

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

BEATS ELECTRONICS, LLC

Opposer-Petitioner,

v.

SHENZHEN SHIJIJIAHONG
TECHNOLOGY CO., LTD.,

Applicant-Registrant.

Opposition No.

Cancellation No.

COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL

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, CA 90232, believes that it will be damaged by the continued registration of the mark BEATIT in International Class Class 9 as shown in U.S. Registration No. 4,951,328 and registration in International Class 12 as shown in Application Serial Nos. 86/766,697 owned by Shenzhen Shijijiahong Technology Co., Ltd. (“Applicant”) and therefore hereby opposes and petitions to cancel the same.

The grounds for Beats Opposition and Petition to Cancel are as follows:

1. Beats is the owner of numerous trademarks for or including the terms “BEAT” and “BEATS” that have been utilized in connection with well-known, high-quality music and audio products and services. Products sold under Beats’ trademarks are among the most popular audio 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.

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Beats' Prior Rights

2. Since substantially prior to the acts of Applicant alleged herein, Beats has owned a variety of marks incorporating the terms "BEAT" and "BEATS" which have been utilized in connection with the distribution and sale, of audio- products, technology, entertainment services, and apparel.

3. Beats owns several U.S. federal registrations for marks incorporating the term "BEATS", including the following:

MARK	INTERNATIONAL CLASS: GOODS & SERVICES	REGISTRATION NUMBER	PRIORITY DATE
BEATS	IC 9: Headphones	3,862,142	June 3, 2008
BEATS	IC 9: Audio speakers; loudspeakers	4,035,777	June 3, 2008
BEATS	IC 9: Loudspeakers, audio speakers, car audio speakers, media players for automobiles, CD players for automobiles.	4,361,690	February 5, 2009
	IC 25: T-shirts		
BEATS	IC 9: Electronic cables, namely, audio electric cables and cable connectors; power cables and cable connectors; audio speakers for home theater systems.	4,529,746	July 21, 2009
	IC 25: Headgear, namely, caps, hats.		
	IC 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; musical entertainment in the nature of live visual and audio performances by musical groups and DJs; exhibitions, namely, exhibitions concerning music.		
BEATS	IC 9: Carrying cases for headphones	4,537,908	February 5, 2009

MARK	INTERNATIONAL CLASS: GOODS & SERVICES	REGISTRATION NUMBER	PRIORITY DATE
BEATS BY DR. DRE	IC 9: Media players for automobiles, DVD players for automobiles, CD players for automobiles, digital audio players for automobiles, audio speakers, car audio speakers, loudspeakers, loudspeaker cabinets, horns for loudspeakers, headphones, personal headphones for use with sound transmitting systems, and media players for automobiles.	4,176,105	July 29, 2009
BEATS BY DR. DRE	IC 9: Audio speakers for home theater systems	4,572,603	July 21, 2009

4. Through the common law use, application, and registration of various marks incorporating the terms “BEAT” and “BEATS,” Beats has created a family of marks such that consumers have become accustomed to seeing and therefore recognizing products and services with BEAT and BEATS-based marks as originating from Beats (hereinafter referred to as the “family of BEATS marks” or “the BEATS Marks”). The public has come to recognize the common characteristic of the family of BEATS marks (the terms BEAT and BEATS in each of them) as indicating the source of these goods, namely, Beats.

5. Beats has devoted substantial resources, time, and effort to develop, market, and promote its BEATS Marks. Through these efforts, and long before the filing of the Application and Registration, Beats built up and established extensive and valuable goodwill in the BEATS Marks. As a result, the public has come to know, identify, and recognize products and services bearing or marketed in association with marks incorporating the term “BEAT” or “BEATS” as originating with or authorized by Beats.

6. Furthermore, through Beats’ efforts, the BEATS Marks, both individually and collectively, have become famous and had become famous prior to Applicant’s filing of the Applications.

Beats Will Be Harmed By Registration of Applicant's Mark

7. On information and belief, Applicant is a limited Chinese company with a business address of 3A-BC, Qianyutong Building, Qingji Road, LongHua New District, Guangdong, Shenzhen China 518000.

8. On September 24, 2015, notwithstanding Beats' prior rights in and to the BEATS Marks, Applicant filed its application to register BEATIT in International Class 09 for use in connection with "Batteries, electric, for vehicles; Cabinets for loudspeakers; Cameras; Cases for photographic apparatus; Cell phone straps; Cell phones; Data cables; Electric accumulators; Headphones; Portable media players; Theft alarms." On May 3, 2016, that application matured into Registration No. 4,951,328 (the "Registration"). On September 24, 2015, Applicant also filed its application to register BEATIT in International Class 12 for use in connection with "Anti-theft devices for vehicles; Bicycles; Cars; Electrically-powered motor vehicles; Pushchairs; Remotely controlled land vehicle; Space vehicles; Unicycles and structural parts therefor; Unmanned aerial vehicles (UAVs); Upholstery for vehicles," Application No. 86/766,706 (the "Application"). The Registration and Application were both filed under Lanham Act §1(a), based on Applicant's alleged first use in commerce on September 06, 2009.

