudio.com renewal success!
To: bdhysell@gmail.com
Cc: auratoneproaudio.com@proxy.dreamhost.com

Hello,

Your renewal of auratoneproaudio.com for 1 year has been processed.

This registration expires 2011-07-31 09:01:14.

To modify registration information, please log into the DreamHost web panel and go to the "Domain > Registration" area at:

https://panel.dreamhost.com/?tree=domain.registration

Thanks for choosing DreamHost!
The Happy DreamHost Domain Registration Team

Exhibit

M

---------- Forwarded message ----------
From: **Sonotechnique** <sales@sonotechnique.ca>
Date: Fri, Nov 30, 2012 at 11:14 AM
Subject: re: Auratones
To: Alex Jacobsen <tfx644@mocs.utc.edu>

Hello Alex,

It would be great to have the original Auratone company back in business. To be competitive, I think that you should consider offering both passive and self-powered models.

I think Auratone would have the edge on the market due to it's heritage and legacy... users would want the original, not a copy!

Hope this helps... all the best, Gerry

Gerry Eschweiler

President

geschweiler@sonotechnique.ca

T: 416-947-9112 (Toronto)

T: 800-449-5919 Canada toll-free

F: 416-947-9369

www.sonotechnique.ca

---------- **Original Message** ----------

From: Alex Jacobsen <tfx644@mocs.utc.edu>

To: sales@sonotechnique.ca

Cc:

Date: Wed, 28 Nov 2012 17:54:12 -0600

Subject: **Auratones**

Hello Gerry, I hope everything is going well. I am the grandson of Jack Wilson, founder of Auratones. My Aunt gave me your contact information in hopes of reaching you. I am emailing you about my curiosity of Auratones as I have been doing alot of research on them. From what I understand the production of the Auratones started to go down in the early 2000's and stopped completely with the passing of my grandfather in 2005. What I am curious about is if the market of Auratones was/is dying or was it more to do with the interests of my grandfather. I do see that knockoffs of the Auratones came out to take over the market in Avatones and Behritones. After doing some homework I see that they are not much different than the original Auratones and many people still prefer the Auratones. While I understand that these serve a niche market in the music industry, I was wondering if they are still relevant enough as my family has looked into possibility of bringing the Auratones back. I have talked to some people in the music industry and I have only heard good things regarding their popularity. Any help, thoughts, or opinions would be greatly appreciated.

Thank you and I look forward to hearing from you.

Alexander Jacobsen

Exhibit

N

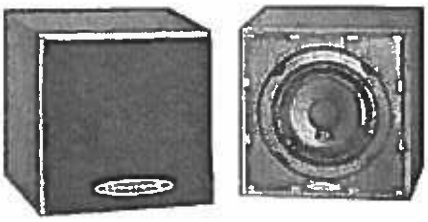
31st Annual

2016 TECNOLOGY HOF

Founded in 2004 by George Petersen and presented since 2015 by the NAMM MUSEUM of Making Music, the TECnology Hall of Fame honors and recognizes audio products and innovations that have made a significant contribution to the advancement of audio technology. Inductees to the TECnology Hall of Fame are selected by a panel of more than 50 recognized audio experts, including authors, educators, engineers and other professionals. Products or innovations must be at least 10 years old to be considered for induction.

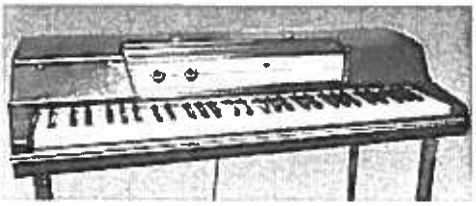
2016 TECnology Hall of Fame Inductees

offered lower noise performance and greater SPL (138 dB) handling.



1958Auratone Sound Cubes

The original compact reference monitor, Auratone speakers were the brainchild of company founder Jack Wilson, who in 1958, debuted small cube-shaped studio monitors with a single 4.5-inch driver. While not exactly hi-fi, Auratone Sound Cubes offered a real-world representation of how your mix would sound on AM car radios or a mono TV set, and by the 1970's, were found in every recording studio worldwide. As TV and auto sound improved, these eventually fell out of favor, as the Yamaha NS-10 became the standard in small reference monitors. Today with the popularity of music playbacks on iPads, smartphones and computer speakers, Auratone Sound Cubes returned in 2015, this time by Wilson's grandson and other family members, and these lo-fi wonders are back in action to a new generation of studio users.



1954Wurlitzer Electronic Piano

Invented in 1954 by the Rudolph Wurlitzer Company's chief design engineer Cliff Anderson, the Wurlitzer Electronic Piano was intended as a portable and compact replacement for the acoustical piano. It's electromechanical design was based on a series of a tuned metal "reeds" with an electrical potential that when struck by a key, vibrated near a conductive member, changing a voltage shift that could be amplified and converted into audio oscillations. Although a "Wurly's" sound hardly resembled an acoustic piano, it was portable and did have a distinctive voicing that soon became a mainstay of rock, pop and jazz artists worldwide, with some notable examples being Supertramp's "The Logical Song" and Steely Dan's "Do It Again." The Wurlitzer Electronic Piano was in production from 1954 to 1984, and lives on today as valuable vintage instruments and digitally sampled recreations.

Exhibit

O

---------- Forwarded message ----------
From: **Samir Chamoun** <samirjc@gmail.com>
Date: Fri, Oct 23, 2009 at 8:55 PM
Subject: Re: samir
To: Marlaine Hysell <bluffville@bellsouth.net>

my dear marlaine is there any way i can get in touch with you by Phone i need to order urgently RD26T8 replacement tweeter for T6V.LAST TIME I SENT U AN EMAIL NO RESPONSE.I LOOKED AT THE PICTURES UR DAD HAS LEFT AND I THINK YOU HAVE THEM.THANK YOU

From: Samir Chamoun [mailto:samirjc@gmail.com]
Sent: Sunday, February 22, 2009 4:55 PM
To: auratone@bellsouth.net
Subject: samir

sorry about jack .trying to reach him last year .i know we used to talk when he was in san diego.i use to buy from him the RD26T8 replacement tweeter for T6V.do you have the speakers and tweeter.how much the cost .thank you

Exhibit

P

Auratone - Recording Monitors for the Real World!

Home of the original Auratone 5C Super Sound Cube.

Like Us On Facebook!
(https://www.facebook.com/auratonefanpage)

We've moved! Come see us at auratonesoundcubes.com! (http://www.auratonesoundcubes.com)

TM_SOURCE=INTERNAL&UTM_MEDIUM=FOOTER&UTM_CAMPAIGN=3)

Exhibit

Q

SOS
Sound On Sound Est. 1985

RSPE AUDIO & VIDEO SOLUTIONS | Save up to 40% Pro Tools | HDX

Bruce Swedien: Recording Michael Jackson

Legendary engineer on Thriller

People • Opinion Artists / Engineers / Producers / Programmers

Published in SOS November 2009
Close window
Print article

In this article

So Musical It Hurts
The Thrill Of Acusonic
Working The Room
Transients & Compression
The Colour Of Magic
Don't Stop Till You Get Enough
Blue Sky Production
The Inspirational Michael Jackson
Bruce Swedien's Microphones

Bruce Swedien at the Harrison console in Westlake Studios, in a photo taken during the mixing of Michael Jackson's Thriller

Bruce Swedien has been the engineer of choice for Michael Jackson and his producer Quincy Jones, among many others. In a rare interview, he lays bare the techniques behind some of the superstar's biggest hits.

Mike Senior

Bruce Swedien considers himself a lucky man. As the man at the desk for Michael Jackson's Thriller, which has defended its best-selling album status in the Guinness Book Of World Records for more than 25 years, there's no denying that he found himself in the right place at the right time, and there can have been few doors closed to him since, given a CV point like that! But if you look beyond the glare of Thriller's nine-digit sales figures, it's clear that there's a whole lot more to Swedien's story than good fortune: although the first of his five Grammy awards came with Thriller, his records with Quincy Jones and George Benson had already garnered three nominations for Best Engineered Recording before that.

The only child of classically trained musicians, he not only received a solid musical education, but also unquestioning support when their 10th birthday gift to him, a disc-recording machine, revealed the strength of his true vocation. By the age of 14 he was spending his holidays recording all comers, and even set up his own radio station to broadcast the results to the neighbourhood! At 19 he'd already worked for Tommy Dorsey and was setting up his own commercial studio in an old cinema in his home town of Minneapolis. By 1957, the 21-year-old was recording the Chicago Symphony Orchestra professionally for RCA Victor, before moving on to Universal Studios the following year, joining Bill Putnam in his pioneering experiments with early stereo and multitrack techniques.

"Bill Putnam was the most gracious guy in life, and he took me under his wing," Swedien recalls. "Universal was a fabulous studio. Studio A was a huge room designed by Bill, and was just gorgeous. The

Looking at Bruce Swedien's monitoring setup at his own West Viking Studio in Florida, I immediately spotted some familiar little cubic speakers sitting atop the meterbridge: a pair of Auratone 5Cs. Does he recommend them? He almost jumps out of his chair: "I love Auratones! You know what Quincy calls them? The Truth Speakers. There's no hype with an Auratone, and it's sad that you can't buy them any more. I knew the guy who made them out in San Diego, but he died a couple of years ago. If you see any Auratones on eBay, buy them! I have about three or four sets of them. Probably 80 percent of the mix is done on the Auratones, and then I'll have a final listen or two on the big speakers — I have Westlake speakers which I absolutely love, with special custom-built power amps. I don't listen very loud on the Auratones, the SPL is maybe 85dB for the bulk of the mixing work. If I were to allow conversation to go on in the control room while I was mixing, it would be easy to do, but I hate distractions when I'm mixing, which is another reason why I usually ask everybody to leave." Many engineers use a single Auratone in mono, but Swedien has no truck with that: "I hate mono, and I'm not a big fan of surround either. I love stereo. If you've got your shit together, and you know what you're doing, you can do as much with two-channel stereo as most mixers can do with surround."

A prominent pair of illuminated VU meters also dominates the meterbridge: "I love VU meters. Mine were found for me by Allen Sides at Ocean Way Studios, and they're gorgeous meters. They will register some sounds, for example low frequencies, which may not be audible on the Auratones, so I do rely on them heavily. I am quite fussy about mix levels and bus levels. If you're trying to make your mixes as clear and clean as possible, you kind of have to keep it at zero or less on the bus, because those meters are designed to resemble our human hearing, and the peaks, although they may not look like much, may be tremendous. If you're not careful, they can make mixes that sound rather ugly."

The engineer's 'less is more' approach to EQ is already well documented: "The trick is to use as little EQ as possible to achieve the desired result," he writes in his autobiography. However, he has also been a long-time advocate of the EQ in the Harrison mixing consoles, and has owned a 3232C desk himself since using the 4032 at Westlake Studios for Thriller. 'Spectacular' and 'dynamite' are epithets that come up in our conversation, not just in relation to the main swept bands, but even to the high-pass filter: "It isn't 'just a filter'. It's so dramatic — if you put it at 40Hz, that's exactly what you get. And if you use the high-pass filter wide open, it is wide open. And the important thing is that the audio the filters lets through is absolutely untouched."

Don't Stop Till You Get Enough

Credits on Michael Jackson's string of hit solo albums would be ample excuse for any engineer to rest on their laurels, but that's clearly not Bruce Swedien's style. He continues to produce records for such renowned artists as Santana and Jennifer Lopez, as well as dedicating himself to nurturing new generations of engineering talent via courses and seminars. Who knows? You might bump into him yourself one of these days. If you're lucky.

Blue Sky Production

Bruce Swedien: "What I frequently hear in many modern mixes is over-treated, over-compressed music with no sense of reality at all, which to me is on the verge of disgusting. I always try to put some element of stark reality into my productions, a little patch of blue sky. I'll give you an example. There's a string line in 'Billie Jean', and I recorded that absolutely classically in Studio A at Westlake, with violins left, violas slightly to the right, and celli to the right. If you listen to that song it just jumps right out at you. It's so natural and so basic it's just pathetic, but it adds so much to that mix."

