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

Proceeding	91220569
Party	Defendant T-Mobile USA, Inc.
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Date	05/04/2015
Attachments	T-Mobile Answer.pdf(100241 bytes )

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

Tijs M. Verwest,	§	
	§	Opposition No. 91220569
Opposer,	§	
	§	
v.	§	
	§	
T-Mobile USA, Inc.,	§	
	§	
Applicant.	§	
	§	

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**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

T-Mobile USA, Inc. (“T-Mobile” or “Applicant”) responds to the Notice of Opposition filed by Tijs M. Verwest as follows:

T-Mobile is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Opposer Tijs M. Verwest’s (“Opposer”) citizenship and principal place of business as set forth in Opposer’s introductory paragraph to its Notice of Opposition and therefore denies the same. T-Mobile specifically denies the remaining allegations set forth in the introductory paragraph to the Notice of Opposition.

1. T-Mobile admits only that Opposer performs and records under the name Tiësto. T-Mobile specifically denies that Musical Freedom has a strong presence on the internet. T-Mobile is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 1 and therefore denies the same.

2. T-Mobile admits only that the U.S. Patent & Trademark Office (“USPTO”) records purport to show that Opposer is the owner of Reg. No. 4,196,409 for the words “Musical Freedom” which lists various goods in Classes 9, 16, and 25. T-Mobile also admits only that the

USPTO records purport to show that Opposer is the owner of Reg. No. 4,296,771 for the words “Musical Freedom” in a stylized format which lists various goods and services in Classes 9, 16, 25 and 41. T-Mobile further admits only that Exhibit A contains print-outs from the USPTO TESS database. T-Mobile specifically denies all other allegations in ¶ 2 of the Notice of Opposition.

3. T-Mobile admits only that USPTO records purport to show that Opposer filed the application underlying Reg. No. 4,196,409 on June 20, 2011 pursuant to Section 66(a) of the Lanham Act and that the USPTO records purport to list a Section 67 priority date of December 21, 2010. T-Mobile admits only that USPTO records purport to show that Opposer filed the application underlying Reg. No. 4,296,771 on March 28, 2011 pursuant to Section 66(a) of the Lanham Act, and that the USPTO records purport to list a Section 67 priority date of December 21, 2010. T-Mobile further admits only that the Section 67 priority date of December 21, 2010 listed in the USPTO records for Reg. Nos. 4,196,409 and 4,296,771 is earlier in time than the June 18, 2014 application filing date for T-Mobile’s Application No. 86/314,001. T-Mobile specifically denies all other allegations in ¶ 3 of the Notice of Opposition.

4. T-Mobile is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 4 of the Notice of Opposition and therefore denies the same.

5. T-Mobile admits the allegations of ¶ 5, but denies that the services listed in ¶ 5 are the services currently covered by T-Mobile’s Application No. 86/314,001. On February 11, 2015 the office of the Deputy Commissioner for Trademark Examination Policy approved T-Mobile’s amendment of the services in Application No. 86/314,001 to “cellular telecommunications services, namely, transmission of music from third party streaming music providers via cellular telecommunications networks and the Internet; streaming services, namely,

transmission of audio from third party streaming music providers; all of the foregoing provided solely in connection with cellular rate plans that exempt music streaming data from cellular rate plan data limits.”

6. T-Mobile admits the allegations in ¶ 6 of the Notice of Opposition.

7. T-Mobile restates and incorporates by reference its responses to the allegations contained in Paragraphs 1 to 6 herein.

8. T-Mobile denies the allegations in ¶ 8 of the Notice of Opposition.

9. T-Mobile denies the allegations in ¶ 9 of the Notice of Opposition.

10. T-Mobile denies the allegations in ¶ 10 of the Notice of Opposition.

11. T-Mobile restates and incorporates by reference its responses to the allegations contained in Paragraphs 1 to 10 herein.

12. T-Mobile denies the allegations in ¶ 12 of the Notice of Opposition.

13. T-Mobile admits only that the USPTO records purport to show that Reg. No. 4,196,409 for the words “Musical Freedom” and Reg. No. 4,296,771 for the words “Musical Freedom” in a stylized format are listed on the Principal Register. T-Mobile is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of ¶ 13 of the Notice of Opposition and therefore denies the same. T-Mobile specifically denies all other allegations in ¶ 13 of the Notice of Opposition including but not limited to denying that Opposer’s alleged MUSICAL FREEDOM marks are famous within the meaning of the Federal Trademark Dilution Act, or that Opposer’s alleged MUSICAL FREEDOM marks are actually recognized amongst the public in general.

14. T-Mobile admits only that it is using the mark MUSIC FREEDOM in commerce in connection with “cellular telecommunications services, namely, transmission of music from

third party streaming music providers via cellular telecommunications networks and the Internet; streaming services, namely, transmission of audio from third party streaming music providers; all of the foregoing provided solely in connection with cellular rate plans that exempt music streaming data from cellular rate plan data limits.” T-Mobile specifically denies all other allegations in ¶ 14 of the Notice of Opposition including but not limited to denying that Opposer’s alleged MUSICAL FREEDOM marks are famous.

15. T-Mobile denies the allegations in ¶ 15 of the Notice of Opposition.

16. T-Mobile denies the allegations in ¶ 16 of the Notice of Opposition.

17. T-Mobile admits only that registration of Application No. 86/314,001 would give T-Mobile a *prima facie* exclusive right to the use of the mark MUSIC FREEDOM in connection with “cellular telecommunications services, namely, transmission of music from third party streaming music providers via cellular telecommunications networks and the Internet; streaming services, namely, transmission of audio from third party streaming music providers; all of the foregoing provided solely in connection with cellular rate plans that exempt music streaming data from cellular rate plan data limits” in International Class 38. T-Mobile specifically denies all other allegations in ¶ 17 of the Notice of Opposition.

T-Mobile respectfully requests that the Notice of Opposition be dismissed in its entirety, and that T-Mobile’s Application No. 86/314,001 proceed to registration.

#### **AFFIRMATIVE DEFENSES**

Without prejudice to the denials set forth in its Answer and without admitting any of Opposer’s allegations not otherwise admitted, T-Mobile avers and asserts the following defenses to the Notice of Opposition:

FIRST DEFENSE

(Failure to State a Claim for Relief)

Opposer's Notice of Opposition fails to set forth sufficient facts to entitle Opposer to the relief sought and/or and fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(Reservation of Defenses)

Applicant hereby gives notice that it intends to rely on any additional affirmative defenses as may become available or apparent during discovery, and thus reserves the right to amend its answer to assert such additional defenses.

Respectfully submitted,

Date: May 4, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's Answer To Notice Of Opposition has been served on Opposer's counsel, by mailing said copy via overnight courier on the 4th of May 2015 to the below listed correspondence address of record:

Jill M Pietrini  
Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

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/Jessica D. Bradley/  
Jessica D. Bradley