

ESTTA Tracking number: **ESTTA624787**

Filing date: **09/02/2014**

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

Notice of Opposition

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

Opposer Information

Name	Yonder Mountain Enterprises, LLC
Granted to Date of previous extension	10/19/2014
Address	2425 Balsam Drive/c/o Arrone Appel Boulder, CO 80304 UNITED STATES

Attorney information	Justin C. Konrad Hutchinson Black & Cook, LLC 921 Walnut Street, Suite 200 Boulder, CO 80302 UNITED STATES konrad@hbcboulder.com Phone:3034426514
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Applicant Information

Application No	86027752	Publication date	04/22/2014
Opposition Filing Date	09/02/2014	Opposition Period Ends	10/19/2014
Applicant	Adam Plus Company, LLC 261 Madison Avenue, Ste 9038 New York, NY 10016 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing prerecorded music, playback of music, information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet website and database featuring non-downloadable music
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer services, namely, providing non-downloadable software for delivering, distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audiodata via a global computer network; providing a website featuring technology that enables users to identify musical preference based on user based selections

Applicant Information

Application No	86027827	Publication date	04/22/2014
Opposition Filing Date	09/02/2014	Opposition Period Ends	
Applicant	Adam Plus Company, LLC 261 Madison Avenue, Ste 9038 New York, NY 10016 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing prerecorded music, playback of music, information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet web site and database featuring non-downloadable music
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer services, namely, providing non-downloadable software for delivering, distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audiodata via a global computer network; providing a web site featuring technology that enables users to identify musical preference based on user based selections

Applicant Information

Application No	86238472	Publication date	08/12/2014
Opposition Filing Date	09/02/2014	Opposition Period Ends	09/11/2014
Applicant	Adam Plus Company, LLC 261 Madison Avenue, Ste. 9038 New York, NY 10016 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Downloadable mobile applications for internet-based music services; computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing prerecorded music, playback of music, information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet website and database featuring non-downloadable music
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer services, namely, providing non-downloadable software for delivering, distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audiodata via a global computer network; providing a website featuring technology that enables users to identify musical preference based on user based selections

Grounds for Opposition

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

U.S. Application No.	86140100	Application Date	12/10/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	YONDER MOUNTAIN STRING BAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1999/09/15 First Use In Commerce: 1999/09/15 Digital music downloadable from the Internet; Musical sound recordings; Pre-recorded CDs featuring music; Pre-recorded electronic and digital media featuring music</p> <p>Class 025. First use: First Use: 1998/12/25 First Use In Commerce: 1998/12/25 Hats; Sweatshirts; T-shirts; Tank tops</p> <p>Class 041. First use: First Use: 1998/09/25 First Use In Commerce: 1998/09/25 Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music</p>		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	YONDER		
Goods/Services	<p>Digital music downloadable from the Internet; Musical sound recordings; Pre-recorded CDs featuring music; Pre-recorded electronic and digital media featuring music Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music</p>		

Attachments	86140100#TMSN.png(bytes) W0928926.PDF(83818 bytes) W0928925.PDF(80179 bytes) W0928927.PDF(77318 bytes)
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Certificate of Service

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

Signature	/Justin C. Konrad/
Name	Justin C. Konrad
Date	09/02/2014

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

In the matter of Application Serial No. 86/027,827
Filed on August 2, 2013
For the Mark **YONDER: LET THE MUSIC PLAY and design**
Published in the *Official Gazette* on April 22, 2014

YONDER MOUNTAIN ENTERPRISES, LLC	:	
	:	
Opposer,	:	
	:	Opposition No. _____
v.	:	
	:	
ADAM PLUS COMPANY, LLC	:	NOTICE OF OPPOSITION
	:	
Applicant.	:	