The Inspirational Michael Jackson

While researching for this interview, I happened on the following comment from Bruce Swedien regarding recording Michael Jackson's vocals: "Damn near any chimpanzee could record Michael. I mean he is such a pro, it is unbelievable!" I asked him to elaborate. "Michael was not an ordinary vocalist or an ordinary singer," he explains. "If any young people in the music industry take the decision to use Michael as an inspiration, that's about the smartest thing that they could possibly do. In the studio you hardly knew he was there — he was extremely quiet and polite and kind — but he really cared

Exhibit

R

Name	Jacobsen, Alexander
Email	info@auratonesoundcubes.com
Payer ID	AK9GMVXXVVTYW
Report Date	01/01/2015-01/31/2015

Date	Name	Gross	Fee	Net	Transaction ID	Invoice Number
1/7/2015	Funky Junk France	751.4	-29.6	721.8	9CD47054MU727310Y	
1/7/2015	James Tuomy	308	-9.23	298.77	73763166FP472270T	INV2-5PCT-HUGW-CZVK-M4AU
1/7/2015	Pedro Garcia	316.5	-12.64	303.86	06N35071VH690445C	INV2-ARNY-LMKW-YN8Y-R8ND
1/8/2015	matthew gerber-corn	380	-15.12	364.88	02V272062U9555709	INV2-4RFW-6YAF-X9DH-CUMB
1/12/2015	Stéphane Lozac'h	375.5	-14.94	360.56	6DW06889X95835811	INV2-4SLK-Y6K2-PUAF-Y43K
1/12/2015	慎一 岡野	393	-15.63	377.37	9TS95285VB378032T	INV2-7MYB-PPYF-2AHE-H29N
1/19/2015	Kevin Henkel	351	-13.99	337.01	5FC62358NN979274X	INV2-FNPD-MG8F-VCZU-38GY
1/20/2015	Andrea McColl	351	-13.99	337.01	1P628895WE916015E	INV2-9W8L-EWJ2-4ZWZ-G6UD
1/21/2015	David Bech	375.5	-14.94	360.56	93A850259N679345B	INV2-JXWT-VBCD-V4NT-8Q9R
1/21/2015	Alex Hodge	307	-9.2	297.8	25390494AM230743K	INV2-CXR5-Z5Q2-4JX6-NLCZ
1/28/2015	恭介 森下	393	-15.63	377.37	5YR8813922662314C	INV2-GWH6-JXYE-XANR-Q2LR
1/28/2015	Tristan Smith	313	-9.38	303.62	898426632J533103T	INV2-ZX2U-6J88-HRE2-WWGT
1/30/2015	mauricio castillo	310.5	-9.3	301.2	6NX13342WT995030L	INV2-XR22-KKD8-NVE9-PTYE
1/30/2015	David Roddie	381	-15.16	365.84	3HH818630V6962624	INV2-6KAF-2JSK-8AFL-6CXD
1/31/2015	Toby Scott	318.5	-9.54	308.96	9D312793RE069301U	INV2-9QGF-893G-4E5H-UTKB
2/4/2015	Masakama Cooper	308.5	-9.25	299.25	8EY77226866658040	INV2-EU2B-ZBQX-8Q75-XRPG
2/6/2015	Kevin Foster	308.5	-9.25	299.25	3057649955360524M	INV2-VTJA-9E65-7DCQ-6TGC
2/20/2015	Hector Ruiz	578	-22.84	555.16	251286540H6640321	INV2-2NNJ-5SA5-KVXK-LBXH
2/22/2015	David Roddie	223.5	-9.02	214.48	87401928MK961840J	INV2-4LR6-Y86T-Y8V7-8C3U
2/23/2015	Brandon Jensen	314	-9.41	304.59	01F127326J007964D	INV2-PU74-EJ2X-9AVA-T7NK
3/4/2015	Satoshi Noguchi	318.5	-9.54	308.96	5FP21806FN817653L	INV2-Q5PX-R6UX-BPHF-YH8H
3/17/2015	Johnny TORCHY	377.5	-15.02	362.48	6V962970S4478941S	INV2-P4GX-TT5G-WEMH-NNV2
3/17/2015	CHARLIE HERBERT ISAAC	380	-15.12	364.88	7YN84777HM021325W	INV2-EQKN-MDVW-4AFA-PH2G
3/17/2015	James MacGregor	353	-14.07	338.93	0K049380327159833	INV2-KMKN-MN29-LRLE-AMPV
3/17/2015	Jared Kuemper	351	-13.99	337.01	59N35742PB123473G	INV2-94R6-4HG4-SJ86-V7QW
3/17/2015	Chris Chen	380	-15.12	364.88	5A5339874N081433S	INV2-9W9F-8KGP-E6B3-S7L5
3/17/2015	john styles	310.5	-9.3	301.2	5M825657RE746731M	INV2-XQ4F-F9ZH-GZB5-874A
3/17/2015	Wildplum	318.5	-9.54	308.96	1HA61178989853629	INV2-F2JV-ZL8F-4Y8L-MTXP

3/18/2015	Ron Dirckx	381	-15.16	365.84	33F92716BC491094F	INV2-AN48-CRVE-QZQQ-6ZHS
3/18/2015	Fastlane Audio	377	-15	362	762259378G765453X	INV2-FUW7-RJQ6-6YGG-MVR2
3/18/2015	Jens Scheiwe	375.5	-14.94	360.56	1PK18406B33956002	INV2-KUQ5-6AU2-DKWV-ENY9
3/18/2015	Gabriel Gallucci	351	-13.99	337.01	92G2199264537391D	INV2-X5VF-K37Q-PCWM-GMSB
3/18/2015	Alex Lee Linderman	317	-9.49	307.51	73L26557DB1008511	INV2-SBAA-24CY-9K8K-4G9P
3/19/2015	Matthew Tedeschi	167	-5.14	161.86	6HJ82439FK220313S	INV2-QJPH-LFJK-K2E4-BNK7
3/19/2015	Joshua Ehrhart	318.5	-9.54	308.96	9PX45776XD919472H	INV2-4YE6-UMQE-4J7B-D3VD
3/20/2015	Kev Wilson	376	-14.96	361.04	8M6919281E981592G	INV2-UMPD-5LEM-YVEB-DPWB
3/24/2015	Jane Lucas	338	-10.1	327.9	2EW85168UH4793614	INV2-RUVF-SE39-BAT3-XE53
3/25/2015	Benjamin WEBER	377.5	-15.02	362.48	4R681981PK066605E	INV2-JCG5-STXR-SN4R-BNFU
3/26/2015	Daniel Barnes	215	-8.69	206.31	21R50913VC863820F	INV2-ST7L-DFYG-L6G4-RAWD
3/30/2015	Tim Kaelen	381	-15.16	365.84	4H127720KT155850U	INV2-G4UX-3L3S-VD85-FU34
4/2/2015	chester oszustowicz	320	-9.58	310.42	920547187L5762153	INV2-UCY3-9A6R-WXGG-3PTZ
4/2/2015	Paul Cutri	320.5	-9.59	310.91	5N388272BK781192U	INV2-8PG4-7FHQ-QTWY-FB24
4/3/2015	Daniel Norris	320	-9.58	310.42	39667182NV961840N	INV2-75SD-JZ9R-A97M-4ME9
4/6/2015	kenneth larkin	328.5	-9.83	318.67	8C9223605E435344L	INV2-EX23-CKW7-29JC-4J5N
4/7/2015	Eric Bisgyer	318	-9.52	308.48	7P043413KP2715940	INV2-2B56-LDA5-UTU4-92T9
4/8/2015	pascal gabriel	388.5	-15.45	373.05	9L245189GG503834D	INV2-LTX8-Q9XA-U8RN-L2Y9
4/8/2015	Sylvain Mayoli	387	-15.39	371.61	27789243FR9677248	INV2-VYV7-VZYS-RFDL-4FT5
4/13/2015	Matthew Moebius	310.5	-9.3	301.2	62E0496081303290H	INV2-RB95-BRTM-5Q73-G566
4/21/2015	Drew Caplan	319	-9.55	309.45	8C307870B7158513E	INV2-L448-Z29L-BG4H-ZB2D
4/29/2015	Funky Junk France	777.4	-30.62	746.78	75R299039N5352303	
4/30/2015	alexander garcia-rivera	319	-9.55	309.45	0UN91401J6000052U	INV2-UKZA-JMQM-DURY-EJA4
5/1/2015	darrin4audio@yahoo.com	209.3	-6.37	202.93	13M21806SR173454R	INV2-JHBS-KXUH-8MSK-V6V8
5/6/2015	Jane Lucas	1,190.83	-34.83	1,156.00	01W42278K3873461N	INV2-P5VR-B4VY-M2R8-UTKJ
5/6/2015	Coyote Hill Prod., Inc.	329	-9.84	319.16	5U5849183L6214435	INV2-MKF8-NVFL-AVS5-L7C2
5/11/2015	Sang Yon Cho	329	-9.84	319.16	56L03599GW096202B	INV2-F6GH-ZEQK-GQPT-XSHA
5/19/2015	Jarod Gibson	361	-14.38	346.62	64U31185JP264954L	INV2-DR49-HXU4-8N9H-UZXE
5/22/2015	Alan Schwartz	329	-9.84	319.16	2RB443180L993514U	INV2-6JN9-XKDS-5RBX-ZYHA
5/23/2015	Yves Dessuant	388	-15.43	372.57	7CP41864W5920543N	INV2-4885-UA6V-D5SE-9AN6
5/28/2015	david nicholls	391	-15.55	375.45	2GF15618L3815614X	INV2-JJEG-2F45-ZELP-SL9C
6/1/2015	Donald Setaro	329	-9.84	319.16	3M290072K52832127	INV2-JRFE-NQQE-W5FC-N9WE
6/3/2015	Geoffrey Clark	319	-9.55	309.45	6U500898PM059722B	INV2-HLW9-QJ4S-TJX3-NX8C
6/9/2015	C E van Bochove	388	-15.43	372.57	6N3077081A2317453	INV2-6F3P-KHXD-MPQ5-TF8K

6/9/2015	Aaron Jensen	329	-9.84	319.16	57G132792M161912P	INV2-R3TZ-B33V-V885-QP7M
6/10/2015	JOAMANDA VEGA	295.1	-8.86	286.24	7JH13752YY067273R	INV2-9U56-XS5G-DZPF-RL7B
6/17/2015	Super Villain	329	-9.84	319.16	7F469243S8488571W	INV2-67CL-U2RZ-96EK-V6RE
6/18/2015	Conglomeride Inc	325	-9.73	315.27	5J035629XJ675130C	INV2-UHE7-D2SR-AMZN-M8BS
6/18/2015	Christian Mayer	329	-9.84	319.16	52W26965R91146509	INV2-EADA-ZUKV-9TYP-KGNU
6/29/2015	Kirk Davis	329	-9.84	319.16	8AC99003W9638230Y	INV2-CC3S-C8HY-MT5C-Y7M2
7/3/2015	Sheng Shan Song	251	-10.09	240.91	5TJ05662KY3778732	INV2-PD9K-8G4E-99ZZ-K664
7/20/2015	Maarten's Sound & Vision	329.3	-13.14	316.16	695378372N872712F	INV2-UHHJ-QY8V-S3AN-934E
7/20/2015	Mharvus João Barelli	339	-13.52	325.48	3MV03184NE653251D	INV2-BGKR-MU2V-938J-75NH
8/3/2015	Nikolay Maslyuk	339	-10.13	328.87	0PW53912TU2967444	INV2-NJ5D-A9AK-WL5P-EH9S
8/3/2015	James Malloy	339	-10.13	328.87	17R935093S513813H	INV2-SH7Q-RK5Y-4G46-M36S
8/3/2015	Jonathan Crocker	339	-10.13	328.87	9JP24541GJ9156351	INV2-7VSR-AS5U-VC8Y-EFGY
8/3/2015	Louis Graham	339	-10.13	328.87	8PE734058Y013651A	INV2-CBP4-3CWX-26U9-QK8N
8/4/2015	Claudius Mittendorfer	339	-10.13	328.87	1KX27742WN232110P	INV2-82QF-AJR5-KPYM-GJZ6
8/5/2015	Benjamin Robinson	339	-13.52	325.48	7JJ82679VC693783V	INV2-233U-SNQ2-SF5M-SD7T
8/6/2015	Valentina Voytenko	459	-18.2	440.8	6FN074661A928800N	INV2-CUMD-7W35-GDNF-HHAU
8/12/2015	darrin4audio@yahoo.com	209.3	-6.37	202.93	8VL98663FN409030J	INV2-A7CK-JXT8-2TU3-ZGPD
8/13/2015	Benjamin Robinson	115	-4.79	110.21	40407265NN057472S	INV2-8R5P-SKVL-GMAG-ELLW
8/17/2015	James Johnston	339	-10.13	328.87	7RY53091XR9039336	INV2-2AMT-QEU9-MYH4-W2JL
8/17/2015	David Sandoval	339	-10.13	328.87	5GK01447BR3207154	INV2-XC7C-L4WJ-GQBG-FL3R
8/18/2015	Robert Thompson	339	-10.13	328.87	1GK693165G507740K	INV2-2B5F-6LKD-TTH9-XZHU
8/19/2015	darrin4audio@yahoo.com	209.3	-6.37	202.93	1YH01112ER190823D	INV2-9SBP-BVWA-JWZZ-3WM9
8/19/2015	Brian Dean	339	-10.13	328.87	1YJ95212F93023622	INV2-Y49F-YYVU-4P4B-EDEV
8/21/2015	Jan Norberg	434	-17.23	416.77	6WR84892WE518040K	INV2-42XM-TP7H-DC6M-EQ52
8/24/2015	Steve Rogers	339	-10.13	328.87	9BJ31689WL668693T	INV2-XRVJ-4FC4-NXQL-AMGV
8/28/2015	Jacob Bergeson	339	-10.13	328.87	94146415X8612562G	INV2-2XM8-P6WG-XFDA-WDKH
9/4/2015	Siegfried Meier	229	-9.23	219.77	9NN77259MC473263F	INV2-XTWB-QUQJ-3ZE9-MS82
9/6/2015	Universal Acoustics Ltd	698	-27.52	670.48	6AX37674FJ646593R	INV2-KPE3-GEBP-PQAU-RR8X
9/8/2015	Patriarch Entertainment	339	-10.13	328.87	0BL06222L0173460X	INV2-VNFG-C829-PFG3-MLDF
9/10/2015	darrin4audio@yahoo.com	209.3	-6.37	202.93	603387683Y1451809	INV2-KZT8-AE9Q-NSSM-A735
9/17/2015	Bread of Stone	339	-10.13	328.87	59G38148AR385072M	INV2-C3BQ-KZJR-N8YQ-5AZD
9/17/2015	Igor Dimovski	319	-9.55	309.45	7D996949FW938515T	INV2-4KTH-RTAH-YXJF-662Y
9/18/2015	Vincent Grimes	339	-10.13	328.87	24V9658041479944G	INV2-VERA-MNLG-FYTH-AXXN
9/18/2015	Scott McChane	271.2	-8.16	263.04	9XW79916B2802110F	INV2-KKQY-U4LB-S295-GU4T

