

ESTTA Tracking number: **ESTTA650122**

Filing date: **01/14/2015**

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	Beats Electronics LLC
Granted to Date of previous extension	01/14/2015
Address	8600 Hayden Place Culver City, CA 90232 UNITED STATES

Correspondence information	Michael G. Kelber Neal, Gerber & Eisenberg LLP 2 N. LaSalle St., Suite 1700 Chicago, IL 60602 UNITED STATES mkelber@ngelaw.com, knye@ngelaw.com, afuelleman@ngelaw.com, fwest-brown@ngelaw.com, docketmail@ngelaw.com Phone:312-269-8000
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Applicant Information

Application No	86255084	Publication date	09/16/2014
Opposition Filing Date	01/14/2015	Opposition Period Ends	01/14/2015
Applicant	Betasavers LLC #900 Tempe, AZ 85281 UNITED STATES		

Goods/Services Affected by Opposition

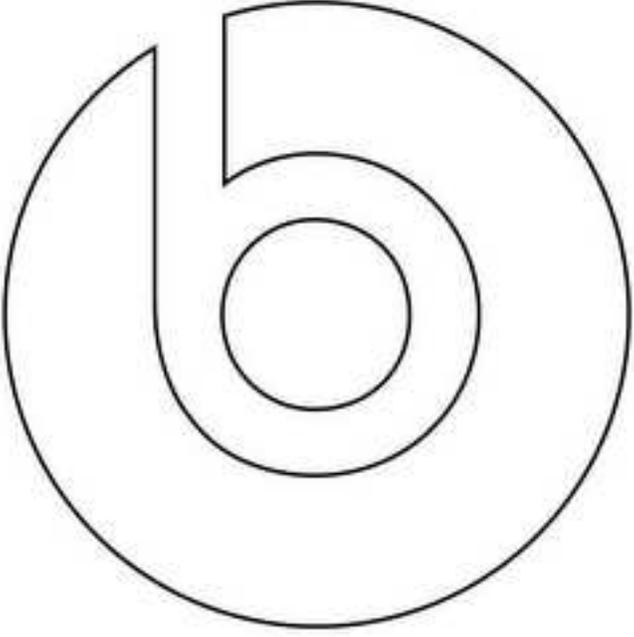
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: On-line retail store services featuring clothing and accessories, household items, personal care products, consumer electronics
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

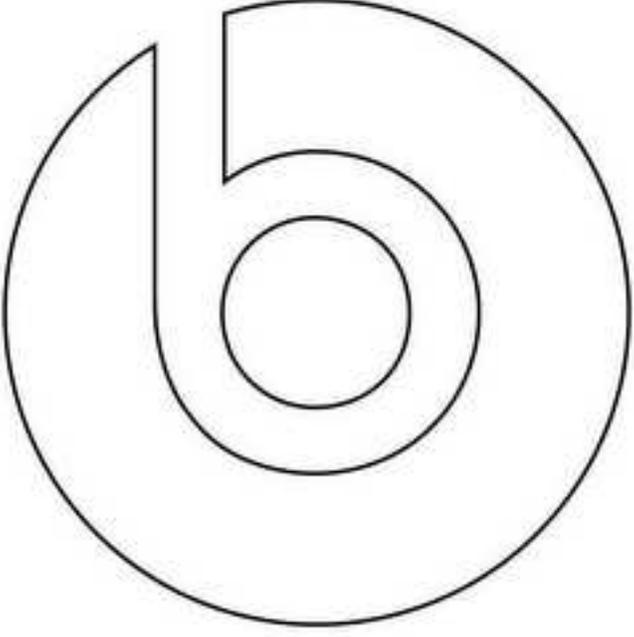
Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3881677	Application Date	06/04/2008
Registration Date	11/23/2010	Foreign Priority Date	NONE
Word Mark	B		

Design Mark	
Description of Mark	The mark consists of the mark consists of the lower case letter "b" in a circle.
Goods/Services	Class 009. First use: First Use: 2008/07/01 First Use In Commerce: 2008/07/01 Headphones

U.S. Registration No.	4060781	Application Date	07/21/2009
Registration Date	11/22/2011	Foreign Priority Date	NONE

