

ESTTA Tracking number: **ESTTA45583**

Filing date: **09/19/2005**

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

Proceeding	91166177
Party	Defendant G Studios, LLC G Studios, LLC 4500 Campus Drive Suite 200 Newport Beach, CA 92660
Correspondence Address	Tawnya R. Wojciechowski Sheppard Mullin Richter & Hampton LLP Fourth Floor 650 Town Center Drive Costa Mesa, CA 92620
Submission	Answer
Filer's Name	Timothy L. Epp, Esquire
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Signature	/tle/
Date	09/19/2005
Attachments	G STUDIOS ANSWER TO OPP.PDF (7 pages)

1. Applicant admits it is the owner of trademark application serial number 78/155590 for G STUDIOS as alleged in paragraph one of the Notice.

2. Applicant does not have sufficient information to admit or deny the allegations in paragraph two of the Notice. Therefore, on that basis, the allegations are denied.

3. Applicant has recently researched the TESS records of the USPTO and admits Opposer owns a trademark registration for G RECORDS under Registration No. 2771589 as alleged in paragraph three of the Notice.

4. Applicant does not have sufficient information to admit or deny the allegations set forth in paragraph four of the Notice. Therefore, on that basis, the allegations are denied.

5. Applicant denies it adopted its G STUDIOS mark with knowledge of Opposer's mark, G RECORDS as alleged in paragraph five of the Notice.

6. As to part one of the allegations set forth in paragraph six of the Notice, Applicant admits it filed its application for G STUDIOS on August 19, 2002. As to part two of the allegation in paragraph six, Applicant does not have sufficient knowledge to either admit or deny the allegation concerning Opposer's first use of Opposer's trademark. Therefore, on that basis, the allegation in part two is denied.

7. Applicant does not have sufficient information to admit or deny contentions concerning Opposer's goodwill as set forth in paragraph seven of the Notice. Therefore, on that basis, the allegations are denied.

8. Applicant denies G RECORDS has become distinctive and exclusively associated with Opposer as alleged in paragraph eight of the Notice.

9. Applicant denies that G RECORDS is known for its distinctiveness in the entertainment field as alleged in paragraph nine of the Notice.

10. Applicant denies Applicant's mark and Opposer's mark are "too closely similar" with "G being the dominant character" as alleged in paragraph ten of the Notice.

11. Applicant denies that Applicant's mark will so confuse consumers as to the actual source of products or services as alleged by Opposer in paragraph eleven of the Notice.

12(a) Applicant denies the statements set forth in paragraph twelve (a) that terminology used in the entertainment industry "all signify variations of the same source of product or services" and "to split these variations between multiple sources would only confuse the consumer."

12(b) Applicant denies part one of Opposer's allegation in paragraph twelve (b) that G is the "dominant character", and part two that "use of entertainment, records, music or studios from separate sources would confuse consumers to the point of confusion" as alleged in paragraph twelve (b) of the Notice.

12(c) Applicant denies the entertainment industry is one generalized channel of trade and denies that Applicant's mark and Opposer's mark pass through the exact same channels of trade as alleged in paragraph twelve (c) of the Notice.

12(d) Applicant denies confusion would be caused by the coexistence of these marks and denies such coexistence would cause irreparable damage to Opposer's business and goodwill as alleged in paragraph twelve (d) of the Notice.

13. Applicant denies that G RECORDS has become exclusively associated with Opposer as asserted in paragraph thirteen of the Notice.

14. Applicant lacks global information to admit or deny Opposer's alleged time and resources invested in Opposer's mark as set forth in paragraph fourteen of the Notice.

Therefore, on that basis, the allegations are denied.

15. Applicant denies that Opposer will be damaged by the registration of the G STUDIOS mark, and that such registration will dilute Opposer's mark as alleged in paragraph fifteen of the Notice.

AFFIRMATIVE DEFENSES

Failure to State Grounds for Opposition

1. Applicant believes and therefore alleges that the facts set forth in the Notice are insufficient to justify denial of its application.

No Priority

2. Plaintiff must plead and later prove priority. Applicant is unaware of any prior use of Opposer's mark and therefore Applicant asserts an affirmative defense to a claim of Opposer's priority associated with Applicant's mark.

No Exclusive Right

3. Opposer does not have any exclusive right to the use of the term "G" or "RECORDS" alone or in combination with other letters, terms or words to the exclusion of other Applicants and trademark owners.

Estoppel, Waiver, and Acquiescence

4. Applicant alleges on information and belief that Opposer is estopped from asserting exclusive rights to a trademark for G RECORDS and Opposer's claims against Applicant are barred under the doctrines of estoppel, waiver, and acquiescence.

Lack of Distinctiveness

5. Applicant alleges on information and belief that Opposer's mark is not distinctive or has not acquired distinctiveness, nor do purchasers associate the mark uniquely with Opposer.

Fraud on the Trademark Office

6. Applicant alleges on information and belief that Opposer may have filed its declaration supporting its statement of use based on a fraudulent or inadequate claim of use and may not be using the mark in commerce.

THEREFORE, Applicant requests that this Notice and opposition proceeding be dismissed with prejudice and Applicant's application be allowed to issue as a registration. Please charge any additional fees, or credit any overpayment, associated with the Applicant's application or this opposition to deposit account No. 500209. A duplicate answer to the notice of opposition is filed for this purpose. Service has been made on Opposer's counsel as shown in the attached certificate of service.

Dated: September 19, 2005

Respectfully submitted,

By  _____
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PROOF OF SERVICE BY MAIL

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding. My business address is Sheppard, Mullin, Richter & Hampton **LLP**, 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626, which is located in the county in which the within-mentioned mailing occurred. I am readily familiar with the practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence will be deposited with the United States Postal Service on the same day in the ordinary course of business.

On 9/19/05, I served the following document(s):

ANSWER TO NOTICE OF OPPOSITION

by placing a true copy in a separate envelope for each addressee named below, with the name and address of the persons served shown on the envelope as follows:

George Stokes
G Records
1555 E. Flamingo Suite 155
Las Vegas, Nevada 89119

and by sealing the envelope and placing it in the appropriate location at my place of business for collection and mailing with postage fully prepaid in accordance with ordinary business practices.

Executed on 9/19/05, at Costa Mesa, California.

Traci R. Barnes

Traci Barnes