

ESTTA Tracking number: **ESTTA616563**

Filing date: **07/18/2014**

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

Proceeding	91216808
Party	Defendant MUSIC Group IP Ltd.
Correspondence Address	E. RUSSELL TARLETON SEED IP LAW GROUP PLLC 701 5TH AVE STE 5400 SEATTLE, WA 98104-7064 russt.docketing@seedip.com
Submission	Answer
Filer's Name	E. Russell Tarleton
Filer's e-mail	RussT@SeedIP.com, litcal@SeedIP.com
Signature	/E. Russell Tarleton/
Date	07/18/2014
Attachments	Answer MG.pdf(102536 bytes)

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

Auratone LLC)	
)	Opposition No. 91216808
Opposer,)	
)	Serial No. 85/647325
v.)	
)	
MUSIC Group IP Ltd.,)	
)	
Applicant.)	Attorney Docket No. 900195.837
)

**APPLICANT MUSIC GROUP IP LTD.’S
ANSWER TO NOTICE OF OPPOSITION**

Applicant MUSIC Group IP Ltd (“MUSIC Group” or “Applicant”), by and through its attorneys, hereby answers the Notice of Opposition filed by Opposer Auratone LLC (“Auratone” or “Opposer”), as follows:

MUSIC Group admits upon information and belief that Auratone has a mailing address of P.O. Box 1691, Hendersonville, TN 37077. MUSIC Group admits it has filed a trademark application, serial no. 85/647325 which speaks for itself. MUSIC Group lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the opening paragraph of the Opposition, and on that basis denies them.

1. MUSIC Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Opposition, and on that basis denies them.

2. MUSIC Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Opposition, and on that basis denies them.

3. MUSIC Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Opposition, and on that basis denies them.

4. MUSIC Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Opposition, and on that basis denies them.

5. MUSIC Group admits it filed U.S. Trademark Application Serial No. 85/647325 on June 8, 2012. MUSIC Group denies the remaining allegations of Paragraph 5 of the Opposition.

6. MUSIC Group denies the allegations of Paragraph 6 of the Opposition.

7. MUSIC Group denies the allegations of Paragraph 7 of the Opposition.

8. MUSIC Group admits it received letters dated February 27, 2013, and July 23, 2013, from an attorney purporting to represent the heirs of Jack Wilson. MUSIC Group admits it has not withdrawn its application. MUSIC Group denies the remaining allegations of Paragraph 8 of the Opposition.

9. MUSIC Group denies the allegations of Paragraph 9 of the Opposition.

10. MUSIC Group denies the allegations of Paragraph 10 of the Opposition.

11. MUSIC Group denies the allegations of Paragraph 11 of the Opposition.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief can be granted.

2. The claim set forth in the Notice of Opposition is barred in whole or in part by the doctrines of waiver, acquiescence, and estoppel.

3. Opposer did not have a bona fide intention to use the mark in commerce and has shown a lack of bona fide intention to use its claimed mark AURATONE in commerce.

4. Opposer lacks standing to bring this opposition because it was formed after MUSIC Group filed its application, and Opposer is not a successor in interest to the trademark rights of Mr. Wilson and his company and has received no rights from the heirs of Jack Wilson or his company that entitles it to oppose MUSIC Group's application.

5. Opposer, to the extent it may have any rights from the heirs of Jack Wilson, abandoned the AURATONE mark through non-use of the mark in commerce, and the abandonment continued at least until the filing of the application at issue in this opposition.

6. Opposer, to the extent it may have any rights from the heirs of Jack Wilson, had no use in commerce of the AURATONE mark and no pending U.S. trademark application filed prior to the filing date of the application at issue in this opposition, and thus Opposer has no damages or reasonable belief in damage that would entitle it to bring this opposition or to prevail in this opposition.

PRAYER FOR RELIEF

WHEREFORE, MUSIC Group requests judgment:

1. Dismissing Opposer's Notice of Opposition and allowing Applicant's application to proceed to registration.

DATED this 17th day of July, 2014.

Seed IP Law Group PLLC

/E. Russell Tarleton/

E. Russell Tarleton
RussT@SeedIP.com
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
Telephone (206) 622-4900
Facsimile (206) 682-6031

Attorneys for Applicant
MUSIC Group IP Ltd.

3307384_1.docx

CERTIFICATE OF SERVICE

I hereby certify that the above **APPLICANT MUSIC GROUP IP LTD.’S ANSWER TO NOTICE OF OPPOSITION** was served on Opposer’s counsel by U.S. first class mail on July 18, 2014, addressed as follows:

Amy J. Everhart
Maria A. Spear
Everhart Law Firm PLC
1400 Fifth Avenue North
Nashville, TN 37208

/Anne Calico/

Anne Calico