

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

In the Matter of Application Serial Nos. 76/516,126; 76/516,127; and 76/515,928
Filing Date: April 25, 2003
Published in the Trademark Official Gazette: March 16, 2004

U.S. MUSIC CORPORATION)	
)	
Opposer,)	
)	Opposition No.: 91161405
v.)	
)	
FENDER MUSICAL INSTRUMENTS)	
CORPORATION,)	
)	
Applicant.)	


09-07-2004
U.S. Patent & TMO/TM Mail Rpt Dt. #22

ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
Box TTAB – NO FEE
2900 Crystal Drive
Arlington, VA 22202-3514

Applicant, Fender Musical Instruments Corporation (“FMIC”), pursuant to 37 C.F.R. §2.106, hereby files its Answer to U.S. Music Corporation’s (“Opposer”) Notice of Opposition to the registration of U.S. Trademark Application Serial Nos. 76/516,126, 76/516,127, and 76/515,928 as follows:

FMIC admits that Opposer has filed a Notice of Opposition with respect to U.S. Trademark Application Serial Nos. 76/516,126, 76/516,127 and 76/515,928, but is without knowledge or information sufficient to form a belief as to Opposer’s business address or entity status. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Opposer’s introductory paragraphs.

1. FMIC is presently without knowledge or information sufficient to form a belief as to

the allegations set forth in Paragraph 1 of Opposer's Notice of Opposition and therefore denies same.

2. FMIC admits that Opposer has attached to its Notice of Opposition as Exhibit A, various alleged advertisements and other materials, the authenticity, accuracy and characterization of which FMIC is presently without knowledge or information sufficient to form a belief thereto and therefore denies same. Further answering, FMIC is presently without knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 2 of Opposer's Notice of Opposition and therefore denies same.

3. FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 3 of Opposer's Notice of Opposition and therefore denies same.

4. FMIC denies that Opposer has any intellectual property right in or to the electric guitar or electric bass guitar body designs that are the subject of U.S. Trademark Application Serial Nos. 76/516,126, 76/516,127, and 76/515,928. Further answering, FMIC states that it is without knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 4 of Opposer's Notice of Opposition and therefore denies same.

5. FMIC admits the allegations set forth in paragraph 5 of Opposer's Notice of Opposition.

6. FMIC admits the allegations set forth in paragraph 6 of Opposer's Notice of Opposition.

7. FMIC admits that on or about April 25, 2003, it filed three federal trademark applications to register certain electric guitar and electric bass guitar body shapes, which applications were accorded the Serial Nos. 76/516,126, 76/516,127 and 76/515,928. Further answering, FMIC admits that it has used, among others, the marks TELECASTER®, STRATOCASTER® and P

BASS® on or in connection with certain distinctive electric guitars and electric bass guitars, including, but not limited to, the distinctive electric guitar and electric bass guitar body designs that are the subject of U.S. Trademark Application Serial Nos. 76/516,126, 76/516,127 and 76/515,928. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 7 of Opposer's Notice of Opposition.

8. FMIC admits the allegations set forth in paragraph 8 of Opposer's Notice of Opposition.

9. FMIC states that it (or its predecessors in interest) has continuously used the distinctive electric guitar body design that is the subject of U.S. Trademark Application Serial No. 76/515,928 since at least as early as 1950. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 9 of Opposer's Notice of Opposition.

10. FMIC states that it (or its predecessors in interest) has continuously used the distinctive electric guitar body design that is the subject of U.S. Trademark Application Serial No. 76/516,126 since at least as early as 1954. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 10 of Opposer's Notice of Opposition.

11. FMIC states that it (or its predecessors in interest) has continuously used the distinctive electric bass guitar body design that is the subject of U.S. Trademark Application Serial No. 76/516,127 since at least as early as 1957. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 11 of Opposer's Notice of Opposition.

12. FMIC admits that on or about April 25, 2003, it filed three federal applications to register certain electric guitar and bass electric guitar body designs, which applications were accorded the Serial Nos. 76/516,126, 76/5516,12 and 76/515,928. Although Applicant did not seek to register these designs with U.S. Patent & Trademark Office in the 1950s, it has been extensively and continually using such designs since then, allowing the designs to gain industry-wide fame and

recognition and strong secondary meaning among consumers. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 12 of Opposer's Notice of Opposition.

13. FMIC denies each and every allegation set forth in Paragraph 13 of Opposer's Notice of Opposition.

14. FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 14 of Opposer's Notice of Opposition relating to Hagstrom and Teisco and therefore denies same. Further answering, the allegations of Paragraph 14 fail to otherwise specifically identify the "manufacturers" cited, and therefore, FMIC is presently without knowledge or information as to the allegations relating to these "manufacturers," and therefore denies same.

15. FMIC states that Opposer fails to identify the cited "manufacturers," and, therefore, FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 15 and therefore denies same.

16. FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 16 of Opposer's Notice of Opposition, especially with respect to Opposer's use of the vague and indefinite term "customary," and therefore denies same, leaving Opposer to its proof.