9/25/2015	Frank Menchaca	339	-10.13	328.87	6DA15058WS439832P	INV2-7XFJ-CM3Q-VUWN-HTAQ
9/26/2015	Len Kovner	349	-10.42	338.58	3V107825M0338533C	INV2-9URY-9JNP-L6RG-NNJY
10/1/2015	MUSICTOOLZ Sp. z o.o.	736	-29	707	54M55709B3315060S	INV2-84JQ-U86M-TYTZ-6WPH
10/11/2015	Matthew Tamisin	349	-10.42	338.58	35693154CU7718146	INV2-UMS2-BL2N-K6RG-WPA4
10/13/2015	Jaminajar	464	-18.4	445.6	5F995799P1684325C	INV2-QY29-ZA9K-S9WN-XSHA
10/13/2015	rob grosser	464	-18.4	445.6	5Y859613WT2214541	INV2-RVK3-9N5H-8S6J-DE8G
10/14/2015	Funky Junk France	1,380.60	-54.14	1,326.46	5M28904173446710X	INV2-ZE4P-G9WQ-2H2T-A5M7
10/18/2015	Donald Srygley	249	-7.52	241.48	40Y32500WE491064A	INV2-QWLQ-LPW7-VYNA-JBHP
10/28/2015	Tomas Espiritusanto	319	-9.55	309.45	2B499425VX928934C	INV2-6QB7-8VNK-YT33-AU37
11/5/2015	Shane Judhan	310.5	-9.3	301.2	3BJ70127LY2094400	INV2-D7G9-2BTW-ZEUW-F589
11/10/2015	LIKE School	448	-17.77	430.23	0F217622S7167205J	INV2-WDQT-2DUR-VLVK-3RFV
11/13/2015	Douglas Raus	200	-6.1	193.9	89976111SE390863D	INV2-NN7Z-L466-ZU6B-LUL7
		39,494.03	-1,370.79	38,123.24		

Name	Jacobsen, Alexander
Email	info@auratonesoundcubes.com
Payer ID	AK9GMVXXVVTYW
Report Date	07/01/2014-12/31/2014

Date	Name	Gross	Fee	Net	Transaction ID	Invoice Number
7/8/2014	Spencer Cheyne	321.14	(12.82)	308.32	730245017Y040305P	INV2-WFVC-8FFQ-L26S-EV6U
7/14/2014	Christopher Coady	287.75	(8.64)	279.11	59211653KF4742704	INV2-BKCS-6NC4-MZ5Z-HPDG
7/14/2014	Yale Yng-Wong	293.75	(8.82)	284.93	0JK0727397989515V	INV2-LN8J-FZ7J-JGHU-LGU9
7/17/2014	Craig Sadler	292.75	(8.79)	283.96	2T811694HK6099536	INV2-PYW8-TWGK-U5RQ-2WLR
7/20/2014	Peter Haas	291.50	(8.75)	282.75	10Y238615X589323W	INV2-H3WE-5CAC-68LZ-CQNB
7/21/2014	PT Big Knob Audio	681.15	(26.86)	654.29	60F84831A13834127	INV2-T9JB-7MEU-FM69-WBFM
7/22/2014	Elizabeth Tokar	296.17	(8.89)	287.28	35B47833LX186734M	INV2-DCJB-PZ8Z-9WMP-VGDQ
7/22/2014	Andrew Mittelman	292.75	(8.79)	283.96	8RT339560Y3155239	INV2-V34W-5C9A-X8FX-RBJA
7/24/2014	Thomas Cappola	358.85	(14.30)	344.55	1LV37334FP4785438	INV2-SWXJ-55KR-QF5K-2SSN
7/25/2014	Robert Perlow	296.17	(8.89)	287.28	7F374874FA509562C	INV2-HCXH-B2T4-GNYB-Z3RJ
7/28/2014	Miles Senzaki	293.78	(8.82)	284.96	7US45850R5499915A	INV2-VW3K-QA85-9SMP-LYML
7/30/2014	Forensic Audio	383.25	(15.25)	368.00	9Y89318775961053W	INV2-AH6V-QK9C-756Q-X7G3
7/31/2014	Chris Taylor	290.17	(8.71)	281.46	7WV03770FE9233607	INV2-XKBL-QP5E-HUGP-SMTG
7/31/2014	Jason Buhl	290.67	(8.73)	281.94	7U3762721W312024T	INV2-QSLB-QELJ-KX9S-R9JH
8/1/2014	Inflatable Tapes	293.75	(8.82)	284.93	27R71928JU862802A	INV2-V56P-DX6K-7VSP-BS7W
8/2/2014	Travis Brigman	293.88	(8.82)	285.06	43P456194R4226039	INV2-35PP-9PGP-JRJU-FGQQ
8/4/2014	Steven Easton	362.77	(14.45)	348.32	2JV11896NS3910112	INV2-RL7B-F848-XL7S-WDKC
8/11/2014	Lewis Pickett	293.85	(8.82)	285.03	6CU55808BD2298635	INV2-WAUX-6RHN-3NBF-BGK3
8/11/2014	KLAUDIO MARCELIC	370.50	(14.75)	355.75	62U66014970349948	INV2-7B58-7MKY-4LA6-CB3G
8/11/2014	Chris Cimino	293.75	(8.82)	284.93	9FS74347C9190880V	INV2-KAPD-W79Z-B463-KZQA
8/11/2014	Gianluca Pizzaia	293.75	(11.76)	281.99	34M298236K347353L	INV2-R29L-E5UV-NSF5-2RP8
8/12/2014	Prospect Audio	292.25	(8.78)	283.47	98H14592S49040441	INV2-XNJW-JHY2-JBKP-XMXY
8/12/2014	Jacob Rodriguez	300.30	(9.01)	291.29	1X934904XN9221816	INV2-GWPJ-ZFTV-SPM9-X9XW
8/13/2014	Glen Nicholls	357.80	(14.25)	343.55	8660518368380204U	INV2-MMHY-AQRU-HQPU-9XWN
8/14/2014	Eirik Blomacher	569.50	(22.51)	546.99	07919517TB085181S	INV2-KPHQ-MWSB-62X2-8GT9
8/16/2014	Yevhen Kidyaykin	352.50	(14.05)	338.45	72T14043C9902310A	INV2-ZLVD-43FR-NQUP-Y5J6
8/25/2014	Eirik Horremsbakk	339.25	(13.53)	325.72	6XW18464VK264572C	INV2-A7G6-FRRU-RTA9-HNWQ
8/27/2014	Edward Lyman	296.50	(8.90)	287.60	2U161879X4683811L	INV2-E279-J77P-BK82-XK6E

9/3/2014	Fickle3 Promotions	358.50	(14.28)	344.22	61C429665P9653457	INV2-BUZU-3MXH-TUXJ-ZXGS
9/15/2014	disco poker production	355.50	(14.16)	341.34	65337489BW937180P	INV2-4DR3-J2GH-FTQY-92SM
9/16/2014	Steve Lehmann	328.50	(13.11)	315.39	8H037656LU860135G	INV2-AX8Y-UWZF-4E8K-S4WN
9/17/2014	David Slitzky	292.00	(8.77)	283.23	8GW81673AN577891H	INV2-9W86-TDJ3-NKEP-8NRL
9/17/2014	Mario Fischer	352.50	(14.05)	338.45	8GV23347AB339642R	INV2-TJYJ-UN2E-6DHR-BQNU
9/18/2014	Donncha Moynihan	293.00	(11.73)	281.27	65X88899NS787052T	INV2-78YP-TEKK-QJZG-43AF
9/25/2014	Randall Bagoly	290.00	(8.71)	281.29	4TF4120891569803L	INV2-WZTK-HGSL-85KJ-JBJW
9/29/2014	Jeremy Duval	355.50	(14.16)	341.34	38Y68379UD878453X	INV2-VW5N-JV5W-LHZ9-DM59
9/30/2014	Antoine Houff	297.75	(8.93)	288.82	4A736396YV510633X	INV2-FLBC-U7CS-4S22-Q6PB
10/1/2014	Simon Yarde	357.50	(14.24)	343.26	0J531999L67318213	INV2-TQYA-CRZ7-AEJ5-BTCP
10/4/2014	Christopher Le	298.00	(8.94)	289.06	1GP8214206771254W	INV2-X8FC-KUMS-DZZV-T999
10/5/2014	Christopher Le	298.00	-	298.00	1GP8214206771254W	INV2-X8FC-KUMS-DZZV-T999
10/7/2014	Gonzalo Contreras	291.00	(8.74)	282.26	86V93210B90294945	INV2-86RH-BJWK-MW7Q-Q3XL
10/7/2014	ALICE FAIVRE	355.50	(14.16)	341.34	71C00199HA027771C	INV2-KXFC-UVPG-HFUG-XFHE
10/8/2014	I THiNK Studios, Inc.	291.00	(8.74)	282.26	66N352386L7255320	INV2-SJTP-9GEX-SAJ8-QLD9
10/8/2014	Peter Tissot	292.85	(8.79)	284.06	0CU66846MG706290K	INV2-DS7S-VQYD-WGDX-TT87
10/9/2014	Tom Hambleton	290.50	(8.72)	281.78	3S111962UD706784M	INV2-JH76-3KV3-RUE5-K574
11/20/2014	Luke Greener	290.50	(11.63)	278.87	1R460553WT2433341	INV2-TN9C-XBPJ-SQ7W-DAY2
11/20/2014	John Jordan	314.00	(9.41)	304.59	0UU75711BN331221P	INV2-QLA8-7WQU-AGNX-X9YX
11/21/2014	German Wahnsinn GmbH	695.00	(27.41)	667.59	6PW27138E45763500	INV2-FMRG-YKJ5-XEG9-HDXP
12/3/2014	Sanjeev Sharma	378.00	(15.04)	362.96	6L387542L4035533X	INV2-YEGN-23JH-U7T2-7WQW
12/3/2014	chris todd	378.00	(15.04)	362.96	7SG25817BJ6063901	INV2-WEEY-3XQF-XGYD-5TQ7
12/3/2014	Zenon Marko	310.50	(9.30)	301.20	6E994240SU915274A	INV2-UP3G-6YNJ-8NUN-M4N9
12/3/2014	laurent kremer	375.50	(14.94)	360.56	4BN85393GS967833G	INV2-SZ83-95DW-96U9-UW5U
12/3/2014	Chris Cosentino	308.50	(9.25)	299.25	75A44372VH403305F	INV2-UYXA-X2FN-TGP3-XRB9
12/4/2014	Fabio Somaschini	378.50	(15.06)	363.44	9DD78710U73929048	INV2-PMSX-YQCX-UNGS-BVR9
12/9/2014	Scott Kushner	606.00	(17.87)	588.13	8BB33313CE9094412	INV2-QZEF-98RA-KWJ5-D37W
12/10/2014	Miracles of Modern Science	310.50	(9.30)	301.20	92J980673S851384X	INV2-7H85-ZURV-7ZY7-J6VA
12/19/2014	Alain Zumbuehl	380.00	(15.12)	364.88	6XG36249YD175592H	INV2-TJ3Q-NH3N-VA8T-85BW
12/19/2014	Ryan Petersen	314.00	(9.41)	304.59	6WV9931026131513C	INV2-32B2-885R-GVVY-TDL7
12/24/2014	Georgios Giaslas	380.00	(15.12)	364.88	0YN35824906359900	INV2-DJEC-MJLD-9LG6-M2WY
12/26/2014	Anne-Marie Brick	289.00	(11.57)	277.43	22G97844MY689224M	INV2-4BAJ-Z99Y-JBSX-HTBX
12/27/2014	Ikenna Udemba	310.50	(9.30)	301.20	49Y46965US166814J	INV2-JZ4G-4SMM-AX4J-BGZK
		20,796.30	(719.33)	20,076.97		

AURATONE

INVOICE

SEPTEMBER 29, 2015
INVOICE # 2002

P.O. Box 1691, Hendersonville, TN 37075
Alexander Jacobsen
info@auratonesoundcubes.com

TO: TransAudio Group
7320 Smoke Ranch Rd # G, Las Vegas, NV 89128

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	LINE TOTAL
40	CE5C	Auratone 5C Super Sound Cube (pair,black)	$174.50	$6,980.00