Yonder Mountain Enterprises, LLC (“*Opposer*”), believes it would be damaged by registration of the mark shown in Application Serial No. 86/027,827 (“*Applicant’s Application*”) filed by Adam Plus Company, LLC (“*Applicant*”) for the mark YONDER: LET THE MUSIC PLAY and design (“*Applicant’s Mark*”), and pursuant to 15 U.S.C. § 1063, hereby opposes same.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is a limited liability company existing under the laws of the state of Colorado, with its principal place of business in Boulder County, Colorado.
2. Opposer was formed by the members of the musical group, Yonder Mountain String Band (“*Yonder*”), as the business entity to provide Yonder’s musical

services and to administer Yonder's assets, including the goodwill in its trademarks and service marks "Yonder Mountain String Band" and "Yonder" (the "*Yonder Marks*").¹

3. Opposer has provided live musical performance services since 1998 and has performed thousands of concerts under the Yonder Marks at large venues throughout the United States and beyond since that date. Opposer's musical performance services under the Yonder Marks have been regularly and extensively covered by the national press in major national media outlets.

4. Opposer publicly released its first musical sound recordings in 1999, and has released eleven studio record albums as well as hundreds of "live" recordings under the Yonder Marks since that date. Opposer's musical recordings under the Yonder Marks have achieved extensive commercial success, including number one albums on the national Billboard Top Bluegrass record charts.

5. Opposer registered the domain name www.yondermountain.com in 1998 and since that date has consistently provided a web site utilizing the Yonder marks featuring information, photographs, recordings, videos and other materials related to music. In 2005, Opposer also registered the domain name www.yondermountainlive.com and began providing additional streaming and downloadable musical recordings through that web site utilizing the Yonder Marks.

6. The Yonder Marks are distinctive, nonfunctional, and possess secondary meaning in that they are strongly associated by the public with Opposer and, as a result, they signify Opposer as the source and/or sponsor of Opposer's musical sound recordings, live musical performances, apparel and website services.

¹ For purposes of this Notice of Opposition, the term "Opposer" will include activities of Yonder prior to formal organization of Opposer in 2000 as well as subsequent to such date.

7. On December 10, 2013, Opposer filed Application Serial No. 86/140,100 (“*Opposer’s Application*”), for the mark YONDER MOUNTAIN STRING BAND, on a Section 1(A) basis, for the following goods and services:

Class 009	Digital music downloadable from the Internet; Musical sound recordings; Pre-recorded CDs featuring music; Pre-recorded electronic and digital media featuring music.	First Use in Commerce: Sept. 15, 1999
Class 025	Hats; Sweatshirts; T-shirts; Tank tops.	First Use in Commerce: December 25, 1998
Class 041	Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music.	First Use in Commerce: September 25, 1998

8. On March 19, 2014, Opposer received a Suspension Notice stating that the trademark examining attorney assigned to Opposer’s Application was suspending action on Opposer’s Application because Applicant’s Application may present a bar to registration of Opposer’s mark.

9. On information and belief, on August 2, 2013, Adam Plus Company, LLC, with an address of record at 261 Madison Avenue, Ste 9038 New York NEW YORK 10016, filed Application Serial No. 86/027,827, for the mark YONDER: LET THE MUSIC PLAY and design, on a Section 1(B) basis, for the following goods and services:

Class 009	computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data	(Not yet used in commerce)
Class 041	Entertainment services, namely, providing prerecorded music, playback of music,	(Not yet used in commerce)

	information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet website and database featuring non-downloadable music	
Class 042	Computer services, namely, providing non-downloadable software for delivering, distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audio data via a global computer network; providing a website featuring technology that enables users to identify musical preference based on user based selections	(Not yet used in commerce)

10. On information and belief and consistent with Applicant's filing of Applicant's Application on a 1(B) intent-to-use basis, Applicant had not yet begun any use of Applicant's Mark as of August 2, 2013 – nearly fifteen years after Opposer began using the Yonder Marks in commerce in connection with its music-related goods and services.

11. Applicant's Application was published for opposition on April 22, 2014. On May 19, 2014, Opposer filed a request seeking a 30-day extension of time to oppose Applicant's Application, which was granted until June 21, 2014. Because Opposer and Applicant were engaged in settlement discussions and Opposer needed additional time to confer with counsel, on June 18, 2014, Opposer filed a request seeking an additional 60-day extension of time to oppose Applicant's Application, which request was granted until August 20, 2014.

