

ESTTA Tracking number: **ESTTA67372**

Filing date: **02/21/2006**

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	Village Voice Media Holdings, LLC
Granted to Date of previous extension	03/18/2006
Address	1201 E. Jefferson Street Phoenix, AZ 85034 UNITED STATES

Attorney information	John L. Hay Gust Rosenfeld, P.L.C. 201 E. Washington St., Suite 800 Phoenix, AZ 85004 UNITED STATES jhay@gustlaw.com Phone:602-257-7468
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Applicant Information

Application No	78499718	Publication date	01/17/2006
Opposition Filing Date	02/21/2006	Opposition Period Ends	03/18/2006
Applicant	Lund Entertainment, Inc. 5 Old English Road Worcester, MA 01609 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 2004/12/15 First Use In Commerce: 2004/12/15 All goods and services in the class are opposed, namely: Magazines for gay men concerning general interest topics, entertainment, news and national and international gay community issues

Attachments	notice of opposition.pdf (4 pages)
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Signature	/johnlhay/
Name	John L. Hay
Date	02/21/2006

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Attorneys for Opposer

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

In the matter of application)	
)	
Serial No.: 78/499718)	NOTICE OF OPPOSITION
)	
Published in the Official Gazette on January 17, 2006)	
)	
Mark: SCENE)	
_____)	
)	
VILLAGE VOICE MEDIA HOLDINGS, LLC, a Delaware Limited Liability Company)	
)	
Opposer,)	
)	
v.)	
)	
LUND ENTERTAINMENT, INC., a California corporation)	
)	
Applicant.)	
_____)	

Village Voice Media Holdings, LLC, a Delaware limited liability company, with its principal place of business at 1201 East Jefferson Street, Phoenix, Arizona 85034, will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same. This Notice of Opposition has been timely

filed, Opposer having been granted a thirty-day extension of time in which to oppose, which expires March 18, 2006.

The grounds for opposition are as follows.

1. Applicant seeks to register the word mark SCENE in International Class 16 as a trademark for “magazines for gay men concerning general interest topics, entertainment, news and national and international gay community issues,” as evidenced by the publication of the mark in the Official Gazette in the January 17, 2006 issue.

2. Opposer and its predecessors in title have used the mark since June 3, 1971 for printed materials, namely newspapers of general circulation including feature materials involving government, politics, social matters, journalism and other matters of general and local interest, as well as features about entertainment, dining, music and recreation, which use is in International Class 16, in connection with a weekly newspaper published in Cleveland, Ohio and circulated in commerce within the United States.

3. Opposer and its predecessors in title have used the mark since February 9, 1983 for a weekly newspaper covering issues and events in the Nashville, Tennessee area, which use is in International Class 16, in connection with a weekly newspaper published in Nashville, Tennessee and circulated in commerce within the United States. A predecessor in title of Opposer has obtained registration of the mark NASHVILLE SCENE on August 3, 1998 at registration number 2,266,878, which registration has become incontestable. As a result of a merger creating Opposer, the trademark, its related good will, and the registration have been assigned to Opposer and the assignment will be filed in the United States Patent and Trademark Office shortly.

4. Applicant claims first use of the mark SCENE on December 15, 2004. Opposer has superior rights in and to the mark SCENE for newspapers and periodicals containing general interest topics including news, entertainment, social issues and politics because its usage of the mark predates Applicant's usage.

5. Opposer and its predecessors in title have distributed their products bearing the mark SCENE throughout the United States. Opposer and its predecessors have developed extremely valuable goodwill in respect of their mark by virtue of their efforts, the expenditure of considerable sums for promotional activities, and the excellence of their products.

6. Applicant's mark, SCENE, is virtually identical to Opposer's mark SCENE. When the mark SCENE is applied by Applicant to goods traveling in the same channels of trade as those sold by the Opposer, it so nearly resembles Opposer's mark as to be likely to be confused therewith and mistaken therefor, and will lead to deception or mistakes as to the origin of Applicant's goods bearing the Applicant's mark.

7. If the Applicant were permitted to use and register SCENE for its products, confusion in trade resulting in damage and injury to Opposer is inevitable because Applicant's mark is virtually identical to Opposer's mark. Readers familiar with Opposer's mark SCENE for its newspapers would be likely to read Applicant's magazine believing it to be a publication of Opposer. Any such confusion would inevitably result in loss of reputation and perhaps loss of readership for Opposer's newspapers, which would cause economic damage to Opposer, which depends upon the quantity of its readers to sell the advertising that provides Opposer's revenue.

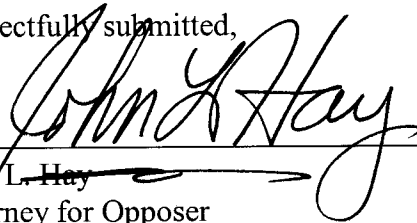
8. Furthermore, any defect, objection or fault found with Applicant's magazines marketed under the SCENE mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its publications merchandised under the SCENE mark.

9. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to opposer.

Opposer requests that the application for the mark SCENE be rejected and that the registration of the mark be refused.

DATED this 20th day of February, 2006.

Respectfully submitted,



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