SUBTOTAL USD	$6,980.00
TN SALES TAX USD	
TOTAL USD	**$6,980.00**

AURATONE®

Recording Monitors for the Real World

AURATONE

INVOICE

NOVEMBER 3, 2015
INVOICE # 2010

P.O. Box 1691, Hendersonville, TN 37075
Alexander Jacobsen
info@auratonesoundcubes.com

TERMS: UPON RECEIPT

TO: TransAudio Group
7320 Smoke Ranch Rd # G, Las Vegas, NV 89128

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	LINE TOTAL
53	5C	Auratone 5C Super Sound Cube (pair,black)	$174.50	$9,248.50
10	5C	Auratone 5C Super Sound Cube (single,black)	$87.25	$872.50

SUBTOTAL USD	$10,121.00
TN SALES TAX USD	
TOTAL USD	**$10,121.00**

AURATONE®

Recording Monitors for the Real World

AURATONE

INVOICE

DECE 3, 2015
INVOICE # 2014

P.O. Box 1691, Hendersonville, TN 37075
Alexander Jacobsen
info@auratonesoundcubes.com

TERMS: UPON RECEIPT

TO: TransAudio Group
7320 Smoke Ranch Rd # G, Las Vegas, NV 89128

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	LINE TOTAL
30	5C	Auratone 5C Super Sound Cube (pair,black)	$174.50	$5,235.00
10	5C	Auratone 5C Super Sound Cube (single,black)	$87.25	$872.50

SUBTOTAL USD	$6,107.50
TN SALES TAX USD	
TOTAL USD	**$6,107.50**

AURATONE®

Recording Monitors for the Real World

AURATONE

INVOICE

DECEMBER 7, 2015
INVOICE # 2018

P.O. Box 1691, Hendersonville, TN 37075
Alexander Jacobsen
info@auratonesoundcubes.com

TO: TransAudio Group
7320 Smoke Ranch Rd # G, Las Vegas, NV 89128

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	LINE TOTAL
40	5C	Auratone 5C Super Sound Cube (pair,black)	$174.50	$6,980.00
20	5C	Auratone 5C Super Sound Cube (single,black)	$87.25	$1,745.00

SUBTOTAL USD	$8,725.00
TN SALES TAX USD	
TOTAL USD	**$8,725.00**

AURATONE®

Recording Monitors for the Real World

Exhibit

S

Royer Labs
Professional Audio Products

November 12, 2015

Mr. Brad Lunde
TransAudio Group
7340 Smoke Branch Road
Las Vegas, Nevada 89128

Dear Mr. Lunde,
I recently acquired a pair of the *new* Auratone 5C Super Sound Cubes. I've been using an original pair for many years and wanted to retire (and save) them. My first thought was that the new Auratones be a close representation of the originals at best. I mated them to the same Crown DC300A that powered my original pair. My first listening experience was revealing. Not only did they sound familiar like my original pair they sounded better, much better! The detail and imaging are amazing! The new 5C's translate the nuances of mix accurately and are perfectly suited to today's styles and musical sounds.
I've always relied on Auratones as a valuable reality check for mixes, and these new 5C's accomplish this admirably. Rarely does a remake of a classic hit the mark but Auratone knocked it out of the park this time. Auratone did everything right with these speakers and I thank them for that.

Sincerely,

Rick Perrotta
President / Royer Labs

2711 Empire Avenue • Burbank, California 91504 • Tel: 818.847.0121 • Fax: 818.847.0122 • www.royerlabs.com

Exhibit

T

Home | Tablet Mag | Podcasts | WIN Prizes | Subscribe | Advertise | About SOS | Help Wed 9 Dec 2015 Search SOS Have an account? Log in or Register for free

SOS Sound On Sound Est 1985

UAD HOLIDAY SALE BIG STOREWIDE SAVINGS UP TO 60% UNIVERSAL AUDIO Shop Now

Search News Articles Forum Video Subscribe Shop Readers' Adverts Information WebExtras

ENTER FOR A CHANCE TO WIN A PAIR OF FOCUSRITE RED 1 MIC PRES SIGNATURE SOUND IN A 500 SERIES FORMAT PROFESSIONAL Focusrite Enter Now

Own a studio? Create your free profile today. STUDIO FILTER

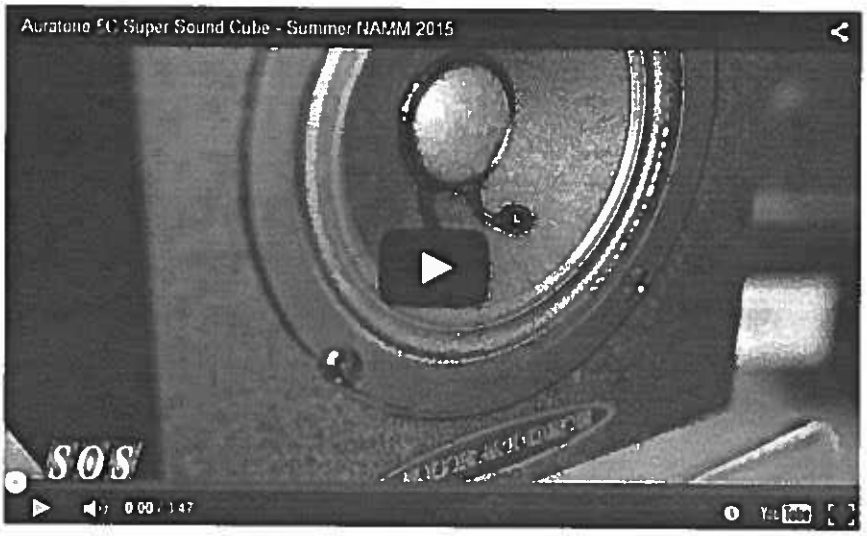
Secure Software Updates Learn How To Reduce Hacker Risk For Internet-Connected Devices.

Summer NAMM 2015: Auratone 5C (Video)

Infinite baffle passive monitors

11/07/2015

SHARE



A permanent fixture in countless professional recording studios since the 1970s, the Auratone 5C remains the first-choice real-world reference monitoring tool — or "grot box" to you and me — for many mix engineers. Pairing a small, responsive driver with a closed-back, infinite-baffle enclosure, these compact cubes deliver an unflattering, at times unpleasant sound that, while objectively terrible, nevertheless provides an invaluable insight into crucial aspects of the mix. With a mid-range peak that reveals the smallest imbalance in the middle of the audio spectrum and an accurate transient response in the low frequencies, if a mix sounds right on a pair of Auratones, it will generally translate well to any other system, from the most expensive hi-fi to the cheapest portable radio.

The Auratone 5C has spawned numerous imitators aiming to fill the same role. Now the Auratone brand is back, revived by the grandson of original founder Jack Wilson, and so is its most famous product. Following lengthy testing and re-engineering of the original driver, the 5C Super Sound Cube is back in production in Auratone's new factory in Nashville, TN. With a sealed MDF cabinet, mahogany laminated sides and a 4.5-inch driver, those passive speakers promise a flat frequency response, excellent power handling and impressive durability. They're also sensibly price at $339 per pair.

www.auratonesoundcubes.com

brainworx bx console Introducing TMT Tolerance Modelling Technology The Next Level in Analog Realism in the Box PLUGIN ALLIANCE

LEWITT SHHH ... 0 dB (A) SELF-NOISE // LCT 550 SUPER LOW SELF-NOISE LARGE-DIAPHRAGM STUDIO CONDENSER MICROPHONE

Auratone News

Summer NAMM 2015: Auratone 5C (Video) 11/07/15
Infinite-baffle passive monitors

Monitors / Monitoring News

Ultimate Ears Pro launch hi-res in-ear monitors 19/11/15
UE Pro partner with Capitol Studios to create hi-res capable monitors

AES 2015 Focusrite RedNet AM 2 (Video) 31/10/15
Stereo Dante headphone amp and line-out interface

AES 2015 Barefoot MM26 (Video) 30/10/15
Four-way active monitor system with 6 drive units

Focusrite announce RedNet AM2 monitoring unit 29/10/15
Dante-compatible unit boasts line and headphone outputs

Blue launch Lola headphones 27/10/15
Lighter, ampless Mo-Fi follow-up announced

All News Channels

Click to jump to a channel

- Accessories
- A-D / D-A Converters
- Amplification / Amplifiers
- Artists / Personnel
- Books / Publications
- Bought + Sold
- Composing / Arranging
- Computers
- Computer Recording Syster
- Controllers
- Courses / Education
- Drum Machines
- Drums / Percussion / Cymb:
- Effects / Processing
- Events / Exhibitions
- Guitars / Basses
- Industry / Music Business
- Interfaces: Audio / MIDI
- Keyboards / Pianos

Exhibit

U

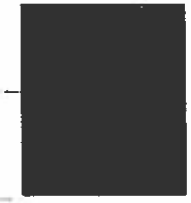
hysellstuff.com/auratone/gallery/

Auratone Corporation Studio Monitors and Speaker Systems

The Auratone systems on this page are original prototypes and samples. You may contact me at Auratone {AT) bellsouth [dot] net

Please note: These units are one of a kind and are not currently for sale. Auratone inventory items that are for sale can be found here: http://hysellstuff.com/auratonespeakerinventory/speaker_inventory.php
I am sorry for any confusion.

Original 5C's "Auratone 5C" rubber stamped on back, Gold Auratone logo on fabric grille cloth, red tape "X" on the top of one	Early 5C Variations True cube shape, 5" brown fabric grille, Brown Field, Chula Vista	5C Super-Sound Cube SN# 0501840	5C Super-Sound Cube "Original wirewrap", gold imprinting, SN#2041149	5C Super-Sound Cube Imprinting on baffle in gold SN#2011212	5C Super-Sound Cube Fabric grille, silver imprinting on baffle: Logo and Recording Monitors for the Real World	5C Super-Sound Cube Square speaker in round hole,

5C no marking except for gold SN# imprinting on baffle, no veneer	5C Super-Sound Cube Video Shield Magnet Pleather, laminate baffle and back	5C Super-Sound Cube Pleather, fuzzy material on bottom	5C Super-Sound Cube Goldish speaker	Primo Sound Cube Silver imprinting	Ultra Sound-Cube Silver imprinting, SN#8010060	Ultra Sound Cube Imprinted front and back in silver
Ultra Sound Cube SN#8010004	Ultra Sound Cube Silver imprinting	Ultra Sound Cube SN#8140033	Super-Sound Cube Video-Shield Magnet, wood grain sides, silver imprinting, SN#0251807	5C ? Sound Cube Pleather, seams on all edges, fuzzy bottom	5CTV	Road Cubes Vinyl handle crossways to closure, no label, square magnet, no way of connecting speaker that is glued in
						

Road Cube Empty, no markings, stitched handle	Road Cubes Plastic grilles with Auratone molded into grille, stitched handle	Single Road Cube Banana plug and fuse, Auratone molded into plastic grille	5S Full-Range-System Del Mar	5S Full-Range System Gold imprinting	5S Full-Range System SN#0381930	6-1/2 X 9-1/2 X 5 deep, smaller speaker about 3"
5W Super-Sound-Cube SN#738107, typed	5W Super-Sound-Cube SN#738216, typed	5W Super-Sound-Cube 2-9-82, SN#1380682, black molded plastic terminal	5W Super-Sound-Cube Molded logo on grille the same as on Road Cube, SN#2391391 imprinted in gold	T-5 Test Sample 4-24-83, 7 X 10-1/4 X 7-1/4	Original T6	T-6 Sub-Compact 2-Way "Not shielded", SN#7300287
T-6 Sub-Compact 2-Way	T-6 Sub-Compact 2-Way	RT6V, Video Shield	RTV5 Rack Two-Way	Piedmont Walnut veneer	5X Super-Slim-Line,	Pro-Line

HC-AU[illegible]

Way Slightly textured cone, SN#3060232	Way Smooth cone, SN#3030214	SN#7470003	SN#0400061	Walnut veneer, multi-color grille cloth, 11-3/8 X 21 X 11 deep, Thousand Oaks, CA	Del Mar, 7-1/2 X 7-1/2 X 3-1/4 deep	Hi-Fi Extension Speaker, For Hi-Fi, Auto, Stereo, Radio, 7-1/2 X 7-1/2 X 3 deep, 5-3/8 perforated metal grille
  Rubber stamped "Auratone" on back Brown fabric grille cloth, screw-on back, no veneer, 7-1/4 X 11-1/2 X 5-1/2 deep	 Painted orange, black frame, brown grille cloth 11-1/4 X 15-1/2 X 4-1/2					

Exhibit

X

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2

Auratone, LLC,	)
	) Opposition No.
Opposer,	) 91216808
	)
v.	) Application
	) Serial No.
MUSIC Group IP Ltd.,	) 85647325
	)
Applicant.	) Published in
	) the Official
	) Gazette on
	) May 13, 2014
	)

3 4 5 6 7 8 9 10 11

---

12 13 14

DEPOSITION OF:

15

MICHELLE JACOBSEN

16

Taken on behalf of the Applicant

17

July 22, 2015

18 19 20 21 22

23 Atkinson-Baker, Inc.
ABI Job NO. A907DB7
24 800-288-3376
Jennifer G. Haynie, LCR, No. 403
25

1 Q. Where were you living at the time he
2 passed away?
3 A. Hendersonville.
4 Q. In which state?
5 A. Tennessee.
6 Q. And when he passed away, did you go to
7 California?
8 A. Yes.
9 Q. Was the funeral for Jack Wilson in
10 California?
11 A. There was no funeral. He was cremated,
12 and since he was in the military it was a
13 military ceremony.
14 Q. Are ashes stored somewhere?
15 A. No. They were thrown out to sea.
16 Q. So after the death of Jack Wilson, did
17 you go back to San Diego to attend to the
18 business of Auratone Corporation?
19 A. Yes.
20 Q. What did you do there?
21 A. Our main goal was to go through
22 everything, pack it and get it shipped to either
23 my house or my sister's house, and her house was
24 more conducive to store everything, and so we
25 spent about a week, week and a half, two

1 weeks -- my husband was also involved in that,
2 Paul Jacobsen, and we arranged to have a semi
3 come and bring everything to my sister's because
4 her house was best for that right now because
5 she had a full, finished basement so everything
6 was stored there.
7 Q. And where did she live at the time?
8 A. Duluth, Georgia.
9 Q. And by sister, you're referring to
10 Marlaine?
11 A. Uh-huh, yes.
12 Q. Did you have other sisters?
13 A. No. We did but she passed away Susanne
14 Eve Wilson -- passed away in 1995.
15 Q. Do you know what the cause of her death
16 was?
17 A. Suicide.
18 Q. Any brothers?
19 A. Yes. Paul Adam Wilson.
20 Q. Is he still alive?
21 A. As far as I know.
22 Q. Do you have any contact with him?
23 A. No.
24 Q. So there were four of you?
25 A. Yes.

