

ESTTA Tracking number: **ESTTA774125**

Filing date: **10/01/2016**

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	Allen Ginsberg LLC
Granted to Date of previous extension	10/01/2016
Address	P.O. Box 582Stuyvesant Station New York, NY 10009 UNITED STATES

Attorney information	John Pelosi Allen Ginsberg LLC 233 Broadway Ste. 2208 New York, NY 10279 UNITED STATES jpelosi@pwes.com Phone:2123343599
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Applicant Information

Application No	86538435	Publication date	08/02/2016
Opposition Filing Date	10/01/2016	Opposition Period Ends	10/01/2016
Applicant	Subscription On Demand Audio, LLC Suite 404 Los Angeles, CA 90028 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing audio and video podcasts in the fields of arts, business, comedy, education, food, games, hobbies, government, health, fitness, kids and family, music, news and politics, science and medicine, society and culture, sports and recreation, technology, television and film

Grounds for Opposition

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

U.S. Application No.	87132399	Application Date	08/09/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HOWL!		

Design Mark	<h1>HOWL!</h1>
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2003/06/01 First Use In Commerce: 2003/06/01 entertainment services, namely, planning, managing and conducting a series of festivals featuring musical performances, theatrical performances, poetry readings and art exhibits

Attachments	87132399#TMSN.png(bytes) Ginsberg Howl Opposition.pdf(41708 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	/John Pelosi/
Name	John Pelosi
Date	10/01/2016

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

In re: Application Serial No. 86/538,435
Mark: HOWL
Published: August 2, 2016

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Allen Ginsberg, LLC

Notice of Opposition

Opposer,

Opposition No.

-against-

Subscription On Demand Audio, LLC

Applicant.

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Allen Ginsberg, LLC (“Ginsberg”) believes that it will be damaged by the registration of the above-identified mark and hereby opposes the registration thereof:

FACTS

Applicant

1. Upon information and belief, Subscription On Demand Audio, LLC (“Applicant”) is a California limited liability company having a principle place of business located at 5815 West Sunset Blvd., Suite 404, Los Angeles, CA 90028.

2. On February 18, 2015, Applicant filed Trademark Application Serial No. 86/538,435 (the “Application”), pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b) for registration of the word mark, HOWL (“Applicant’s Mark”).

3. On August 2, 2016, Applicant’s Mark was published for opposition in the Official Trademark Gazette for the following goods:

- a. “Downloadable audio and video files in the fields of arts, business, comedy, education, food, games, hobbies, government, health, fitness, kids and family, music, news and politics, science and medicine, society and culture, sports and recreation, technology, television and film” in Class 9.
 - b. “Podcasting services; telecommunication services, namely, transmission of audio and video podcasts; streaming of audio and video material in the fields of arts, business, comedy, education, food, games, hobbies, government, health, fitness, kids and family, music, news and politics, science and medicine, society and culture, sports and recreation, technology, television and film on the Internet” in Class 38.
 - c. “Entertainment services, namely, providing audio and video podcasts in the fields of arts, business, comedy, education, food, games, hobbies, government, health, fitness, kids and family, music, news and politics, science and medicine, society and culture, sports and recreation, technology, television and film” in Class 41.
4. Opposer’s opposition relates to Applicant’s services in Class 41 only.
 5. Upon information and belief, Applicant commenced use of Applicant’s Mark in 2016 in connection with some or all of the goods and/or services identified in the Notice of Publication.

Opposer

6. Opposer Allen Ginsberg, LLC is a limited liability company organized and existing under the laws of the State of New York, with an address of P.O. Box 582 Stuyvesant Station, New York, NY 10009.

7. Opposer is the company that owns and operates the estate of legendary poet and leading writer of the Beat Generation, Allen Ginsberg. Among many other works, Allen Ginsberg was the author of the classic poem, “Howl”, which is regarded as one of the great works of American literature. Allen Ginsberg died in 1997 and Allen Ginsberg, LLC continues to administer the rights in and to his works and preserve his towering legacy.

8. Opposer uses and licenses the rights for the name HOWL! for use in connection with entertainment services, namely events such as festivals that feature musical performances, theatrical performances, poetry readings and art exhibits. These events are held in different cities with the most notable being the annual festival in the East Village of New York City where Allen Ginsberg lived and wrote his works. The HOWL! events have been held continuously since 2003.

9. On August 9, 2015, Opposer filed Application Serial No. 87/132,399 for HOWL! (“Opposer’s Mark”) in connection with entertainment services, namely, planning, managing and conducting a series of festivals featuring musical performances, theatrical performances, poetry readings and art exhibits in Class 41.

10. Since 2003, Opposer and its licensees have broadly and continuously used Opposer’s Mark and have marketed it in connection with entertainment events, such as festivals relating to musical performances, theatrical performances, poetry readings and art exhibits.

11. Opposer and its licensees have expended significant time, effort and money in promoting and advertising the events in connection with Opposer’s Mark both online and in print advertisements.

12. Opposer’s use of Opposer’s Mark predates Applicant’s use of Applicant’s Mark in commerce *by more than a decade*.

13. The meaning of Opposer's Mark has become synonymous with a counter culture movement that cries – or “howls” – against the conventions and beliefs of a mainstream culture. It applies to outcasts that support beliefs contrary to the accepted opinion. For generations, many, including Applicant now, have attempted to usurp the name popularly identified with Allen Ginsberg and other beat writers, to present themselves, their services and/or their products as non-conventional alternatives to what is popular or ordinary.

COUNT I
LIKELIHOOD OF CONFUSION

14. Opposer re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Notice of Opposition.

15. Opposer's Mark has been continuously used in commerce since 2003 in connection with entertainment events, such as festivals relating to musical performances, theatrical performances, poetry readings and art exhibits.

16. Opposer commenced use of Opposer's Mark well before Applicant filed the Application and/or commenced use of the Applicant's mark in commerce.

17. Applicant's Mark is identical to Opposer's Mark in sight, connotation and overall commercial impression – the only difference is that Opposer's Mark uses an exclamation point.

18. The services identified in the Application are similar or related to the services with which Opposer is using Opposer's Mark.

19. The services identified in the Application travel in similar or related channels of trade as Opposer's services.

20. Registration of Applicant's Mark is likely to cause confusion, mistake or deception as to the source of Applicant's services and is likely to falsely suggest a common

association, sponsorship, approval or origin of services between Applicant and Opposer, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

21. Applicant's Mark causes confusion, mistake or deception by using Opposer's Mark, in its entirety, in a manner to suggest that its entertainment service related to podcasts is a non-conventional alternative to the more popular and accepted platforms offering podcast content. Applicant's use of Applicant's Mark is not a reverential nod to Ginsberg, but a calculated effort to use his legend and poem to promote an entertainment service that similarly offers contrarian views on topics like "art, government, news and politics, society and culture." Without coincidence, these are precisely the same topics covered in the music, art, poetry and theater performances seen at Opposer's entertainment events. To this extent, Applicant is falsely suggesting that there is an association between its entertainment podcast services and the festival services that were created to honor Allen Ginsberg's legacy and his renowned poem.

WHEREFORE, Opposer prays that this opposition be granted and that registration of Application Serial No. 86/538,435 be refused.

Dated: New York, New York
October 1, 2016

Respectfully submitted,

PELOSI WOLF EFFRON & SPATES LLP

By _____/s/_____
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