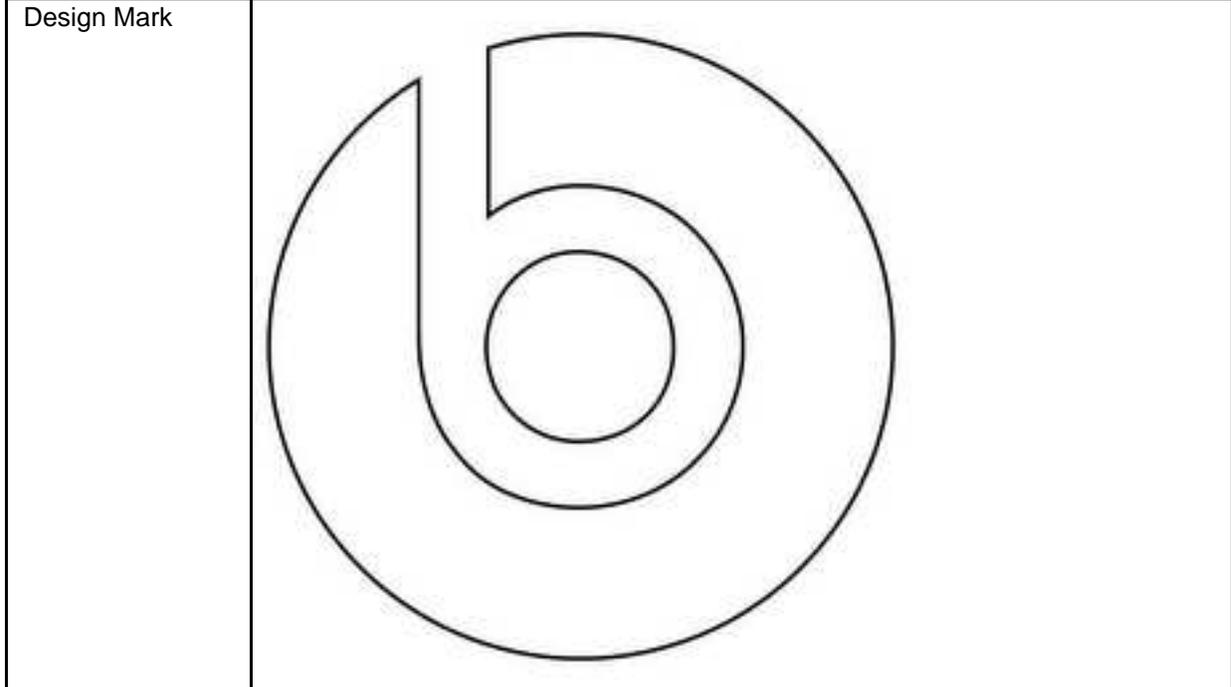
Word Mark	B
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Design Mark	
Description of	The mark consists of the lower case letter "b" in a circle.

Mark	
Goods/Services	Class 009. First use: First Use: 2010/09/07 First Use In Commerce: 2010/09/07 audio speakers; loudspeakers

U.S. Registration No.	4317339	Application Date	06/04/2008
Registration Date	04/09/2013	Foreign Priority Date	NONE

Word Mark	B
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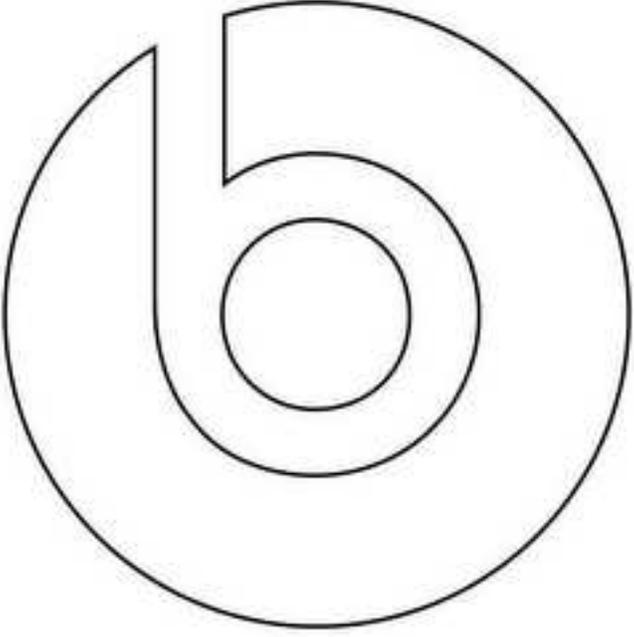