12. Applicant's Mark is substantially similar to Opposer's Yonder Marks, and is so close to the Yonder Marks that it is likely to confuse an ordinary person as to the source, sponsorship or affiliation of the marks. YONDER is identical to one of the Yonder Marks

and is the dominant part of the other Yonder Mark. YONDER is also clearly the dominant part of Applicant's Mark, and the "LET THE MUSIC PLAY" portion of Applicant's Mark only serves to further emphasize that both Applicant's Mark and the Yonder Marks are primarily related to musical goods and services. As such, Applicant's Mark creates a memorable impression that is nearly identical to the Yonder Marks. Moreover, the goods and services involved are highly related in that they all relate to providing of music to the public, including *inter alia* internet music delivery services that are essentially identical. It is extremely common for providers of musical recordings and musical performance services to also provide services related to the distribution of music, as evidenced by countless third-party USPTO trademark registrations for both musical recordings, musical performance services, and digital music distribution services. Indeed, it is entirely possible that Opposer's musical recordings will be distributed through Applicant's distribution software and/or services. Finally, the goods and services appeal to the same or similar class of individuals (individuals interested in and seeking to listen to and obtain music), and, upon information and belief, are or will be promoted through the same trade channels, namely, through internet websites.

13. As a result, and as concluded by the examining attorney who issued the Suspension Notice with respect to Opposer's Application, use of Applicant's Mark in connection with the services set forth in Applicant's Application, *inter alia*, is likely to cause confusion, or to cause mistake, or to deceive customers and potential customers within the meaning of 15 U.S.C. § 1052(d).

14. Use of Applicant's Mark will further serve to create and/or reinforce an erroneous association with Opposer. Individuals and users of the goods or services of

Opposer and the relevant public are likely to believe in error that the good or services offered under Applicant's Mark are offered by or in association with Opposer.

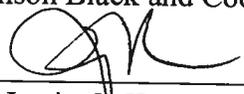
15. Opposer's goodwill and reputation will thus be damaged and jeopardized by Applicant's use and registration of Applicant's Mark.

FOR THE REASONS STATED ABOVE, Opposer believes that it will be damaged by registration of Application Serial No. 86/027,827, and therefore respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration of Applicant's Mark.

Dated: September 2, 2014

Respectfully submitted,

Hutchinson Black and Cook, LLC

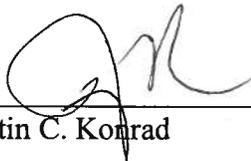
By: 

Justin C. Konrad
Kimberly M. Hult
921 Walnut Street, Suite 200
Boulder, CO 80302
303-442-6514
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 2, 2014, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served by first class mail upon:

Vanessa C. Hew, Esq.
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086



Justin C. Konrad

services and to administer Yonder's assets, including the goodwill in its trademarks and service marks "Yonder Mountain String Band" and "Yonder" (the "*Yonder Marks*").¹

3. Opposer has provided live musical performance services since 1998 and has performed thousands of concerts under the Yonder Marks at large venues throughout the United States and beyond since that date. Opposer's musical performance services under the Yonder Marks have been regularly and extensively covered by the national press in major national media outlets.

4. Opposer publicly released its first musical sound recordings in 1999, and has released eleven studio record albums as well as hundreds of "live" recordings under the Yonder Marks since that date. Opposer's musical recordings under the Yonder Marks have achieved extensive commercial success, including number one albums on the national Billboard Top Bluegrass record charts.

5. Opposer registered the domain name www.yondermountain.com in 1998 and since that date has consistently provided a web site utilizing the Yonder marks featuring information, photographs, recordings, videos and other materials related to music. In 2005, Opposer also registered the domain name www.yondermountainlive.com and began providing additional streaming and downloadable musical recordings through that web site utilizing the Yonder Marks.

6. The Yonder Marks are distinctive, nonfunctional, and possess secondary meaning in that they are strongly associated by the public with Opposer and, as a result, they signify Opposer as the source and/or sponsor of Opposer's musical sound recordings, live musical performances, apparel and website services.