1 that's pretty much where he did business the
2 whole -- the whole entire time of the business
3 from 1958 to 2005, that's where our business
4 took place.
5 Q. And so when the assets of the corporation
6 were moved to Georgia --
7 A. Uh-huh, Duluth, Georgia.
8 Q. -- what did you do or did Marlaine do
9 with respect to the California corporation? Did
10 you notify the State of California?
11 A. I do not know.
12 MS. EVERHART: Hold on one second.
13 I'd like to object to the question, but you
14 hadn't quite finished --
15 THE WITNESS: I'm sorry.
16 MS. EVERHART: Could you restate it
17 maybe?
18 MR. TARLETON: Sure.
19 BY MR. TARLETON:
20 Q. Do you know if anyone notified the State
21 of California that the corporation had changed
22 its address?
23 THE WITNESS: Are you still
24 objecting?
25 MS. EVERHART: Even if I am

1 Q. Receivership?
2 A. No.
3 Q. And when you went to the rental home
4 where Jack Wilson had lived and run Auratone
5 Corporation, what equipment was there that you
6 took eventually to Georgia?
7 A. As far as actual tools?
8 Q. Yes.
9 A. We were more concerned with the actual
10 templates and the actual samples, the actual
11 legacy of Auratone -- to be able to start it and
12 get it up and running at its potential. I don't
13 remember moving saws -- are you talking about
14 saws, drills, that kind of stuff?
15 Q. What did you find in the home when you
16 got there?
17 A. Just about everything.
18 Q. And what does that mean?
19 A. Every Auratone sample that he had made
20 since 1958. Paperwork, documents, furniture,
21 living -- what, you know, just what normal
22 person -- drivers. I mean, it was his business,
23 was there. Photography equipment, pictures,
24 pictures of me when I was 14 years old holding
25 an Auratone, which is on our website right

1 now --
2 Q. How about manufacturing --
3 A. -- a lot of memories.
4 Q. How about manufacturing equipment?
5 A. Yes. There were drills. There was a
6 router. There was a whole room -- was setup for
7 the production, lined with metal shelves with
8 all of his -- you know, he was very organized,
9 even up until his last day.
10 Q. Did you take the metal shelves with you?
11 A. Yes, we actually did.
12 Q. And did you take all of that equipment
13 that you just mentioned?
14 A. Not all of it. Some of it just wasn't
15 feasible to move a, you know, 500-pound drill
16 that could be obtained here if we needed it,
17 which we did buy one. But I would say
18 90 percent of what was there we took -- old
19 pictures of him and Quincy Jones and all of that
20 stuff.
21 Q. And the equipment you left there, how was
22 it disposed of?
23 A. I do not know that because I actually
24 left and my husband was there, and I don't know
25 if he -- how he actually -- if he donated it or

A. Auratone.
Q. Do you have the original of this document?
A. Yes, sir.
Q. Is there any reason you have the originals and not Marlaine?
A. Marlaine had them originally, but when Alex obtained Auratone, we pretty much brought everything to the Hendersonville address because that's where he was -- he was the one running the business.
Q. Okay. And when you say "everything," what do you mean?
A. Product, samples, first issues.
Q. What do you mean "first issues"?
A. Well, my father, every time he produced a certain edition of the sound cube, he would make a prototype and that one would always stay with him, and so we had years and years of prototypes that we brought with us. So we brought all of those, the actual jigs -- everything that he would need to proceed with manufacturing the sound cubes.
Q. I thought you told me earlier you left some of that equipment in California?

1 do not know.
2 Q. Was the business, as you call it, a
3 sole-proprietorship being run by Marlaine?
4 MS. EVERHART: Objection. You can
5 respond.
6 THE WITNESS: I don't know. I mean,
7 we never -- it was our business, I mean . . .
8 BY MR. TARLETON:
9 Q. Was it a partnership?
10 A. I mean, nothing was -- I mean, we were --
11 we were the legacy of Auratone. So there was
12 never any formal documents drawn up, if that's
13 what you're asking.
14 Q. In part, yes. When you say "we," who do
15 you mean?
16 A. Marlaine and I.
17 Q. Were you a partnership?
18 A. Verbally, yes.
19 Q. And you were living in?
20 A. Hendersonville, Tennessee.
21 Q. And she was living in Georgia?
22 A. In Georgia, Duluth, Georgia.
23 Q. And as partners of this business, did you
24 define roles?
25 A. No.

1 Q. Did you have titles?
2 A. No.
3 Q. Did you have business cards?
4 A. No.
5 Q. Did you have a business plan?
6 A. Yes, a long-term business plan,
7 absolutely.
8 Q. Is that in writing?
9 A. I cannot -- I do not know. She may have
10 something in writing.
11 Q. Did you have any marketing materials in
12 print?
13 A. Just what was on the website, to my
14 knowledge.
15 Q. Was it the one that Marlaine was selling,
16 the old inventory?
17 A. Uh-huh.
18 Q. Did you attend trade shows?
19 A. No.
20 Q. Did you have a Yellow Page listing?
21 A. No.
22 Q. Did you have any internet presence?
23 A. Yes. Yes.
24 Q. And that would be the website for selling
25 the old inventory?

1 A. You're talking about from 2005 to 2011?
2 Q. Yes.
3 A. When it was actually in Georgia?
4 Q. Yes.
5 A. As far as just the website, would be the
6 main, main communication that we had with other
7 people, with customers I guess you call them.
8 Q. Do you know if your partnership with
9 Marlaine ever dissolved?
10 A. No.
11 Q. Does it continue today?
12 A. Yes.
13 Q. In what form?
14 A. We're sisters.
15 Q. I mean, partnership in a business sense?
16 A. We all have -- we all have -- because we
17 grew up with Auratone. I mean -- you mean like,
18 you're going to do this and I'm going to do
19 this -- that kind of. I'm not sure. nothing,
20 as far as I know legally, was ever setup -- you
21 were going to have this role, Marlaine, and I
22 was going to have that role. We always, always
23 maintained that we were all in it together, we
24 were Auratone, and we grew up with it.
25 Q. And this is you and Marlaine?

1 A. Uh-huh.
2 Q. Excluding Paul?
3 A. Correct. Because he's nowhere to be
4 found.
5 Q. Does Paul have any rights in Auratone?
6 MS. EVERHART: Objection.
7 THE WITNESS: No, I don't believe he
8 does at this point.
9 BY MR. TARLETON:
10 Q. And what did -- at some time, did you and
11 Marlaine give the Auratone Corporation assets to
12 Alex, physically transfer them to him?
13 A. Yes, because they're at our house.
14 Q. Our house meaning?
15 A. Where Auratone is right now. It's
16 registered in Hendersonville, Tennessee. We
17 have a business license.
18 Q. At your house?
19 A. Uh-huh.
20 Q. And that's where Auratone, LLC, is
21 located?
22 A. Uh-huh.
23 Q. And so at some point in time, the assets
24 were taken from Marlaine's house and put into
25 your house; is that correct?

1 A. I believe Auratone, LLC, was formed
2 before we actually, physically moved everything
3 to the house.
4 Q. Do you know the state in which Auratone,
5 LLC, exists as a legal entity?
6 A. Tennessee.
7 Q. And do you know when the LLC was formed
8 in Tennessee, the date of formation?
9 A. I do not know the exact date.
10 Q. When Jack Wilson died, did he have a
11 Will?
12 A. Yes.
13 Q. Have you seen that Will?
14 A. Yes.
15 (Exhibit Number 3 was marked.)
16 BY MR. TARLETON:
17 Q. Mrs. Jacobsen, the reporter has handed
18 you what has been marked as Exhibit 3. Do you
19 recognize this document?
20 A. Yes.
21 Q. What is it?
22 A. It is the Will of John Archibald Wilson.
23 Q. And for the record, Exhibit 3 is marked
24 as "Highly Confidentiality" Auratone document
25 Numbers 663 through 670. Do you recall the

1 A. Yes. Yes, we contacted Amy. I'm sorry.
2 Q. Besides Amy, was there any other lawyer
3 contacted?
4 A. No.
5 MS. EVERHART: Objection. Again
6 lack of personal knowledge the way you asked the
7 question.
8 BY MR. TARLETON:
9 Q. To your knowledge?
10 A. To my knowledge, no.
11 MR. TARLETON: Maybe take a
12 five-minute break.
13 MS. EVERHART: Sure.
14 BY MR. TARLETON:
15 Q. We're back on the record. Mrs. Jacobsen,
16 during the break, did anything come to your mind
17 that could cause you to change your testimony
18 you've given already?
19 A. No, sir.
20 Q. I'd like to talk for a minute about the
21 passing of the baton, so to speak, to Alex.
22 When do you recall that decision being made by
23 you or your sister or the two of you?
24 A. We talked about it in 2009 when he was
25 still in college because Alex had also expressed

1 some interest in the company when he was in
2 college.
3 Q. And how did he express that interest to
4 you?
5 A. That it was something that he was really
6 fascinated about, that there was a big following
7 that, you know, he was just excited about the
8 whole Heritage of it, and he would say, you
9 know, I can't believe -- you know, we need to
10 get this up and going again -- this is awesome.
11 And I'd say, well, honey, your dad has a real
12 job, a real full-time job. So it has to be
13 after you graduate from college, and it was very
14 important that all of our kids graduated from
15 college. He graduated and we gave him our
16 blessings, and he's taken off with it.
17 Q. When you say you gave him your
18 blessings --
19 A. Marlaine and I both gave him.
20 Q. Verbally or in writing?
21 A. Nothing's in writing.
22 Q. Did you give him a formal assignment of
23 rights in the trademark Auratone in writing?
24 A. No.
25 Q. And today, do you have any role or

Exhibit

Y

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2
Auratone, LLC,)
3) Opposition No.
Opposer,) 91216808
4)
v.) Application
5) Serial No.
MUSIC Group IP Ltd.,) 85647325
6)
Applicant.) Published in
7) the Official
) Gazette on
8) May 13, 2014
)
9)
)
10)
)
11)
12 ----------
13
14
DEPOSITION OF:
15
MARLAINE ANNETTE HYSELL
16
Taken on behalf of the Applicant
17
July 21, 2015
18
19
20
21
22
Atkinson-Baker, Inc.
23 ABI Job NO. A907DB6
800-288-3376
24 Jennifer G. Haynie, LCR, No. 403
25

1 Q. What was your major?
2 A. English.
3 Q. And any education since then?
4 A. Formal, no.
5 Q. What about informal training?
6 A. A little bit. Some art classes, that
7 type of thing.
8 Q. I see. And are you currently employed?
9 A. No.
10 Q. When was the last time you were employed?
11 A. Twenty-eight years ago.
12 Q. And what was your job?
13 A. I worked at a department store.
14 Q. And which department store was that?
15 A. Burdine's.
16 Q. Have you ever worked for a company called
17 Auratone Corporation?
18 A. Yes.
19 Q. And when was that?
20 A. I left there in 1984.
21 Q. When did you start working there?
22 A. Probably -- if not -- I can't say that
23 this is the exact year, but I would say around
24 1965.
25 Q. How old were you then?