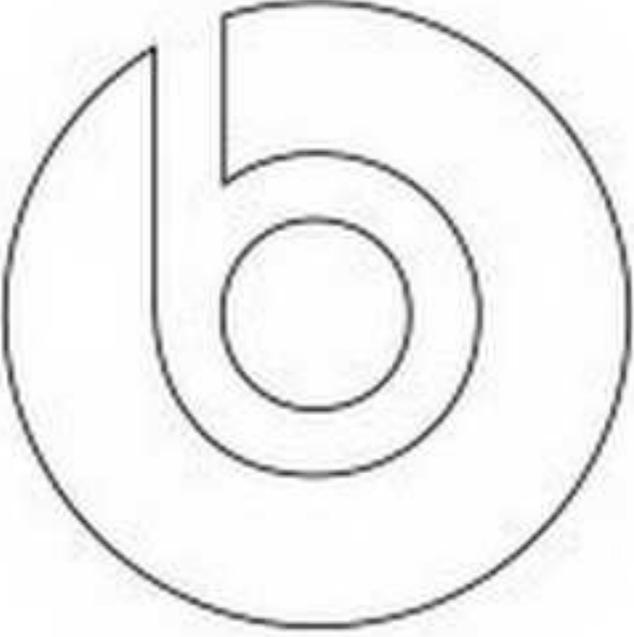
Description of Mark	The mark consists of the mark consists of the lower case letter "b" in a circle.
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Goods/Services	Class 009. First use: First Use: 2011/11/14 First Use In Commerce: 2011/11/14 Audio equipment, namely, media players for automobiles, CD players for automobiles, digital audio players for automobiles; mobile phones containing digital audio players and cables for the transmission of sounds
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U.S. Registration No.	4517948	Application Date	07/21/2009
Registration Date	04/22/2014	Foreign Priority Date	NONE

Word Mark	B
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Design Mark			
Description of Mark	The mark consists of the lower case letter "b" in a circle.		
Goods/Services	<p>Class 009. First use: First Use: 2010/01/17 First Use In Commerce: 2010/01/17 Electronic cables, namely, audio electric cables and cable connectors; power cables and cable connectors; computers; laptop computers; eyewear and sunglasses; cell phones; smart phones; and audio speakers for home theater systems</p> <p>Class 025. First use: First Use: 2011/11/05 First Use In Commerce: 2011/11/05 clothing, namely, T-shirts; headgear, namely, caps, hats</p> <p>Class 041. First use: First Use: 2010/09/29 First Use In Commerce: 2010/09/29 Provision of live entertainment and recorded entertainment, namely, live musical performances by musical bands and DJs; musical entertainment in the nature of live visual and audio performances by musical groups and DJs; exhibitions, namely, exhibitions concerning music</p>		
U.S. Application No.	86174924	Application Date	01/24/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	B		

Design Mark	
Description of Mark	The mark consists of lower case letter "B" in a circle.
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Speaker stands; Protective cases for speakers; Plug adaptors; Chargers for use with headphones and speakers; Multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, body and heart rates, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, weather information, the temperature, wind speed, and the declination of body and heart rates, altitude and speed; Electronic monitoring devices incorporating microprocessors, digital display, and accelerometers, for detecting, storing, reporting, monitoring, uploading and downloading sport, fitness training, and activity data to the Internet; Tablet computers; Televisions; Carrying cases for headphones and portable speakers; Portable speaker mount for bicycles; Computer software, namely, software for updating wireless speakers and headphones; Remote controls for digital music systems; Remote controls for stereos; Handheld devices for playing, organizing, downloading, transmitting, manipulating and reviewing audio, and media files; Handheld devices for controlling speakers, amplifiers, stereo systems and entertainment systems; Computer software for use in playing, organizing, downloading, transmitting, manipulating, and reviewing audio files, and media files; Computer software for use in controlling speakers, amplifiers, stereo systems, home theater systems, and home entertainment systems; Computer software for use in controlling digital music systems; Home theater systems comprised of digital music players, digital music controllers, speakers, amplifiers, and wireless handheld controllers; Home entertainment systems comprised of digital music players, digital music controllers, speakers, amplifiers, and wireless handheld controllers</p> <p>Class 014. First use: First Use: 0 First Use In Commerce: 0 Watches; Smart watches; Watches and bracelets incorporating functions for monitoring and reporting fitness, training, and activity data, namely, time, distance, pace, calories burned, and cumulative activity level; Watches and bracelets that communicate data to personal digital assistants, smart phones, and personal computers through Internet websites and other computer and electronic communication networks; Wearable digital electronic devices in the form of a wristwatch, wrist band or bangle and also featuring software for providing ac-</p>