¹ For purposes of this Notice of Opposition, the term "Opposer" will include activities of Yonder prior to formal organization of Opposer in 2000 as well as subsequent to such date.

7. On December 10, 2013, Opposer filed Application Serial No. 86/140,100 (“*Opposer’s Application*”), for the mark YONDER MOUNTAIN STRING BAND, on a Section 1(A) basis, for the following goods and services:

Class 009	Digital music downloadable from the Internet; Musical sound recordings; Pre-recorded CDs featuring music; Pre-recorded electronic and digital media featuring music.	First Use in Commerce: Sept. 15, 1999
Class 025	Hats; Sweatshirts; T-shirts; Tank tops.	First Use in Commerce: December 25, 1998
Class 041	Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music.	First Use in Commerce: September 25, 1998

8. On March 19, 2014, Opposer received a Suspension Notice stating that the trademark examining attorney assigned to Opposer’s Application was suspending action on Opposer’s Application because Applicant’s Application may present a bar to registration of Opposer’s mark.

9. On information and belief, on August 2, 2013, Adam Plus Company, LLC, with an address of record at 261 Madison Avenue, Ste 9038 New York NEW YORK 10016, filed Application Serial No. 86/027,752, for the mark YONDER MUSIC, on a Section 1(B) basis, for the following goods and services:

Class 009	computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data	(Not yet used in commerce)
Class 041	Entertainment services, namely, providing prerecorded music, playback of music,	(Not yet used in commerce)

	information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet website and database featuring non-downloadable music	
Class 042	Computer services, namely, providing non-downloadable software for delivering, distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audio data via a global computer network; providing a website featuring technology that enables users to identify musical preference based on user based selections	(Not yet used in commerce)

10. On information and belief and consistent with the filing of its application on an intent-to-use basis, Applicant had not yet begun any use of Applicant's Mark as of August 2, 2013 – nearly fifteen years after Opposer began using the Yonder Marks in commerce in connection with its music-related goods and services.

11. Applicant's Application was published for opposition on April 22, 2014. On May 19, 2014, Opposer filed a request seeking a 30-day extension of time to oppose Applicant's Application, which was granted until June 21, 2014. Because Opposer and Applicant were engaged in settlement discussions and Opposer needed additional time to confer with counsel, on June 18, 2014, Opposer filed a request seeking an additional 60-day extension of time to oppose Applicant's Application, which request was granted until August 20, 2014.

12. Applicant's Mark is substantially similar to Opposer's Yonder Marks, and is so close to the Yonder Marks that it is likely to confuse an ordinary person as to the source, sponsorship or affiliation of the marks. YONDER is identical to one of the Yonder Marks

and is the dominant part of the other Yonder Mark. YONDER is also clearly the dominant part of Applicant's Mark, and the "MUSIC" portion of Applicant's Mark (which Applicant has disclaimed) only serves to further emphasize that both Applicant's Mark and the Yonder Marks are primarily related to musical goods and services. As such, Applicant's Mark creates a memorable impression that is nearly identical to the Yonder Marks. Moreover, the goods and services involved are highly related in that they all relate to providing of music to the public, including *inter alia* internet music delivery services that are essentially identical. It is extremely common for providers of musical recordings and musical performance services to also provide services related to the distribution of music, as evidenced by countless third-party USPTO trademark registrations for both musical recordings, musical performance services, and digital music distribution services. Indeed, it is entirely possible that Opposer's musical recordings will be distributed through Applicant's distribution software and/or services. Finally, the goods and services appeal to the same or similar class of individuals (individuals interested in and seeking to listen to and obtain music), and, upon information and belief, are or will be promoted through the same trade channels, namely, through internet websites.

13. As a result, and as concluded by the examining attorney who issued the Suspension Notice with respect to Opposer's Application, use of Applicant's Mark in connection with the services set forth in the Application, *inter alia*, is likely to cause confusion, or to cause mistake, or to deceive customers and potential customers within the meaning of 15 U.S.C. § 1052(d).

