

ESTTA Tracking number: **ESTTA252902**

Filing date: **12/04/2008**

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

Proceeding	91187342
Party	Defendant PACIFIC RIM MARKETING INC
Correspondence Address	PACIFIC RIM MARKETING INC 1306 VIA TORNASOL APTOS, CA 95003-5654 UNITED STATES
Submission	Answer
Filer's Name	Fred Scherrer
Filer's e-mail	fred@pacrim-marketing.com
Signature	/fred scherrer 1024/
Date	12/04/2008
Attachments	Answer Opposition 91187342.pdf (4 pages)(51859 bytes) Proof of service.pdf (3 pages)(495875 bytes)

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

ANSWER TO OPPOSITION No. 9118742,

Sean Puffy Combs,

Opposer,

-against_

Pacific Rim Marketing, Inc.

Applicant

Facts Common to All Claims

On April 25, 2005 Pacific Rim Marketing, Defendant, filed application Serial Number 78/615,932 to register IDIDDY for “Headphones and cases especially adapted for MP3 players, cell phones and video disc player in Class 9, with a first use in commerce date of April 6, 2005.

Application approved and published on June 3, 2008, and Trademark Registration Number 3,488,624 was issued on August 19, 2008. Trademark Registration number 3,488,624 subsequently cancelled and withdrawn on October 20, 2008 by order of the Commissioner for Trademarks due to opposition.

1) Defendant is an entrepreneur who branded, produced, marketed, packaged and offered for sale MP3 carrying cases for Apple Computers iPod MP3 players in 2005. The first use of this name in Commerce was April 6, 2005. As of April 25, 2005, the date of application number 78/615,932, the brand name iDiddy was not a registered or issued trademark.

2. The brand name and MP3 carrying case iDiddy was conceived from the phrase “Diddy Bag”, which was a reference to a small bag used to carry small items by U.S. Military servicemen as early as World War One. This descriptive phrase for a small bag used to carry incidental items was used in the defendant’s household as a child.

3. The “i” in iDiddy was derived from the letter “i” used in Apple Inc’s. iMac, iPod, and iTunes and the “i” and the word Diddy (from Diddy Bag) were combined to create the product brand and product name “iDiddy”. The name was not derived from Opposer’s mark, but rather from a proud military tradition of “Diddy Bags” issued to and carried by our service men before Opposer was born.

ANSWER TO COUNT ONE, Paragraph 6

1) iDiddy and P.Diddy are very different. There is a two letter difference between iDiddy and P.Diddy. There is a difference between the letter “i” and the letter “P”. In addition the opposer uses a period (.) to separate the letter “P” from the word “Diddy”. The defendant’s mark uses the letter “i” and no period between his application mark iDiddy. Given that there are substantial grammatical and character differences in the two marks, we believe that there is no confusion between P.Diddy and iDiddy.

2) The defendant believes that downloadable musical sound recordings refer to “digital downloads” over a computer or wireless network such as the internet. Defendant’s mark is for “Headphones and cases specially adapted for MP3 players, cell phones and video disc players”. There is a difference between physical hard goods such as carrying cases and headphones which one can touch and feel, and downloadable intellectual property in the form of digital music. This is the mark that we applied for and that had been issued, we believe, based upon these substantial differences.

ANSWER TO COUNT ONE Paragraph 7

3) The defendant believes that no confusion that will result from the differences as stated above in the Answer to Count 1, paragraph 6, answer 1). There is no intention to harm the Opposer or associate the goods with Opposer. Opposer has the mark P.Diddy that is differentiated substantially from iDiddy.

ANSWER TO COUNT TWO, paragraph 8;

4) The defendant believes that no confusion that will result from the differences as stated above in the Answer to Count 1, paragraph 6, answer 1). There is no intention to harm the Opposer or associate the goods with Opposer. Opposer has the mark P.Diddy that can and is differentiated substantially from iDiddy. Opposer sells downloadable music. Defendant sells carrying cases and headphones for devices that can play Opposer’s, as well as others, downloadable music.