1 A. Well, I was born in '58, so seven to ten.
2 I would say seven years, in that range, doing
3 small jobs, twisting wire, that sort of thing.
4 Q. I see. And when you left in 1984, what
5 were your duties?
6 A. I was a vice president. I did
7 bookkeeping, anything that was required of me,
8 answered the phone, sometimes worked in assembly
9 as needed.
10 Q. Who was your immediate supervisor?
11 A. My mother, Harriet Wilson -- Elaine
12 Wilson.
13 Q. And what was her title?
14 A. She was also a vice president.
15 Q. Did you have a specific area that you
16 were vice president of, such as sales,
17 marketing?
18 A. No. I think I would probably call it --
19 I couldn't call it an accounting (phonetic)
20 because I wasn't an accountant, but bookkeeping,
21 keeping track of the books. But I didn't have a
22 title, like vice president of packing boxes.
23 Q. Understood.
24 And was Auratone Corporation located in
25 California at that time?

1 school. My parents arranged for us to take the
2 school bus from their factory for many years
3 after school so we wouldn't be alone at home.
4 Oftentimes, we slept on stacks of cardboard
5 because my parents needed to work late.
6 I mean, I guess like a farmer would say
7 farming is in my blood, Auratone's in my blood.
8 And I -- I just always felt like there wouldn't
9 be anybody heartless enough to try to take that
10 away from us.
11 Q. At any point in time, did you attempt to
12 contact the people you found were trying to
13 register the mark?
14 A. As I said before, no.
15 Q. And did you make any attempt to reinstate
16 the Auratone mark yourself?
17 A. Well, I --
18 MS. EVERHART: Objection to the form
19 of that question.
20 THE WITNESS: I didn't know if you
21 wanted to restate it.
22 BY MR. TARLETON:
23 Q. Well, let's nail it down to a period of
24 time. From the time you found that piece of
25 paper until the time you saw another company

1 trying to register the mark, did you make any
2 attempt to re-register the Auratone mark?
3 A. No. As far as making phone calls to
4 government or concessions or that sort of thing,
5 no.
6 Q. Did you hire an attorney to help you with
7 the Auratone trademark?
8 A. I did not hire an attorney. I spoke with
9 an attorney.
10 Q. Do you know who that was?
11 A. I don't remember her name.
12 Q. Was she in California?
13 A. No. She was in Georgia.
14 Q. At what --
15 A. Atlanta area.
16 Q. At what period of time was this?
17 A. I would only -- guessing really, within
18 about a year of my dad's death.
19 Q. And did the attorney take any action for
20 you?
21 A. No.
22 Q. Do you know why?
23 A. I didn't ask her to.
24 Q. Why not?
25 A. At that time, there was discussion

1 between myself and my husband and my sister,
2 Michelle, and her husband and -- how are we
3 going to manage starting Auratone again and who
4 would do it, and who was going to make the
5 commitment and so forth. My husband arranged
6 for, as a favor to him, an attorney -- trademark
7 attorney to call me and have just sort of an
8 introduction conversation. I had questions such
9 as --
10 MS. EVERHART: And let me instruct
11 you not to discuss the substance of the
12 conversations with the attorney.
13 THE WITNESS: That's right. I
14 probably shouldn't do that.
15 BY MR. TARLETON:
16 Q. And so based on your discussion with the
17 attorney, what did you decide to do about the
18 Auratone trademark?
19 MS. EVERHART: And I'll object to
20 that question.
21 THE WITNESS: I wouldn't say an
22 active decision was made because at that point,
23 I and we (phonetic) continued to determine what
24 we were going to do as far as trying to keep
25 things -- keep Auratone going or keep the

1 Auratone name for our family.
2 BY MR. TARLETON:
3 Q. And what decision was eventually made?
4 A. That Alex would just take it over.
5 Q. And when did you make that decision?
6 A. Is it okay if I ask Alex what year he
7 graduated from college.
8 Q. No.
9 MS. EVERHART: No.
10 THE WITNESS: No? Okay. So I think
11 whether or not I formally or informally told
12 Alex or my sister that I was okay with that
13 decision, I was satisfied with the decision that
14 Alex was capable and dedicated enough to take
15 over running the business and pursuing the
16 trademark and all that. Probably 2010, maybe
17 '11.
18 BY MR. TARLETON:
19 Q. And how did you inform Alex of this?
20 A. That was probably through Michelle, just
21 in having a conversation that, you know, I'm
22 good with it now. Obviously, we all emotionally
23 had a very strong investment in the business and
24 coming to the point of, okay, I feel like it's
25 in good hands. I'm satisfied that it will be in

1 good hands. I can step back. It was a process
2 for me to come to that decision.
3 Q. And this was verbally?
4 A. Yes.
5 Q. So between the time your father passed
6 away in 2005 --
7 A. Uh-huh.
8 Q. -- and the time you came to that decision
9 in 2010 time period, what happened to Auratone
10 Corporation?
11 A. I had some communication -- as far as the
12 corporation functioning, I wouldn't say it
13 wasn't exactly functioning. I did -- on the
14 behalf of the corporation, did have some
15 communication with customers that I was familiar
16 with over the years, some that I wasn't familiar
17 with.
18 I shipped some speakers to a former
19 customer because I knew when my dad passed away
20 that my dad had owed him some finished systems,
21 so I had -- a system is the complete enclosure
22 ready to go in the box and be shipped. A
23 speaker is a speaker, a raw speaker. You know,
24 that's my terminology.
25 So I -- to make up for that, I shipped

him -- I don't remember the number, but quite a few raw speakers because I wanted to make that right. I didn't want the name or my parents' names being disparaged because that debt wasn't satisfied, things like that. I sold a few things on E-Bay and that was really to cover some of the expenses of flying out and the funeral and all of that.

Q. At the time your father passed away, where were you living?

A. In -- then it's called Duluth, Georgia. Now it's called Peachtree Corners.

Q. In Georgia. And is that where you currently live?

A. Yes.

Q. At the time your father passed away, as I understand it, you flew out to California --

A. Yes.

Q. -- to handle the affairs.

A. Yes. And I paid for my sister's expenses, too, the same.

Q. And that would be Michelle?

A. Yes.

Q. And that's when the two of you found this piece of paper concerning the Auratone

1 trademark?
2 A. Yes.
3 Q. And then you brought that piece of paper
4 back to Georgia?
5 A. As far as I recall, yes.
6 Q. And you consulted with a trademark
7 attorney?
8 A. Yes.
9 Q. But you've made no attempts to
10 re-register the mark at that time?
11 A. Yes, that's correct.
12 Q. And when you made the decision to let go
13 of the business to Alex in around 2010, at that
14 time, you had taken no steps to re-register the
15 mark?
16 A. Correct.
17 Q. Auratone Corporation was a California
18 corporation?
19 A. Correct.
20 Q. When you brought the papers back from
21 California to Georgia, did you incorporate
22 Auratone Corporation in Georgia?
23 A. No.
24 Q. What happened to the California
25 corporation?

1 A. I don't know. It -- I don't have a
2 specific recollection, but I do think that there
3 was filing that needed to be kept up with on
4 that, too, and that wasn't kept up with. But
5 that's just -- I have a feeling that that was
6 what was happening and that was probably
7 nonexistent, but I don't know for a fact.
8 Q. You don't know because you don't remember
9 or because someone else may have been
10 responsible for it?
11 A. I don't know because I don't remember.
12 Q. Okay. Who was primarily responsible for
13 the business after your father's death? Was it
14 you?
15 A. Uh-huh.
16 Q. And as far as you can remember, the
17 corporation in California eventually stopped
18 being active?
19 A. Yes.
20 Q. And you did not incorporate in Georgia --
21 A. Correct.
22 Q. -- or anywhere else?
23 A. Correct.
24 Q. And this is because you were uncertain as
25 to what to do with the business?

1 A. Correct -- no. Well, not what to do with
2 the business. As to who was going to be the
3 primary person or persons that were going to run
4 the business and get a manufacturing operation
5 going up again.
6 (Exhibit Number 6 was marked.)
7 THE WITNESS: My parents were the
8 sole owners of this business.
9 MR. TARLETON: Thank you.
10 BY MR. TARLETON:
11 Q. I'm handing you what has been marked as
12 Exhibit 6. Would you take a moment to look that
13 over.
14 A. Uh-huh, yes. I wrote this post.
15 Q. You say you wrote this post?
16 A. Uh-huh, yes.
17 Q. And it was on the Steve Hoffman music
18 forums?
19 A. Yes.
20 Q. And about when did you write this post?
21 A. Looks like -- I don't know how long it
22 took Mr. Hoffman to post it, but somewhere
23 around July of 2005.
24 Q. And on the first page of Exhibit 6, which
25 has four pages, there is a post addressed to

1 Mr. Hoffman that has your name at the bottom; is
2 that correct?
3 A. Correct.
4 Q. And below your name, there's a date,
5 July 3, 2005.
6 A. Correct.
7 Q. And what prompted you to make that post?
8 A. I -- first of all, that's the date that
9 Steve Hoffman posted this. This is a note I
10 sent directly to Steve Hoffman and he posted it.
11 Q. I see.
12 A. But the -- I knew that from following the
13 business over the years, that there were a lot
14 of people interested in where can I find my
15 Auratone -- you know, my 5Cs, my Auratones, a
16 lot of -- there was just -- there was -- in that
17 industry, that niche market, there was a lot of
18 interest and rumors about, you know, did Jack
19 die, did -- what happened. And so I -- at that
20 point, I -- memorializing my father, I decided
21 to write that to Mr. Hoffman.
22 Q. And the last sentence of that post, can
23 you read what that says?
24 A. It says, "Too soon for my sister, brother
25 and I to know what will happen with what is left

1 of Auratone."
2 Q. And by "sister," you're referring to?
3 A. Michelle.
4 Q. And "brother"?
5 A. Paul.
6 Q. Is Paul alive today?
7 A. As far as I know, I think he is.
8 Q. And when's the last time you had contact
9 with Paul?
10 A. In the year my sister, Suzanne, died
11 since 1995.
12 Q. And you've had no contact with him since
13 then?
14 A. Person to person, no.
15 Q. What type of contact did you have with
16 him?
17 A. He -- well, do you already know? Do I
18 have to -- do I have to go into how my sister's
19 death -- explain this? Do I have to --
20 Q. Well, I'm just curious if he's an heir
21 and may have an interest in the company --
22 A. Right.
23 Q. -- if you had any discussions with him
24 about that.
25 A. No. We could not find him. The police

1 even tried to find him when my dad died and they
2 were unable to locate him.
3 Q. Do you know where he is today?
4 A. I think he's in California, but I don't
5 know for a fact.
6 Q. Do you know if he is claiming any
7 ownership rights in the Auratone business?
8 A. I don't know.
9 Q. Or in the Auratone mark?
10 A. I don't know. I have an opinion, but I
11 don't know.
12 Q. All right. Did you bring anything else
13 back from California besides the papers?
14 A. Yes.
15 Q. Well, can you tell us briefly what it
16 was?
17 A. We brought sound systems in various forms
18 of completion. We brought tools, some
19 machinery, boxes and boxes of raw speakers,
20 wires, crossovers. My sister and I shipped a
21 few things. I don't know specifically, but we
22 boxed up a few things and I -- I'm not positive.
23 I think we shipped a few boxes or we might have
24 found out before we shipped them that my husband
25 was able to arrange for a truck -- a large like

1 semi-truck to stop by the house and with my
2 brother-in-law's help, pack those things onto
3 the truck and ship them. And they were shipped
4 to our home in Georgia.
5 Q. And you say "the house." What house was
6 this?
7 A. He -- my father lived in a rental house
8 and the house that I lived in in Georgia.
9 Q. So your father lived in a rental house in
10 California?
11 A. Yes. Point Loma.
12 Q. Point Loma. And is that where we
13 conducted business of the Auratone Corporation?
14 A. Yes.
15 Q. Is that where manufacturing took place?
16 A. Yes.
17 Q. There were no other manufacturers making
18 the speakers for him?
19 A. Not as far as I know. He did not --
20 well, are you -- you have to differentiate
21 between a speaker and the system. When you say
22 "speaker," do you mean something ready to ship
23 or the actual speaker that makes the noise?
24 Q. So the actual speaker that makes the
25 noise.

1 filled after that time?
2 A. I think there were a couple where it was
3 one or two pair, but I -- I can't be positive
4 about that.
5 Q. And the equipment that was shipped to
6 Georgia, would it be fair to characterize that
7 as inventory?
8 A. The speakers, yes, the raw speakers.
9 Q. And the other equipment?
10 A. Well, there was equipment to manufacture,
11 to cut up the wood, all that sort of thing.
12 Many, many of the speakers were -- didn't
13 involve production. They were samples. They
14 were for products that weren't being made any
15 longer, things like that --
16 Q. I see.
17 A. -- but they had value.
18 Q. And so all of that was shipped to your
19 home in Georgia?
20 A. Yes.
21 Q. And what did you do with it when you got
22 there?
23 A. Spent hours and hours and hours sorting
24 it, figuring out what was what and stored it in
25 my basement.