14. Use of Applicant's Mark will further serve to create and/or reinforce an erroneous association with Opposer. Individuals and users of the goods or services of

Opposer and the relevant public are likely to believe in error that the good or services offered under Applicant's Mark are offered by or in association with Opposer.

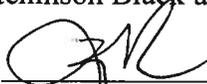
15. Opposer's goodwill and reputation will thus be damaged and jeopardized by Applicant's use and registration of Applicant's Mark.

FOR THE REASONS STATED ABOVE, Opposer believes that it will be damaged by registration of Application Serial No. 86/027,752, and therefore respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration of Applicant's Mark.

Dated: September 2, 2014

Respectfully submitted,

Hutchinson Black and Cook, LLC

By: 

Justin C. Konrad
Kimberly M. Hult
921 Walnut Street, Suite 200
Boulder, CO 80302
303-442-6514
Attorneys for Opposer

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The undersigned hereby certifies that on September 2, 2014, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served by first class mail upon:

Vanessa C. Hew, Esq.
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086


Justin C. Konrad

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

In the matter of Application Serial No. 86/238,472
Filed on August 2, 2013
For the Mark **YONDER: HEAR FOREVER**
Published in the *Official Gazette* on August 12, 2014

YONDER MOUNTAIN ENTERPRISES, LLC	:	
	:	
Opposer,	:	Opposition No. _____
	:	
v.	:	
	:	
ADAM PLUS COMPANY, LLC	:	NOTICE OF OPPOSITION
	:	
Applicant.	:	
	:	

Yonder Mountain Enterprises, LLC (“*Opposer*”), believes it would be damaged by registration of the mark shown in Application Serial No. 86/238,472 (“*Applicant’s Application*”) filed by Adam Plus Company, LLC (“*Applicant*”) for the mark YONDER: HEAR FOREVER (“*Applicant’s Mark*”), and pursuant to 15 U.S.C. § 1063, hereby opposes same.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is a limited liability company existing under the laws of the state of Colorado, with its principal place of business in Boulder County, Colorado.
2. Opposer was formed by the members of the musical group, Yonder Mountain String Band (“*Yonder*”), as the business entity to provide Yonder’s musical

services and to administer Yonder's assets, including the goodwill in its trademarks and service marks "Yonder Mountain String Band" and "Yonder" (the "*Yonder Marks*").¹

3. Opposer has provided live musical performance services since 1998 and has performed thousands of concerts under the Yonder Marks at large venues throughout the United States and beyond since that date. Opposer's musical performance services under the Yonder Marks have been regularly and extensively covered by the national press in major national media outlets.

4. Opposer publicly released its first musical sound recordings in 1999, and has released eleven studio record albums as well as hundreds of "live" recordings under the Yonder Marks since that date. Opposer's musical recordings under the Yonder Marks have achieved extensive commercial success, including number one albums on the national Billboard Top Bluegrass record charts.

5. Opposer registered the domain name www.yondermountain.com in 1998 and since that date has consistently provided a web site utilizing the Yonder marks featuring information, photographs, recordings, videos and other materials related to music. In 2005, Opposer also registered the domain name www.yondermountainlive.com and began providing additional streaming and downloadable musical recordings through that web site utilizing the Yonder Marks.

6. The Yonder Marks are distinctive, nonfunctional, and possess secondary meaning in that they are strongly associated by the public with Opposer and, as a result, they signify Opposer as the source and/or sponsor of Opposer's musical sound recordings, live musical performances, apparel and website services.

¹ For purposes of this Notice of Opposition, the term "Opposer" will include activities of Yonder prior to formal organization of Opposer in 2000 as well as subsequent to such date.