17. FMIC admits that Opposer has attached to its Notice of Opposition as Exhibits B-D various alleged advertisements and other materials, the authenticity, accuracy and characterization of which FMIC is presently without knowledge or information sufficient to form a belief thereto and therefore denies same. Except as expressly admitted herein, FMIC denies each and every allegation set forth in Paragraph 17 of Opposer's Notice of Opposition.

18. FMIC states that Opposer fails to identify the cited "third party manufacturers," and,

therefore, FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 18 and therefore denies same.

19. FMIC states that Opposer fails to identify the cited "third party manufacturers," and, therefore, FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 19 and therefore denies same.

20. FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 20 of Opposer's Notice of Opposition, especially with respect to Opposer's use of the vague and indefinite phrase "widespread, substantial and significant," and therefore denies same, leaving Opposer to its proof.

21. FMIC denies each and every allegation set forth in Paragraph 21 of Opposer's Notice of Opposition.

22. FMIC denies each and every allegation set forth in Paragraph 22 of Opposer's Notice of Opposition.

23. FMIC denies each and every allegation set forth in Paragraph 23 of Opposer's Notice of Opposition.

24. FMIC denies each and every allegation set forth in Paragraph 24 of Opposer's Notice of Opposition.

25. FMIC is presently without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 25 of Opposer's Notice of Opposition and therefore denies same.

26. FMIC denies each and every allegation set forth in Paragraph 26 of Opposer's Notice of Opposition.

FURTHER ANSWERS AND AFFIRMATIVE DEFENSES

1. Further answering, unless expressly admitted herein, FMIC denies each and every

allegation contained in Opposer's Notice of Opposition.

2. Further answering, FMIC states that Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

3. Further answering, FMIC asserts that Opposer has failed and neglected to use reasonable means to protect itself from alleged losses and to minimize the alleged losses and damage complained of in its Notice of Opposition and as a result Opposer's claims for relief are barred.

4. Further answering, FMIC states that Opposer's claims for relief in its Notice of Opposition are barred by the doctrine of unclean hands.

5. Further answering, FMIC states that Opposer's claim for relief in its Notice of Opposition are barred by the doctrine of equitable estoppel.

6. Further answering, FMIC states that Opposer's Notice of Opposition fails to plead the necessary and operative facts in sufficient detail to provide Opposer with adequate notice of the grounds supporting the Opposition.

WHEREFORE, Applicant Fender Musical Instruments Corporation, respectfully submits that Opposer's Notice of Opposition should be dismissed in its entirety and that Applicant's marks are entitled to, and should be approved for, registration.

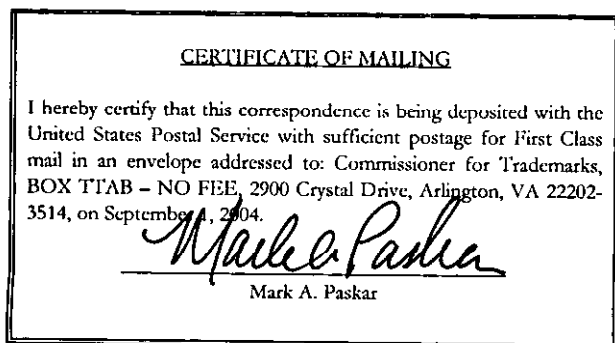
Respectfully submitted,

Date: Sept. 1, 2004

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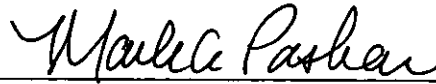
Attorneys for Applicant Fender Musical
Instruments Corporation



CERTIFICATE OF MAILING

The undersigned hereby certifies that a copy of the foregoing Answer to Notice of Opposition, was mailed, first class postage prepaid, on the 1st day of September, 2004 to:

Ronald S. Bienstock, Esq.
BIENSTOCK & MICHAEL, P.C.
250 West 57th Street, Suite 1917
New York, New York 10107



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

TRANSMITTAL LETTER (GENERAL)
(With Certificate of Mailing by First Class Mail)

Applicant: Fender Musical Instruments Corporation
Opposer: U.S. Music Corporation
Opposition No.: 91161405
Serial Nos.: 76/516,126, 76/516,127, and 76/515,928
Trademarks: Miscellaneous Designs

Docket No.
C046939/0176360

TTAB

TO THE COMMISSIONER FOR TRADEMARKS:

Transmitted herewith is the following:

1. Transmittal letter (1 page, in duplicate);
2. Answer to Notice of Opposition (7 pages, in triplicate); and
3. Return postcard.



09-07-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

- No fee is required.
- Please charge Deposit Account No. 02-4467 in the amount of _____
A duplicate copy of this sheet is enclosed.
- A check in the amount of \$_____ is attached.
Any excess or insufficiency should be credited or debited to Deposit Account No. 02-4467.
A duplicate copy of this sheet is enclosed.

Mark A. Paskar

Signature

Dated: September 1, 2004

Mark A. Paskar, Esq.
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(314) 259-2000
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I certify that this document is being deposited on September 1, 2004, with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Trademarks, BOX TTAB - NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Mark A. Paskar

Signature of Person Mailing Correspondence

Mark A. Paskar

Typed or Printed Name of Person Mailing Correspondence

cc: Nancy D. Collora, Docket Clerk