

ESTTA Tracking number: **ESTTA260627**

Filing date: **01/14/2009**

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

Proceeding	91187342
Party	Plaintiff Sean P.Combs
Correspondence Address	Robert A. Becker Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES rbecker@frosszelnick.com
Submission	Other Motions/Papers
Filer's Name	Robert A. Becker
Filer's e-mail	rbecker@frosszelnick.com
Signature	/Robert Becker/
Date	01/14/2009
Attachments	Motion for Amended NOO and Judgment on Pleadings (F0402103).PDF (36 pages)(7051158 bytes)

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

In re Application Ser. No. 78/615,932

Published June 3, 2008

Opposer's Reference: PFD USA TC-07/05683

-----X		
Sean Puffy Combs,	:	
	:	
Opposer,	:	
	:	Opposition No. 91187342
- against -	:	
	:	
Pacific Rim Marketing Inc.,	:	
	:	
Applicant.	:	
-----X		

**COMBINED MOTION FOR LEAVE TO FILE AMENDED NOTICE OF
OPPOSITION AND MOTION FOR JUDGMENT ON THE PLEADINGS**

Opposer hereby moves under Fed. R. Civ. P. 15(a) and 37 C.F.R. § 2.107(a) for leave to file an Amended Notice of Opposition that adds a fifth count to the four counts set forth in the original Notice of Opposition. Opposer further moves under Fed. R. Civ. P. 12(c) and 37 C.F.R. § 2.127 for judgment on the pleadings.

MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

Opposer filed its original Notice of Opposition on October 1, 2008. Applicant filed its Answer on December 4, 2008. In ¶¶ 2 and 3 on the first page of that Answer, Applicant stated:

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. [sic] 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.

(Emphasis supplied.) Thus, in its Answer, Applicant admitted that its mark is descriptive of the goods covered by its application. Therefore, Opposer is moving to file the Amended Notice of Opposition attached hereto as Exhibit 1, in which it adds COUNT FIVE, which states that the subject mark may not be registered on the Principal Register under 15 U.S.C. § 1052(e)(1) because it is descriptive of the covered goods. As further stated in COUNT FIVE, the subject application has been cited against Opposer's pending application Ser. No. 78/690,920, and thus registration of Applicant's descriptive mark would be damaging to Opposer.

Under Fed. R. Civ. P. 15(a)(2), "The court should freely give leave when justice so requires." As stated in § 507.02 of the T.B.M.P., "[T]he Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. This is so even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint" (Pp. 500–289-90, footnotes omitted.) Here, the Board should grant leave to amend the Notice of Opposition because the added claim is based on an admission that Applicant had not made when Opposer filed its original Notice of Opposition. Furthermore, since nothing has happened in this proceeding since Applicant filed its Answer, there can be no

prejudice to Applicant if this motion to amend is granted. *See, e.g., Buffett v. Chi-Chi's, Inc.*, 226 U.S.P.Q. 428, 430-31 (T.T.A.B. 1985) (motion to amend notice of opposition to add 2(e)(1) claim based on facts that were not discovered or did not occur until after the filing of the answer granted even though motion made more than a year after commencement of proceeding).

Therefore, Opposer's motion for leave to file the Amended Notice of Opposition attached hereto as Exhibit 1 should be granted.

MOTION FOR JUDGMENT ON THE PLEADINGS

If the Board grants the above motion for leave to file an amended notice of opposition, Opposer hereby moves for judgment on the pleadings, specifically on COUNT FIVE of the Amended Notice of Opposition, which states that registration of the subject mark would violate Section 2(e)(1) because the mark is descriptive of the subject goods.

Based on the pleadings and matters of which the Board may take judicial notice, there can be no dispute that registration of the subject mark must be refused, because Applicant admitted in ¶¶ 2 and 3 on page 1 of its Answer that the mark IDIDDY is descriptive of the products for which it seeks registration. Specifically, Applicant admitted that DIDDY is a "descriptive phrase for a small bag used to carry incidental items" and that the IDIDDY product is a "carrying case."

Furthermore, there can be no dispute that registration of the subject mark would be damaging to Opposer, because, as shown in Exhibits C and D to the Amended Notice of Opposition (which are documents from the PTO's file relating to Opposer's

application Ser. No. 78/690,920), the subject application has been cited against and is blocking Opposer's application Ser. No. 78/690,920.

As stated in § 504.02 of the T.B.M.P. (p. 500–283), a judgment on the pleadings is appropriate “where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law.” (Footnote omitted.) For the reasons set forth above, this is just such a case.

Therefore, Opposer's motion for judgment on the pleadings refusing registration for the subject application should be granted.