1 Q. Do you know if any steps were taken to
2 renew that registration?
3 A. I don't know.
4 Q. Have you taken any steps to register the
5 Auratone trademark in any countries outside of
6 the U.S.?
7 A. No.
8 Q. After you brought the equipment and
9 inventory and speakers back to your home in
10 Georgia, what did you do with them?
11 A. As I said before, sorted them out. I had
12 pretty accurate inventory of what was there.
13 Sold a few things on E-Bay.
14 Q. When did you sell those on E-Bay? What
15 time period?
16 A. Probably in 2006, something like that. I
17 think around there.
18 Q. And did you advertise anywhere else
19 besides on E-Bay that you had speakers for sale?
20 A. My son helped me set up a website, a web
21 page that I could refer people to where I listed
22 speakers, samples, so forth, that if anyone was
23 interested in those, could -- could make me an
24 offer sort of a thing.
25 Q. Do you recall the address of that web

page?
A. Pro Audio.
Q. Was it Auratone Pro Audio?
A. I'm sorry. Auratone Pro Audio.
Q. Dot com?
A. Yes. I called it Pro Audio because in my home, it was -- the Auratone part was assumed.
(Exhibit Number 11 was marked.)
BY MR. TARLETON:
Q. The reporter has handed you what has been marked as Exhibit 11.
A. Uh-huh.
Q. Do you recognize this?
A. Yes.
Q. What is it?
A. It is a printout of the inventory internet page that my son and I created.
Q. And which son was this?
A. Brian. Oh, then there's also a page -- a gallery of the different configurations of the full official names, like Auratone 5C Super Sound Cube. The various configurations that it took over the years. I call it my museum page. As well as some other systems that may or may not have been produced. A couple of them were

1 not produced. They were just kind of testing
2 the water as far as making different systems.
3 Q. And when did this web page become active?
4 A. I think it was probably 2006, 2000 --
5 yeah, 2005, 2006.
6 Q. Is it still active today?
7 A. Yes.
8 Q. And do you know if it can be located
9 using a Google search?
10 A. It could. I don't know if it can't
11 today. I haven't tried in the last few years,
12 probably three years, so I don't know.
13 Q. Who took the pictures that are displayed
14 on the web page?
15 A. Unfortunately, I have to say I did.
16 Q. And is it possible to order product
17 directly from the web page?
18 A. Using the e-mail address I have listed
19 there, it's possible to contact -- is possible
20 and was possible to contact me directly and
21 inquire.
22 Q. They couldn't make a payment directly
23 over the web page?
24 A. No. They could through my E-Bay account.
25 Q. And has that website changed in its

1 Q. Is that an accurate list?
2 A. I would say those things -- well, parts
3 covers a lot of things, so I did also sell a --
4 what was it called? Not a signal checker. I
5 think it was an -- it's a little testing device,
6 so that would be a piece of equipment. I had
7 two.
8 Q. And was this testing device that was
9 branded with the Auratone brand?
10 A. No. It was just a piece of equipment
11 that was used when testing speakers --
12 Q. I see.
13 A. -- for deciding which ones to use. I
14 don't remember what exactly it was used for.
15 Q. In Interrogatory Numbers 42 and 43, there
16 appears to be no activity between 2006 and 2013.
17 A. Uh-huh.
18 Q. Is that correct?
19 MS. EVERHART: Objection.
20 THE WITNESS: As far as I remember,
21 I didn't go over and scrupulously looked to see
22 if a speaker was shipped January 7th -- January
23 1st of 2007.
24 BY MR. TARLETON:
25 Q. Okay. Do you have a business license

1 Q. And the surviving children of Suzanne
2 Wilson, do you know if they've assigned any
3 rights to Alex Jacobsen?
4 A. I don't know.
5 Q. And how about Michelle Jacobsen?
6 A. I -- obviously, I can -- I can make that
7 assumption, but do I have personal knowledge of
8 her saying I assigned my rights, no.
9 Q. And you have no documents --
10 A. Correct.
11 Q. -- evidencing any assignment of rights?
12 A. Correct.
13 Q. At any time, did anyone offer to buy all
14 of the inventory of Auratone Corporation
15 following your father's death?
16 A. Yeah, yes. I would say so. Not -- well,
17 I don't -- no. Not all of the inventory, no. I
18 can't remember exactly what he wanted because he
19 was never really clear and he --
20 Q. Who is "he"?
21 A. I -- John something. It started with a
22 G.
23 Q. It was an individual?
24 A. An individual who was an audiophile.
25 Q. About what time period did this take

1 place?
2 A. Probably 2006.
3 Q. And did he contact you?
4 A. Yes, because he saw my listing for
5 Auratone speakers on E-Bay.
6 Q. And how did he contact you?
7 A. Through e-mail and then I think he called
8 me once.
9 Q. And what was the result of that?
10 A. Excuse me. It was just a discussion and
11 I -- I was probably dismissive. I might not
12 have been too polite, but I -- no, that's not
13 something I'm interested in.
14 Q. So as I understand it, you had this
15 inventory for sale on a web page and this
16 individual called to purchase the inventory, but
17 you declined to sell it?
18 MS. EVERHART: Objection.
19 THE WITNESS: He called to -- just
20 to talk to me because I was Jack Wilson's
21 daughter. I mean, that was really the first
22 thing. And then -- and just talked to me about
23 business, that sort of thing. And he told me
24 that he had talked to my dad and my mother over
25 the years, just various conversations, but I

1 don't know where or the circumstances. And he
2 was specifically interested in things that had
3 to do with the 5C. So to say that he wanted to
4 buy the inventory is not correct.
5 BY MR. TARLETON:
6 Q. I see. What did he want to buy?
7 A. I think -- we never got down to a brass
8 tacks thing, but my impression is that he was
9 interested in things -- not everything, but
10 things pertaining to the 5C, the raw speakers,
11 that sort of thing.
12 Q. And you didn't want to sell those to him?
13 A. No.
14 Q. Why not?
15 A. Because they're the -- they were the most
16 recent version of speakers that my dad approved
17 of as having the correct sound for the 5C.
18 Q. Were they advertised for sale?
19 A. Some of them were --
20 Q. But you didn't --
21 A. -- on E-Bay and I -- I think might have
22 been on the website.
23 Q. I see. Any reason why you didn't want to
24 sell them?
25 A. As I just said, because of sentimental

1 reasons and then also because those were
2 examples -- physical examples of the correct
3 sound. And I didn't mind selling a few of them.
4 Although there was a lot of need in the
5 audiophile community for replacement speakers
6 and people wanted that real speaker in their
7 system.
8 MR. TARLETON: Go ahead and give her
9 Exhibit 14.
10 (Exhibit Number 14 was marked.)
11 BY MR. TARLETON:
12 Q. So the reporter has handed you what has
13 been marked as Exhibit 14.
14 A. Uh-huh.
15 Q. And for the record, I'll identify them as
16 highly confidential Auratone Numbers 728 through
17 759. Would you take a quick look at and let me
18 know if you recognize this document.
19 A. Yes. They look like my -- some of my
20 PayPal records.
21 Q. And were -- what do these PayPal records
22 pertain to?
23 A. Most of them, I think, are for speakers.
24 Some of them are for tweeters. One is for the
25 Crown tuner that I mentioned previously.

1 Q. Are these products that you brought from
2 California to your home?
3 A. Yes.
4 Q. Are these documents that you have
5 produced to the attorney in this case?
6 A. Yes. I haven't looked at every page, but
7 that's what it looks like to me.
8 Q. And did you produce all of the PayPal
9 records that you have pertaining --
10 A. All I could find, yes. I don't think
11 there are any more. I don't have any reason to
12 believe there are any more, but I have -- you
13 know, give that caveat. Computers are
14 computers, but we searched and I had my son who
15 is extremely computer literate also search, and
16 this is all we found.
17 Q. So you believe this represents all of the
18 sales of the products --
19 A. Yes.
20 Q. -- you brought back from California --
21 A. Correct.
22 Q. -- from Auratone Corporation?
23 A. Correct. And then at some point, I
24 decided I -- it was better not to sell any more.
25 Q. When did you make that decision?

1 A. Well, there was a lapse there. I don't
2 know the last date of my selling something where
3 I was sort of like, oh, I should probably get
4 something else on there. You know, like I felt,
5 you know, a duty to try to recoup some of the
6 thousands of dollars involved with getting
7 things out to -- back to Atlanta. So I sort
8 of -- maybe I'll get a few more things on.
9 And then probably -- I would guess maybe
10 late 2007, 2008, you know. We're going to get
11 this business going again. I'm holding on to
12 these. I mean, I didn't -- I felt qualms about
13 making sure I didn't send them to -- or, you
14 know, they pick them up, but they didn't go to
15 Alex before I knew Alex was fully committed
16 about letting them out of my sight --
17 Q. Right.
18 A. -- because I knew the value of them.
19 (Exhibit Number 15 was marked.)
20 BY MR. TARLETON:
21 Q. I'm handing you now what has been marked
22 as Exhibit 15, and this document is marked
23 highly confidential Auratone Number 762. Have
24 you seen this document before?
25 A. Yes.

1 Q. Marketing plans?
2 A. No.
3 MS. EVERHART: Again, you're
4 referring to that time period?
5 MR. TARLETON: Yes. Between --
6 THE WITNESS: I should say nothing
7 in writing. There was a lot of discussion.
8 BY MR. TARLETON:
9 Q. Discussion with who?
10 A. With my husband, who is well versed in
11 business, and with my sister, Michelle, and some
12 with Alex and some with my brother-in-law, Paul
13 Jacobsen.
14 Q. Have you done anything to promote the web
15 page where you have these Auratone products
16 displayed?
17 A. I posted it back when I uploaded the
18 website. I did -- I believe I posted that link
19 on a few discussion boards.
20 Q. And when would this have been?
21 A. Probably -- it could have been as late as
22 2007, but I'm not sure.
23 Q. And nothing since then?
24 A. I don't think so.
25 Q. And the AuratoneProAudio.com domain, who

Exhibit

Z

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2
Auratone, LLC,)
3) Opposition No.
Opposer,) 91216808
4)
v.) Application
5) Serial No.
MUSIC Group IP Ltd.,) 85647325
6)
Applicant.) Published in
7) the Official
) Gazette on
8) May 13, 2014
)
9)
)
10)
)
11)
12 ----------
13
14
DEPOSITION OF:
15
ALEX JACOBSEN
16
Taken on behalf of the Applicant
17
July 21, 2015
18
19
20
21
22
23 Atkinson-Baker, Inc.
ABI Job NO. A907DB6
24 800-288-3376
Jennifer G. Haynie, LCR, No. 403
25

1 Q. Did you ever work with him in his company
2 when you were --
3 A. No.
4 Q. -- 15 years old or earlier?
5 A. No.
6 Q. Did you know your grandfather?
7 A. Yes.
8 Q. So you had met him?
9 A. Yes.
10 Q. And were you living in California when he
11 was there?
12 A. No. I moved here in Tennessee at a very
13 young age. My family moved here.
14 Q. From?
15 A. California.
16 Q. Okay. About how old were you?
17 A. I was one year old when we moved.
18 Q. Okay. And when your grandfather died,
19 what happened to the company? Do you know?
20 A. Well, my aunt took over when he passed
21 away. My aunt, Marlaine, was the one who kind
22 of oversaw trying to get it out of the gutter
23 from when he passed away.
24 Q. Okay. Did she involve you in that at
25 all, in those activities you just mentioned?

1 at times.
2 Q. And then any other employment?
3 A. No.
4 Q. Okay. So do you consider Auratone, LLC
5 your the employer?
6 A. Well, I own it, so I guess that would be
7 my position now.
8 Q. Okay. Owner of Auratone, LLC. And are
9 you the sole member?
10 A. Yes.
11 Q. And when did you form that company?
12 A. That would be 2000 -- LLC would be 2013
13 when I formed it.
14 Q. About when in 2013? Do you remember?
15 A. In May. April or May.
16 Q. And did you form that yourself or did you
17 have an attorney help you?
18 A. I formed that myself.
19 Q. Did you do that online?
20 A. I can't remember, to be honest with you.
21 Through paperwork I filed or I did it online.
22 Q. And does Auratone, LLC have any
23 employees?
24 A. No.
25 Q. So at the present time, you're still

A. In 2012. Probably from early 2012 until summer 2012.
Q. And why were you in South Africa?
A. I went to college there for an exchange -- as an exchange student.
Q. Excuse me. When did you graduate college?
A. 2012. December 2012.
Q. Did you walk?
A. Yes.
Q. Was that in June of 2013 or --
A. No. I walked in December of 2012. It had been right after the semester ended.
Q. And when he told you about this dispute over the Auratone mark, what did you do?
A. I consulted an attorney.
Q. And which attorney was that?
A. Amy.
Q. Okay. Your attorney who's here now today?
A. Correct.
Q. And what did you learn?
MS. EVERHART: And I will instruct you not to discuss the substance of our conversations.