7. On December 10, 2013, Opposer filed Application Serial No. 86/140,100 (“*Opposer’s Application*”), for the mark YONDER MOUNTAIN STRING BAND, on a Section 1(A) basis, for the following goods and services:

Class 009	Digital music downloadable from the Internet; Musical sound recordings; Pre-recorded CDs featuring music; Pre-recorded electronic and digital media featuring music.	First Use in Commerce: Sept. 15, 1999
Class 025	Hats; Sweatshirts; T-shirts; Tank tops.	First Use in Commerce: December 25, 1998
Class 041	Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music.	First Use in Commerce: September 25, 1998

8. On information and belief, on April 1, 2014, Adam Plus Company, LLC, with an address of record at 261 Madison Avenue, Ste 9038 New York NEW YORK 10016, filed Application Serial No. 86/238,472, for the mark YONDER: HEAR FOREVER, on a Section 1(B) basis, for the following goods and services:

Class 009	downloadable mobile applications for internet-based music services; computer software for use in the delivery, distribution and transmission of digital music; computer software allowing users to search, store, share, organize, receive, play and download audio data	(Not yet used in commerce)
Class 041	Entertainment services, namely, providing prerecorded music, playback of music, information in the field of music, and commentary about music, all online via a global computer network; entertainment services, namely, providing an Internet website and database featuring non-downloadable music	(Not yet used in commerce)
Class 042	Computer services, namely, providing non-downloadable software for delivering,	(Not yet used in commerce)

	distributing, transmitting, searching, storing, sharing, organizing, receiving, playing and downloading audio data; providing search engines for obtaining audio data via a global computer network; providing a website featuring technology that enables users to identify musical preference based on user based selections	
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9. On information and belief and consistent with Applicant’s filing of Applicant’s Application on a 1(B) intent-to-use basis, Applicant had not yet begun any use of Applicant’s Mark as of April 1, 2014 – nearly fifteen years after Opposer began using the Yonder Marks in commerce in connection with its music-related goods and services.

10. Applicant’s Application was published for opposition on August 12, 2014.

11. Applicant’s Mark is substantially similar to Opposer’s Yonder Marks, and is so close to the Yonder Marks that it is likely to confuse an ordinary person as to the source, sponsorship or affiliation of the marks. YONDER is identical to one of the Yonder Marks and is the dominant part of the other Yonder Mark. YONDER is also clearly the dominant part of Applicant’s Mark, and the “HEAR FOREVER” portion of Applicant’s Mark only serves to further emphasize that both Applicant’s Mark and the Yonder Marks are primarily related to musical goods and services. As such, Applicant’s Mark creates a memorable impression that is nearly identical to the Yonder Marks. Moreover, the goods and services involved are highly related in that they all relate to providing of music to the public, including *inter alia* internet music delivery services that are essentially identical. It is extremely common for providers of musical recordings and musical performance services to also provide services related to the distribution of music, as evidenced by countless third-

party USPTO trademark registrations for both musical recordings, musical performance services, and digital music distribution services. Indeed, it is entirely possible that Opposer's musical recordings will be distributed through Applicant's distribution software and/or services. Finally, the goods and services appeal to the same or similar class of individuals (individuals interested in and seeking to listen to and obtain music), and, upon information and belief, are or will be promoted through the same trade channels, namely, through internet websites.

12. As a result, use of Applicant's Mark in connection with the services set forth in Applicant's Application, *inter alia*, is likely to cause confusion, or to cause mistake, or to deceive customers and potential customers within the meaning of 15 U.S.C. § 1052(d).

13. Use of Applicant's Mark will further serve to create and/or reinforce an erroneous association with Opposer. Individuals and users of the goods or services of Opposer and the relevant public are likely to believe in error that the good or services offered under Applicant's Mark are offered by or in association with Opposer.

14. Opposer's goodwill and reputation will thus be damaged and jeopardized by Applicant's use and registration of Applicant's Mark.

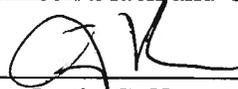
FOR THE REASONS STATED ABOVE, Opposer believes that it will be damaged by registration of Application Serial No. 86/238,472, and therefore respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration of Applicant's Mark.

Dated: September 2, 2014

Respectfully submitted,

Hutchinson Black and Cook, LLC

By:



Justin C. Konrad

Kimberly M. Hult

921 Walnut Street, Suite 200

Boulder, CO 80302

303-442-6514

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 2, 2014, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served by first class mail upon:

Vanessa C. Hew, Esq.
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086



Justin C. Konrad