Further, Opposer requests that the discovery conference and all other dates in the TTAB's November 5, 2008 scheduling order be suspended while these motions are being decided.

Dated: New York, New York
January 14, 2009

Respectfully submitted,

**FROSS ZELNICK LEHRMAN
& ZISSU, P.C.**

By: 

Robert A. Becker

Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the COMBINED MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION AND MOTION FOR JUDGMENT ON THE PLEADINGS to be served by prepaid, first-class mail on this 14th day of January, 2009, upon applicant, Pacific Rim Marketing Inc., at 1051 Leslie Street, La Habra, CA 90631, and at 1306 Via Tornasol, Aptos, CA 95003-5654.


Robert A. Becker

EXHIBIT 1

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

In re Application Ser. No. 78/615,932
Published June 3, 2008
Opposer's Reference: PFD USA TC-07/05683

-----X		
Sean Puffy Combs,	:	
	:	
Opposer,	:	
	:	Opposition No. 91187342
- against -	:	
	:	
Pacific Rim Marketing Inc.,	:	
	:	
Applicant.	:	
-----X		

AMENDED NOTICE OF OPPOSITION

Opposer, Sean Puffy Combs, an individual with an address c/o Bad Boy Entertainment, Inc., 1710 Broadway, New York, New York 10019, believes that he will be damaged by registration of the mark IDIDDY, which is the subject of Application Ser. No. 78/615,932, published in the Official Gazette of June 3, 2008, and hereby opposes same.

As grounds for the opposition, Opposer alleges as follows:

FACTS COMMON TO ALL CLAIMS

1. Opposer is an entertainer, producer, and entrepreneur who has been known worldwide under the name P.DIDDY since at least as early as 2001.
2. Opposer is the owner of all common law rights in the mark P.DIDDY for musical sound recordings, video recordings featuring music, downloadable musical sound recordings, posters, t-shirts, live musical performances, providing a website featuring information on entertainment, sound and video recordings, concerts, fashion, and popular culture, and related

goods and services. Opposer began using the P.DIDDY mark for such goods and services at least as early as 2001. Opposer has never abandoned this mark.

3. Opposer is the owner of Reg. No. 3,109,611 for the mark P.DIDDY for “musical sound recordings; video recordings featuring music and musical based entertainment; downloadable musical sound recordings” in Class 9, based on a first use in commerce date of July 10, 2001, “posters” in Class 16, based on a first use in commerce date of 2002, “t-shirts” in Class 25, based on a first use in commerce date of 2001, “streaming of audio and visual recordings featuring music and musical based entertainment over a global computer network” in Class 38, based on a first use in commerce date of 2003, “entertainment services, namely live musical performances; providing a website on a global computer network featuring information on entertainment, a musical performer and producer and his musical performances, biography, productions, sound and video recordings, appearances, concerts, other recording artists, and the like” in Class 41, based on a first use in commerce date of 2001, and “providing a web site of information about fashion and popular culture” in Class 42, based on a first use in commerce date of 2001. The mark was registered on June 27, 2006, based on an application filed on June 6, 2001. A TARR printout relating to this registration is attached as Exhibit A. This registration is valid and subsisting.

4. On April 25, 2005, Applicant filed application Ser. No. 78/615,932 to register IDIDDY for “Headphones and cases specially adapted for MP3 players, cell phones and video disc players” in Class 9, based on an alleged first use in commerce date of April 6, 2005.

COUNT ONE

5. Opposer repeats and realleges the allegations set forth in ¶¶ 1-4.

6. The mark IDIDDY sought to be registered by Applicant for the above goods is so similar to Opposer's mark P.DIDDY for the goods and services set forth in Reg. No. 3,109,611 as to be likely to cause confusion or to cause mistake or to deceive. Applicant's IDIDDY mark differs from Opposer's P.DIDDY mark by one letter. The goods listed in the subject application, like the goods and services listed in Reg. No. 3,109,611, relate to music and videos. More specifically, Opposer's Reg. No. 3,109,611 covers "downloadable musical sound recordings" in Class 9, while the subject application covers items in Class 9 that are "specially adapted for" devices that play downloadable musical sound recordings. Thus, the goods listed in the subject application are related to the goods and services in Opposer's registration.

7. Use of the mark sought to be registered by Applicant is likely to cause confusion or to cause mistake or to deceive the purchasing public by reason of Opposer's mark, by creating the mistaken belief that Applicant's goods are approved, endorsed, or sponsored by Opposer, or that Opposer is the source of Applicant's goods, or that the goods of Applicant are in some other way associated with Opposer, all to Opposer's grave injury and harm.