	cess to the Internet and for sending and receiving phone calls, electronic mails and messages Class 035. First use: First Use: 0 First Use In Commerce: 0 On-line retail store services featuringconsumer electronics and accessories therefor
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Attachments	77980339#TMSN.png(bytes) 77982572#TMSN.png(bytes) 77490869#TMSN.png(bytes) 77786261#TMSN.png(bytes) 86174924#TMSN.png(bytes) Notice of Opp re Betasavers _b_ logo_.pdf(34689 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	/Michael G. Kelber/
Name	Michael G. Kelber
Date	01/14/2015

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

BEATS ELECTRONICS, LLC

Opposer,

v.

BETASAVERS LLC,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Beats Electronics, LLC (“Beats”), a limited liability company organized under the laws of Delaware with a place of business at 8600 Hayden Place, Culver City, California 90232,

believes that it will be damaged by the registration of the mark  in International Class 35, as shown in Application Serial No. 86/255,084 (the “Application”) filed by Applicant, Betasavers LLC (“Applicant”), an Arizona limited liability company, having a place of business at 60 E. Rio Salado Parkway, Tempe, Arizona 85281, and hereby opposes the same and requests that the registration to Applicant be refused.

The grounds for Beats’ Opposition are as follows:

1. Beats is a worldwide leader in providing a high quality sound experience at every touch point of the consumer’s life. Beats’ mission is to provide a superior end-to-end music experience - with headphones, devices, and services - so fans feel the emotion and hear the music the way artists intended it to sound from the studio. Moreover, Beats’ products are among the most popular audio-related products in the United States, have been extensively promoted and

advertised, and have been the subject of extensive unsolicited publicity resulting from their high-quality, innovative design and well-received marketing campaigns.

Beats' Prior Rights

2. Since substantially prior to the acts of Applicant alleged herein, Beats has distributed and sold numerous music- and audio-related goods and services including consumer electronics such as audio speakers, earbuds, and headphones under and in connection with its b logo mark,  (Beats' "b Logo Mark").

3. Beats owns several U.S. federal registrations its b Logo Mark, including the following:

MARK	GOODS	REGISTRATION NUMBER
	International Class 9: Headphones	3881677
	International Class 9: audio speakers; loudspeakers	4060781
	International Class 9: Audio equipment, namely, media players for automobiles, CD players for automobiles, digital audio players for automobiles; mobile phones containing digital audio players and cables for the transmission of sounds	4317339
	International Class 9: Electronic cables, namely, audio electric cables and cable connectors; power cables and cable connectors; computers; laptop computers; eyewear and sunglasses; cell phones; smart phones; and audio speakers for	4517948

	<p>home theater systems</p> <p>International Class 25: clothing, namely, T-shirts; headgear, namely, caps, hats.</p> <p>International Class 41: Provision of live entertainment and recorded entertainment, namely, live musical performances by musical bands and DJs; musical entertainment in the nature of live visual and audio performances by musical groups and DJs; exhibitions, namely, exhibitions concerning music.</p>	
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4. Likewise, Beats owns several pending U.S. federal trademark applications for the b Logo Mark, including the following:

MARK	INTERNATIONAL CLASS & REPRESENTATIVE GOODS	APPLICATION SERIAL NUMBER	PRIORITY DATE
	<p>IC 9: Speaker stands; Protective cases for speakers; Plug adaptors; Chargers for use with headphones and speakers.</p> <p>IC 14: Watches; Smart watches; Watches and bracelets incorporating functions for monitoring and reporting fitness, training, and activity data.</p> <p>IC 35: On-line retail store services featuring consumer electronics and accessories therefor</p>	86174924	January 24, 2014

5. Through the common law use, application, and registration of its b Logo Mark, consumers have become accustomed to seeing and therefore recognizing products and services with the b Logo Mark as originating from Beats.

6. Beats has devoted substantial resources, time, and effort to develop, market, and, and promote its b Logo Mark. Through these efforts, and long before the filing of the Application, Beats built up and established extensive and valuable goodwill in the b Logo Mark. As a result, the public has come to know, identify, and recognize products and services bearing the b Logo Mark as originating with or authorized by Beats.

7. Furthermore, through Beats' efforts, the b Logo Mark has become famous and had become famous prior to Applicant's filing of the Application.