1 canceled?
2 A. I knew -- all I really knew is that it
3 wasn't -- my grandfather did not renew his
4 trademark. And I discussed with them -- I
5 didn't discuss with them why it had been -- why
6 it had been canceled or the specifics of it. I
7 just kind of knew that it had been -- that he
8 didn't renew it.
9 Q. Did you ask them why they didn't
10 re-register the mark?
11 A. I don't remember. I don't know if we had
12 that conversation or not.
13 Q. And did your aunt, Marlaine Hysell,
14 transfer over to you any hard goods, equipment
15 or inventory --
16 A. Yes.
17 Q. -- when you decided to start Auratone,
18 LLC?
19 A. Yes.
20 Q. And when was this?
21 A. It had been in 2012 when that started, I
22 believe.
23 Q. And what did she give you?
24 A. Just inventory, you know, speakers,
25 products, equipment, all the paperwork designs,

1 all that kind of stuff, contacts.
2 Q. And were all of these -- the hard goods
3 and equipment and inventory that you received,
4 the tangible objects, were those all from your
5 grandfather?
6 A. Yes.
7 Q. Had, to your knowledge, your aunt,
8 Marlaine Hysell, or your mom had any new
9 products manufactured under the Auratone brand?
10 A. Not to my knowledge.
11 Q. And so what you received were basically
12 new old stock?
13 A. Possibly, yes.
14 Q. It was in new condition, but it was old?
15 A. I guess, but it was new. Some of it was
16 new. Some was -- it was not -- some of it was
17 new old stock and some of it was old, I guess,
18 that couldn't be -- wasn't for sale, but we
19 needed those to -- for design and sample
20 reasons.
21 Q. I see. And where is -- this equipment
22 and hard goods that you received, where is that
23 currently being stored?
24 A. At my shop.
25 Q. So you have a shop?

1 A. Yes.
2 Q. And is it a residence?
3 A. Yes.
4 Q. Okay. So Auratone, LLC is doing business
5 out of your residence at this time?
6 A. Correct.
7 Q. Do you have any other facilities
8 anywhere?
9 A. No.
10 Q. Are you currently manufacturing goods?
11 A. Yes.
12 Q. And by "you," I mean Auratone, LLC.
13 A. Yes.
14 Q. And where does that manufacturing take
15 place?
16 A. At our shop.
17 Q. Do you order inventory or components from
18 other sources?
19 A. Yes.
20 Q. And then you assemble everything in your
21 shop?
22 A. Yes.
23 Q. And when did you first start assembling
24 goods in your shop?
25 A. 2013.

1 LLC go live?
2 A. Which one are you referring to? There's
3 Pro Audio and there's -- we have two domain
4 names we've used.
5 Q. So the AuratoneProAudio.com, as I
6 understand it, was and may still be owned by
7 your aunt, Marlaine Hysell.
8 A. Correct, but I own it now.
9 Q. Okay. And your testimony is you now own
10 that domain?
11 A. Yes.
12 Q. Did she transfer it to you?
13 A. Yes.
14 Q. With the domain name assignment?
15 A. Yes. To our server, if that makes sense.
16 Q. Do you own another domain name?
17 A. Yes.
18 Q. What's that?
19 A. AuratoneSoundCubes.com.
20 Www.AuratoneSoundCubes.com.
21 Q. And does the Auratone Pro Audio domain
22 point to the Auratone Sound Cubes domain?
23 A. Yes. So if you go to it, it will say
24 we've moved and it will redirect you to -- to
25 our -- it'll say come to our new website. We've

1 moved.
2 Q. Understood. That doesn't necessarily
3 mean that you own the AuratoneProAudio.com
4 domain or that it's in your name.
5 A. That -- well, the fact that it points
6 doesn't mean that, but I do have control of
7 the -- where I go on the server, if that makes
8 sense. I own that part, if I'm explaining that
9 right.
10 Q. I think so. It's -- you control the
11 Auratone Sound Cubes --
12 A. Yes.
13 Q. -- domain and all traffic that goes from
14 Auratone Pro Audio to the Auratone Sound Cubes
15 domain, all that traffic comes to your server?
16 A. Yes.
17 Q. And when did you point the Auratone Pro
18 Audio domain to the second domain?
19 A. Sometime in -- I don't know the actual
20 date. I know it was in 2014 sometime, but I
21 can't remember the actual date.
22 Q. All right.
23 (Exhibit Number 4 was marked.)
24 BY MR. TARLETON:
25 Q. So the reporter has handed you what has

1 A. That and just to have them in case -- she
2 was curious of always wanting to start it back
3 up, just having some things to base things on
4 for continuing the business and just that kind
5 of thing.
6 Q. And was this something your mom said to
7 you?
8 A. Yes.
9 Q. And so your mom talked about wanting to
10 start the business back up again?
11 A. Yes, yes.
12 Q. And did she talk to you about you doing
13 that?
14 A. Yes.
15 Q. At what point in time?
16 A. That would have been probably right
17 around when I started college or while I was in
18 college. The 2010 time frame, 2009. We always
19 talked about it over the years. I knew what it
20 was -- like we had discussions about it and, you
21 know, possible things we want to do. That's
22 kind of when they -- I guess she -- we got more
23 in discussions of actually, okay, now this is,
24 you know, something that you may need to do or
25 we need to do.

1 Q. And what was your initial feeling when
2 you heard that?
3 A. Yeah. I wanted to do it.
4 Q. Why?
5 A. Because I needed -- wanted to start --
6 keep the family business, continue the legacy.
7 Q. So the Auratone brand had been an old
8 brand. Would you agree?
9 A. No, not necessarily. It's still -- it's
10 never really gone away.
11 Q. Okay. Were you concerned at all about
12 having to find customers --
13 A. No.
14 Q. -- and start channels of distribution?
15 A. No. The name sold -- it was very easy to
16 find customers because of the legacy of the
17 brand. It never really went away.
18 Q. Because in your mind, the Auratone name
19 was still recognized?
20 A. Yes, it was.
21 Q. You felt that you could easily generate
22 new business using the brand?
23 A. Yes.
24 (Exhibit Number 5 was marked.)
25 BY MR. TARLETON:

1 business with him, but I don't have it off the
2 top of my head who that would be personally.
3 Q. All right. And this e-mail is talking
4 about a release of a new product?
5 A. Yes.
6 Q. What product is that?
7 A. The custom edition 5C Super -- Auratone
8 5C Super Sound Cube. We had a system that was
9 made -- I made an update to a new product.
10 Q. So it's an updated design of an old --
11 A. Correct.
12 Q. -- Auratone --
13 A. Well, that's an updated design from the
14 one we were selling previously before that as an
15 Auratone, LLC, and then we came out with the new
16 updated version of that, of a previous product I
17 was making.
18 Q. Okay. Who did the new design?
19 A. I would have. I did.
20 Q. And what was new about the design?
21 A. Just the sounds -- we tweaked the sound a
22 little bit in certain ways that we thought were
23 beneficial.
24 Q. And when you say "tweaked the sound," do
25 you mean electronically or physically?

1 A. I guess you can say physically. We used
2 some different materials like on the speakers to
3 change the sound.
4 Q. Okay. So was the enclosure the same?
5 A. Yes. Well, actually, this one would have
6 been -- I think we used a little different --
7 using a different magnet -- a little more of a
8 custom nice finish. That's why I called it the
9 custom edition.
10 Q. And you say "we." Did anyone assist you
11 in that new design?
12 A. Well, no. I guess the company. Sorry.
13 Q. Okay. And so you were the designer of
14 this product --
15 A. Yes.
16 Q. -- for the company?
17 A. Yes.
18 Q. And did you have any classes in speaker
19 design in college?
20 A. No.
21 Q. So how did you learn to do the design?
22 A. From basically my grandfather when I had
23 all has -- inherited all his stuff, all his
24 equipment and all designs and paperwork. And I
25 had a foundation to start looking into how to

1 get things built from all this old paperwork --
2 Q. I see.
3 A. -- that my aunt had kept for that reason,
4 so I could do that.
5 Q. Do you have any patents pending for any
6 of this new design work?
7 A. No.
8 (Exhibit Number 6 was marked.)
9 BY MR. TARLETON:
10 Q. So the reporter has handed you what has
11 been marked as Exhibit 6. Do you recognize this
12 document?
13 A. Yes.
14 Q. What is it?
15 A. It says it's an invoice for somebody for
16 sale.
17 Q. An invoice from who?
18 A. From me, Auratone.
19 Q. And who is it to?
20 A. It says Doc Barendse.
21 Q. And what was it for?
22 A. Auratone Super Sound Cube and also two 5C
23 Auratone replacement speakers.
24 Q. And what is the date of the invoice?
25 A. May 20th, 2013.

1 or things of that nature.
2 Q. This wasn't something you prepared in
3 response to the lawsuit?
4 A. No.
5 Q. Have you updated this document since the
6 last entry?
7 A. Yes. There would have been something
8 else we have -- something that we have -- we
9 have manufactured more since this time period,
10 obviously, because it's -- it updates almost
11 weekly obviously --
12 Q. Okay.
13 A. -- every time or daily, if that makes
14 sense. So yeah, there would be an updated --
15 more has taken place since this because it gets
16 updated every time we get these materials that
17 we need for manufacturing.
18 Q. So you don't make T-shirts, though?
19 A. No, but we buy -- we get them
20 manufactured for us.
21 Q. Okay. So this represents T-shirts that
22 you didn't manufacture.
23 A. But were manufactured.
24 Q. You screen printed something on them?
25 A. That would be the Auratone logo, yeah.

1 THE WITNESS: Myself.
2 BY MR. TARLETON:
3 Q. No bank loans?
4 A. No.
5 Q. No gifts from relatives?
6 A. No.
7 Q. And you had mentioned that there were
8 some documentation in 2012 --
9 A. Uh-huh.
10 Q. -- about manufacturing plans and things.
11 A. Yes.
12 Q. Can you describe those documents?
13 A. Well, they've been parts of speakers
14 manufactured or -- of that nature.
15 Q. And what would the documents themselves
16 be? Were they orders?
17 A. Design plans. Some of stuff. I don't
18 think we ordered anything. We might have done
19 some samples and stuff. I just know there was
20 design -- I started to -- the design product
21 development phase.
22 Q. And who has possession of those
23 documents?
24 A. That would be me.
25 Q. Any reason why you have not produced them

in this case?

MS. EVERHART: I'll object --

THE WITNESS: I think I have.

MS. EVERHART: -- just to the extent that they weren't requested. You can answer.

THE WITNESS: I'm pretty sure I did produce those, but in terms of what was requested and what was -- that wasn't -- I do know I have produced them or I believe so, but I -- I do have them.

BY MR. TARLETON:

Q. Okay. But you do have the documents?

A. Yes.

Q. You're not sure if you've produced them to your attorney as part of this case?

A. I'm pretty sure I did, but I'd have to look back and make sure exactly what I produced.

Q. Can you describe what the design plans look like for the speakers?

A. That's a trademark secret.

MS. EVERHART: To the extent that it's trade secrets, I wouldn't mind getting to the trade secret speaker, but you can tell him what the document would look like or --

BY MR. TARLETON:

1 Q. Right. Are the sketches that you've done
2 or --
3 A. Some or -- well, mostly like e-mails with
4 other companies who build things or -- of that
5 nature to help kind of start.
6 Q. So the design plans would be more e-mails
7 that you're discussing the specifications for
8 speakers.
9 A. Yeah.
10 Q. Okay.
11 A. Or something to do with what was being
12 manufactured and the parts and that kind of
13 thing.
14 Q. And this would be to your source for the
15 actual speaker?
16 A. Yes. Well, I'm not sure exactly what the
17 conversation -- I just know there could have
18 been lots of things involving -- it could have
19 been enclosures or parts in the enclosure or
20 speaker, or just a general -- I mean, there was
21 a discussion of e-mails where we're talking
22 starting in 2012 with certain people to get --
23 you know, start designing.
24 Q. Okay. And you say you have those
25 documents in your possession?

1 A. Yes.
2 MR. TARLETON: So to the extent they
3 have been produced, can we ask that they be
4 produced?
5 MS. EVERHART: Yeah. I'll go ahead
6 and -- you know, I think we've produced some
7 things like that. And I'll go through the --
8 I'm not aware of anything withheld
9 intentionally, so we'll review anything and take
10 a look at what your requests are. But like I
11 said, I'm not aware of anything withheld along
12 those lines.
13 MR. TARLETON: I don't recall seeing
14 anything as early as 2012.
15 MS. EVERHART: Okay.
16 MR. TARLETON: So I will look again,
17 too.
18 MS. EVERHART: Okay. And we'll take
19 a look at it, as well.
20 MR. TARLETON: Thank you.
21 BY MR. TARLETON:
22 Q. Is it possible to order product from the
23 Auratone Sound Cubes' website?
24 A. Yes.
25 Q. So you can -- a customer can put in their

1 Q. Okay. With respect to the old stock from
2 your grandfather --
3 A. Uh-huh.
4 Q. -- is that now in your possession?
5 A. Yes.
6 Q. Are you advertising to sell that still?
7 A. I have already sold some of it, but I do
8 have some of it -- still some of it now, but not
9 selling anything right now that -- because I
10 need those for sample purposes and testing
11 purposes for new products -- for design of new
12 products.
13 Q. And the website that your aunt had for
14 selling those --
15 A. Yes.
16 Q. -- are you aware of that website?
17 A. Yes.
18 Q. Is it still up?
19 A. Yes.
20 Q. Any reason you haven't taken it down?
21 A. Not in particular. I just think she
22 wanted to have it up still.
23 MR. TARLETON: Okay. I don't think
24 I have any more questions.
25 MS. EVERHART: Okay. I have no