ANSWER TO COUNT TWO, Paragraph 9

5) The goods and services (Headphones and Carrying cases for MP3 Players, Cell Phones and Video players” are very different from “Downloadable music and videos” as covered by the opposer’s mark. Defendant does not use the mark iDiddy, for downloadable musical sound recordings, but rather manufactures headphones, and carrying cases for MP3 Players, Video Players and Cell phones manufactured by Apple and others, as devices that play and reproduce the downloadable music and videos that is covered by Opposer’s mark. The hard goods; carrying cases and headphones “specially adapted for” headphones, MP3 Players, Cell Phones and Video Players” are substantially different as to not cause confusion between downloadable music and tangible carrying cases and headphones.

ANSWER TO COUNT TWO, paragraph 10

6) The defendant believes that no confusion that will result from the differences as stated above in the Answer to Count 1, paragraph 6 answer 1). There is no intention to harm the Opposer or associate the goods with Opposer. Opposer has the mark P.Diddy that can and is differentiated substantially from iDiddy. Opposer sells downloadable music. Defendant sells carrying cases and headphones for devices that can play Opposer's, as well as other musicians, downloadable music.

ANSWER TO COUNT THREE, Paragraph 12

7) "Opposer is an individual know by the name P.Diddy", as well as Sean Combs, Sean Puffy Combs, Sean P. Combs, and Puff Daddy. These are the names that Opposer uses with which the defendant is familiar. Defendant believes that there is little chance of confusion between a manufacturer of headphone and carrying cases and musician/entertainer.

ANSWER TO COUNT FOUR, Paragraph 14

8) Long before the registration of the mark P.Diddy, Diddy Bags from which defendant's brand and product names are derived, were distinctive and famous small bags used in the military to carry small items. Defendant adapted the name of these bags with "i" which is more famous than "P" in order to deliver a brand that covers products not covered for use by the Opposer's mark P.Diddy.

ANSWER TO COUNT FOUR, Paragraph 15

9) Diddy Bag, from which defendant's brand and products are derived were in use and famous long before there was a Sean Combs, Sean P. Combs, Sean Puffy Combs, or a P.Diddy. iDiddy, the combination of the "i" used by Apple's products and Diddy, derived from the military's Diddy Bag at the time of application and filing was not a registered trademark. Defendant did not consider P.Diddy as a competitor or in conflict to it's application for the brand iDiddy either before, during or after being granted the mark iDiddy by the USPTO. Defendant believed then as it believes now that P.Diddy and iDiddy are two very different names, brands, and marks that are not easily confused given the material nature of the different businesses these marks represent; a hard goods manufacturer in the case of iDiddy and music/entertainer t-shirt manufacturer in the case of P.Diddy. Defendant did not upon application, or after USPTO's approval and publishing of the mark, consider iDiddy to be in conflict with Opposer's mark, P.Diddy.

ANSWER TO COUNT FOUR, Paragraph 16

Defendant believes that this is not the case as the two marks and businesses which they represent are very different. iDiddy is a hard goods manufacturer of carrying cases and headphones for MP3, video players, and cell Phones. Opposer's mark P.Diddy is a

provider of musical and video content that is played on devices manufactured by Apple and other manufacturers. Defendants application for the iDiddy mark useage is twice removed from the Opposer's mark as it provides headphones and carrying cases for other manufacturer's devices that allow the reproduction of downloadable music and entertainment covered by Opposer's mark. Defendant believes that the iDiddy mark does not in any way conflict with any of the goods or services provided or covered by the Opposer's P.Diddy Mark.

/fredscherrer/

Document Description: **Response to Office Action**

Mail / Create Date: **30-Apr-2008**

[Back](#)





Lana H. Pham /lhp/
Trademark Attorney
Law Office 115
United States Patent and Trademark Office
(571) 272-9478
Lana.Pham@uspto.gov (informal)

Dear Ms Pham,

I declare the mark IDIDDY has been in use as early as the filing date.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting there from, declares that the substitute specimen was in use in commerce at least as early as the filing date of the application; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

A handwritten signature in black ink, appearing to read 'Fred Scherrer', is written over a horizontal line.

Fred Scherrer - President

March 31, 2008

Pacific Rim Marketing, Inc.
1306 via Tornasol
Aptos, CA 95003
Phone: 714 992 5942
Fax: 714 992 5948
Email: fred@pacrim-marketing.com

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page. [[required PDF viewer](#)] [FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.