9. The Application was published in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on April 19, 2016. This Opposition is timely pursuant to the U.S. Trademark Trial & Appeal Board's April 19, 2016 order allowing Beats until August 17, 2016 to institute an opposition against the Application.

10. There is no issue of priority. Beats use and registration of the mark BEATS is prior to Applicant's alleged date of first in commerce use of the BEATIT mark. Further, each of the foregoing registrations and applications for marks in the family of BEATS marks has been in actual use or has a constructive use date prior to the BEATIT mark's filing dates of September

24, 2015, and cover products and services that are identical or closely related to the products covered by the Application and Registration.

11. The goods set forth in the Application and Registration are identical, similar, or complementary and related to the products and services marketed under the BEATS Marks. For example, Beats has federal registrations and applications for the BEATS Marks for identical goods and complementary and related goods such as “headphones,” “electronic cables,” “loudspeakers,” “car audio speakers,” and “media players for automobiles,” (U.S. Reg. No. 3,862,142, U.S. Reg. No. 4,035,777, U.S. Reg. No. 4,529,746, U.S. Reg. No. 4,361,690, and U.S. Reg. No. 4,176,105).

12. Applicant’s advertising and use of the BEATIT mark as contemplated in the Application and Registration will inevitably reach the same consumers that Beats targets with the use of its family of BEATS Marks.

13. Consumers, upon seeing the BEATIT mark used in connection with Applicant’s products are likely to mistakenly believe that goods provided in connection with the BEATIT mark, originated from or are connected with, sponsored by, associated with, or licensed or approved by Beats.

14. The BEATS Marks and the BEATIT mark share the identical or similar element “beat/beats.” Thus, the BEATS Marks, both individually and collectively are substantially similar in sight, sound, and meaning to the BEATIT mark.

15. Applicant’s BEATIT mark is confusingly similar to the previously used BEATS Marks, both individually and collectively, and therefore, Applicant’s continued registration of the BEATIT mark in Class 09 and the registration of the BEATIT mark in Class 12 would likely cause confusion, mistake, or deception among consumers concerning the origin, source or sponsorship of Applicant’s products in violation of 15 U.S.C. § 1052(d), 1114(1), 1125(a).

16. The confusion caused by the continued registration of the BEATIT mark in Class 09 and the registration of the BEATIT mark in Class 12, with the BEATS Marks, both individually and collectively, would result in damage and injury to Beats and to the public.

17. Given Beats' considerable reputation, continued registration of the BEATIT mark in Class 09 and registration of the BEATIT mark in Class 12 is likely to cause dilution of the distinctiveness of the BEATS Marks, both individually and collectively, in violation of 15 U.S.C. § 1125(c). In addition, if Applicant's goods lack quality, Applicant's use of the BEATIT mark may also tarnish the BEATS Marks, both individually and collectively, resulting in harm to Beats' reputation in violation of 15 U.S.C. §1125(c).

18. Beats will continue to be irreparably damaged by registration of Applicant's confusingly similar BEATIT 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 BEATS Marks. This likelihood of confusion and dilution is likely to result in loss of revenues to Beats and damage to its reputation.

WHEREFORE, Beats Electronics, LLC requests that the registrations sought by Applicant be refused and cancelled and that this Notice of Opposition and Petition to Cancel be sustained.

Beats authorizes the T.T.A.B. to charge any and all fees for Notice of Opposition in one class and the Petition to Cancel in one class and any additional fees related to this matter to the deposit account of Neal, Gerber & Eisenberg LLP, Deposit Account No. 502261.

Respectfully submitted,

Dated: August 16, 2016

/Michael G. Kelber/
One of the Attorneys for
BEATS ELECTRONICS, LLC
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CERTIFICATE OF PAPER FILING

I, Andrea Stein Fuelleman, an attorney, hereby certify that the enclosed **COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL** is being deposited with the United States Postal Service via Express Mail Label No. EL 278683807 US on August 16, 2016 in an envelope addressed to:

Trademark Trial and Appeal Board
United States Patent and Trademark Office
Madison East
Concourse Level, Room C-55
600 Dulany Street
Alexandria, Virginia 22314


Andrea Stein Fuelleman

CERTIFICATE OF SERVICE

I, Andrea S. Fuelleman, an attorney, state that I served a true and correct copy of Opposer's *Combined Notice of Opposition* and *Petition to Cancel* upon Applicant at Correspondence Address of record:

Mr. Peter Wang
Shenzhen Shijijiahong Technology Co.,Ltd
Suite A205a, 6640 Lusk Blvd
San Diego, California United States 92121

via First Class U.S. Mail on this 16th day of August, 2016.


Andrea S. Fuelleman