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

In the Matter of Application  
Serial No. 76/070,559  
Published in the Official Gazette  
on January 29, 2002, at p. TM 57



05-29-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

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WB MUSIC CORP.,	:
	:
Opposer,	:
	:
v.	:
	:
MERCHANTS OF WOW,	:
	:
Applicant.	:
----- X	

Opposition No.

TRADEMARK TRIAL AND  
APPEAL BOARD  
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NOTICE OF OPPOSITION

Opposer, WB Music Corp., a corporation organized and existing under the laws of the State of California, having an office and place of business at 10585 Santa Monica Blvd., Los Angeles, California, 90025-4950 believes that it will be damaged by registration of the designation **JEEPER'S CREEPERS** set forth in application Serial No.76/070,559, published in the Official Gazette on January 29, 2002, and hereby opposes same. The goods and services set forth in application Serial No.76/070,559 are as follows: pre-recorded audio tapes, compact discs, videotapes and DVDs featuring both children's stories and children's programs containing drama, comedy and children's music, in Int. Class 9; printed publications, namely books, magazines, newsletters, and songbooks featuring children's music and children's stories; printed sheet music, in Int. Class 16; toys, namely plush toys board games, computer hand-held

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and software based games, toy statues, play action figures and playground balls, soccer balls, and sports balls, in Int. Class 28; and television programming featuring children's stories, in Int. Class 41.

As grounds for Opposition, it is averred as follows:

1. Merchants of Wow (hereinafter "Applicant") is not entitled to register as a trademark or service mark the designation **JEEPER'S CREEPERS** for the goods and services set forth in application Serial No. 76/070,559.

2. Applicant is not now and was not entitled to the exclusive use as a trademark or service mark of the designation **JEEPER'S CREEPERS** either on or about June 15, 2000, the date of filing of application Serial No. 76/070,559, or on January 29, 2002, the date of publication thereof in the Official Gazette.

3. Opposer is the owner of all rights, title and interests in the copyrights for the well known musical work entitled **JEEPERS CREEPERS**, which has been recorded, performed and published throughout the world for many years.

4. Opposer is the owner of all rights, title and interests in the title **JEEPERS CREEPERS** in connection with the aforementioned musical work.

5. Opposer, and/or its predecessors, licensees or affiliated companies, have over the years engaged in many activities relating to the aforementioned musical work and the title **JEEPERS CREEPERS** including, inter alia, the granting of synchronization and performance licenses to third parties and the granting of licenses to third parties for use of the title **JEEPERS CREEPERS** for various activities including for use as a title of a feature length motion picture and for use as a trademark, service mark and/or tradename in connection with motion picture production, marketing and distribution.

6. Upon information and belief, since long prior to June 15, 2000, the date Applicant filed its intent-to-use application for the designation **JEEPER'S CREEPERS**, and long prior to any use of the designation **JEEPER'S CREEPERS** by Applicant, Opposer, and/or its predecessors, licensees, or affiliated companies, have been continuously using in commerce and/or engaging in analogous use in commerce of **JEEPERS CREEPERS** as a title for the aforementioned musical work and/or as a trademark, service mark or tradename in connection with musical, film and other entertainment related recording, production, marketing and distribution and/or related goods and services.

7. Opposer, and/or its predecessors, licensees or affiliated companies, have expended large sums of money and great time and effort in developing, advertising and promoting the title, trademark, service mark and/or tradename **JEEPERS CREEPERS** as an indicia of the source of origin of the aforementioned musical work and/or goods and services. As a result of the extensive advertising, promotion and long term use of the title, trademark, service mark and/or tradename **JEEPERS CREEPERS**, Opposer has achieved significant revenues.

8. The title, trademark, service mark and/or tradename **JEEPERS CREEPERS** is extremely well-known and famous among the trade and the public in the United States and throughout the world, has acquired tremendous strength, goodwill, and secondary meaning, and is therefore strong and entitled to a wide scope of protection.

9. The goods and services for which Applicant seeks to register the designation **JEEPER'S CREEPERS** in application Serial No. 76/070,559 are substantially similar and related in nature to Opposer's aforesaid activities, goods and/or services and are likely to be directed to the same, similar and/or overlapping classes of purchasers.

10. The **JEEPER'S CREEPERS** designation Applicant seeks to register is virtually identical and, in any event, confusingly similar in overall appearance, pronunciation and connotation to Opposer's title, trademark, service mark and/or tradename **JEEPERS CREEPERS**. Therefore, when applied to Applicant's goods and services, Applicant's **JEEPER'S CREEPERS** designation is likely to cause confusion or mistake or to deceive persons by creating the erroneous impression that Applicant's goods and services originate with or come from the same source as Opposer's activities, goods and/or services, or are endorsed by, sponsored by, licensed by or are otherwise connected in some way with Opposer, thereby resulting in a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

11. Opposer will be seriously damaged and injured by the granting of registration to Applicant's designation **JEEPER'S CREEPERS** because this designation is a colorable imitation of Opposer's title, trademark, service mark and/or tradename **JEEPERS CREEPERS** and is confusingly similar thereto in sound, appearance, and connotation. Any defect, objection or fault found with Applicant's goods and/or services marketed under the designation **JEEPER'S CREEPERS** is likely to reflect upon and injure the reputation of Opposer.

12. Applicant's adoption and/or application to register **JEEPER'S CREEPERS** was without license or permission of Opposer.

13. Applicant's exercise of statutory rights under a U.S. trademark registration would seriously lessen the value of Opposer's rights in, to and under its title, trademark, service mark and/or tradename **JEEPERS CREEPERS**, all to Opposer's great loss and detriment, and the public is likely to be deceived.

By reason of the foregoing, Opposer will be damaged by the registration of the designation **JEEPER'S CREEPERS** by Applicant.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by application Serial No. 76/070,559 be denied with respect to all goods and services set forth therein.

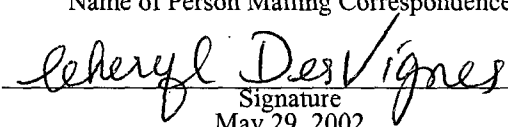
The opposition fees in the amount of \$300.00 for each of the four classes opposed (totaling \$1,200.00) are filed herewith. If for any reason this amount is insufficient, it is requested that Opposer's attorneys' deposit account No. 15-0700 be charged with any deficiency.

Date: New York, New York  
May 29, 2002

EXPRESS MAIL CERTIFICATE

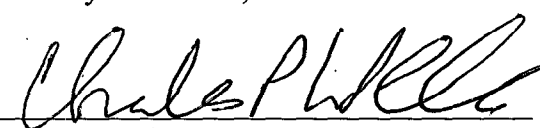
I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail Post Office Addressee (mail label EV147542086US) in an envelope addressed to : Assistant Commissioner for Trademarks, BOX TTAB FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on May 29, 2002.

Cheryl Desvignes  
Name of Person Mailing Correspondence

  
Signature  
May 29, 2002

Date of Signature

Respectfully submitted,

  
Charles P. LaPolla  
OSTROLENK, FABER, GERB & SOFFEN, LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone: (212) 382-0700

Attorneys for Opposer.