Beats Will Be Harmed If Applicant's Mark Registers

8. On information and belief, Applicant is an Arizona limited liability company with a principle place of business of 60 E. Rio Salado Parkway, Tempe, Arizona 85281.

9. On April 17, 2014, notwithstanding Beats' prior rights in and to the b Logo Mark,

Applicant filed the Application to register  in International Class 35 for "On-line retail store services featuring clothing and accessories, household items, personal care products, consumer electronics" ("Applicant's Mark"). The Application was filed under Lanham Act §1(b), based on Applicant's alleged intent to use Applicant's Mark in U.S. commerce.

10. The Application was published in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on September 16, 2014. This Opposition is timely pursuant to the U.S. Trademark Trial & Appeal Board's October 15, 2014 order allowing Beats until January 14, 2015 to institute an opposition.

11. There is no issue of priority. Each of the foregoing registrations for Beats' b Logo Mark has been in actual use or has a constructive use date prior to the Application's filing

date, April 17, 2014, and covers products and services that are identical or closely related to the goods identified in the Application.

12. The goods and services set forth in the Application are the same, similar, or complementary and related to the products and services marketed by Beats under its b Logo Mark. For example, Beats has a pending application for the b Logo Mark for identical services, namely on-line retail store services featuring consumer electronics and accessories therefor (U.S. Serial No. 86/174,924), and registrations for closely related consumer electronics goods, such as headphones and speakers, (U.S. Reg. Nos. 3881677 and 4060781), as well as multiple registrations for the b Logo Mark for products and services marketed along with these goods and services such as the provision of live entertainment and recorded entertainment.

13. Applicant's advertising and use of Applicant's Mark as contemplated in the Application will inevitably reach the same consumers that Beats targets with the use of its b Logo Mark.

14. Consumers, upon seeing Applicant's Mark used in connection with Applicant's goods and services are likely to mistakenly believe Applicant's Mark, and the goods or services provided in connection with it, originated from or are connected with, sponsored by, associated with, or licensed or approved by Beats.

15. Beats' b Logo Mark and Applicant's Mark are both comprised entirely of a rounded, highly stylized lowercase b. Thus, the Beats' b Logo Mark is substantially similar in sight, sound, and meaning to Applicant's Mark.

16. Applicant's Mark is confusingly similar to the previously used b Logo Mark and therefore, if Applicant's Mark were allowed to register for goods and services in International Class 35 as set forth in the Application, such registration would likely cause confusion, mistake,

or deception among consumers concerning the origin, source or sponsorship of Applicant's products and services in violation of 15 U.S.C. § § 1052(d), 1114(1), 1125(a).

17. If Applicant's Mark were allowed to register, the confusion with Beats' b Logo Mark would result in damage and injury to Beats and to the public.

18. Given Beats' considerable reputation, registration of Applicant's Mark is likely to cause dilution of the distinctiveness of Beats' b Logo Mark in violation of 15 U.S.C. § 1125(c). In addition, should the quality of Applicant's goods or services be lacking, Applicant's use of Applicant's Mark may also tarnish the b Logo Mark resulting in harm to Beats' reputation in violation of 15 U.S.C. §1125(c).

19. Beats will continue to be irreparably damaged by registration of Applicant's confusingly similar mark. Deficiencies or faults in the quality of Applicant's products are likely to reflect negatively upon, tarnish and seriously injure the reputation which Beats has established for its products and services marketed under its b Logo Mark. This confusion is likely to result in loss of revenues to Beats and damage to its reputation.

WHEREFORE, Beats Electronics, LLC requests that the registration sought by Applicant be refused and that this Notice of Opposition be sustained.

Beats authorizes the T.T.A.B. to charge the fees for opposition in one class and any additional fees related to this matter to the deposit account of Neal, Gerber & Eisenberg LLP.

Respectfully submitted,

Dated: January 14, 2015

/Michael G. Kelber/
One of the Attorneys for
BEATS ELECTRONICS, LLC
Michael G. Kelber
Katherine Dennis Nye
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Katherine Dennis Nye, state that I served a copy of the foregoing *Notice of Opposition*, via first class U.S. mail, postage pre-paid, upon Applicant at its Correspondence Address:

Mr. Adegbayi Adefalajo
Betasavers LLC
60 E. Rio Salado Parkway, Suite 900
Tempe, AZ 85281-9126

in accordance with Trademark Rule §§ 2.101 and 2.119 on January 14, 2015.

/Katherine Dennis Nye/
Katherine Dennis Nye

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