COUNT TWO

8. Opposer repeats and realleges the allegations set forth in ¶¶ 1-7.

9. The mark IDIDDY sought to be registered by Applicant for the above goods is so similar to Opposer's mark P.DIDDY for the goods and services set forth in ¶ 2, *supra*, as to be likely to cause confusion or to cause mistake or to deceive. Applicant's IDIDDY mark differs from Opposer's P.DIDDY mark by one letter. The goods listed in the subject application, like the goods and services set forth in ¶ 2, *supra*, relate to music and videos. More specifically, Opposer uses his mark for downloadable musical sound recordings, while the subject application covers items that are "specially adapted for" devices that play downloadable musical sound

recordings. Thus, the goods listed in the subject application are related to the goods and services for which Opposer has common law rights in the P.DIDDY mark.

10. Use of the mark sought to be registered by Applicant is likely to cause confusion or to cause mistake or to deceive the purchasing public by reason of Opposer's mark, by creating the mistaken belief that Applicant's goods are approved, endorsed, or sponsored by Opposer, or that Opposer is the source of Applicant's goods, or that the goods of Applicant are in some other way associated with Opposer, all to Opposer's grave injury and harm.

COUNT THREE

11. Opposer repeats and realleges the allegations set forth in ¶¶ 1-10.

12. Opposer is an individual known by the name P.DIDDY, and the use of IDIDDY by Applicant will falsely suggest a connection with Opposer, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). By reason of the foregoing, Opposer will be damaged by the registration of IDIDDY.

COUNT FOUR

13. Opposer repeats and realleges the allegations set forth in ¶¶ 1-12.

14. Long before any use of or alleged rights of Applicant in the mark hereby opposed, the P.DIDDY mark became famous and distinctive of Opposer's goods and services.

15. Upon information and belief, Applicant adopted and applied to register IDIDDY with full knowledge of Opposer's prior use of, and the fame of, Opposer's P.DIDDY mark. Applicant was also on constructive notice of Opposer's exclusive rights in P.DIDDY by virtue of Opposer's federal trademark registration therefor.

16. The use of IDIDDY by Applicant will cause dilution of the distinctive quality of the famous P.DIDDY mark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C.

§ 1125(c)(1), an independent and additional ground for opposing the subject application pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a). By reason of the foregoing, Opposer will be damaged by the registration of the subject mark.

COUNT FIVE

17. Opposer repeats and realleges the allegations set forth in ¶¶ 1-16.

18. The subject mark, IDIDDY, is descriptive of the goods covered by the subject application.

19. Therefore, the subject mark is not registrable on the Principal Register under 15 U.S.C. § 1052(e)(1).

20. On August 11, 2005, Opposer filed application Ser. No. 78/690,920 for the mark DIDDY for goods and services in Classes 3, 9, 12, 14, 16, 18, 20, 24, 25, 35, 38, and 41. A TARR printout relating to this application is attached as Exhibit B.

21. In a March 6, 2006 Office Action, the Examining Attorney for Opposer's application Ser. No. 78/690,920 cited the subject application, Ser. No. 78/615,932, against application Ser. No. 78/690,920. A copy of that Office Action is attached as Exhibit C.

22. In a December 19, 2006 Notice of Suspension, the Examining Attorney for Opposer's application Ser. No. 78/690,920 suspended that application pending the subject application, Ser. No. 78/615,932. A copy of that Notice of Suspension is attached hereto as Exhibit D. Opposer's application Ser. No. 78/690,920 remains suspended on that ground.


23. Thus, Opposer will be damaged by registration of the subject application because that application is blocking Opposer's pending application Ser. No. 78/690,920.

WHEREFORE, Opposer respectfully requests that its opposition be sustained and the application to register the mark IDIDDY, Ser. No. 78/615,932, be denied.

Dated: New York, New York
January 14, 2009

Respectfully submitted,

**FROSS ZELNICK LEHRMAN
& ZISSU, P.C.**

By: 
Robert A. Becker

Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the AMENDED NOTICE OF OPPOSITION to be served by prepaid, first-class mail on this 14th day of January, 2009, upon applicant, Pacific Rim Marketing Inc., at 1051 Leslie Street, La Habra, CA 90631, and at 1306 Via Tornasol, Aptos, CA 95003-5654.



Robert A. Becker

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-01-14 11:00:55 ET

Serial Number: 76268455 Assignment Information Trademark Document Retrieval

Registration Number: 3109611

Mark (words only): P.DIDDY

Standard Character claim: No

Current Status: Registered.

Date of Status: 2006-06-27

Filing Date: 2001-06-06

Transformed into a National Application: No

Registration Date: 2006-06-27

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-05-19

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Combs, Sean Puffy

Address:

Combs, Sean Puffy
c/o Bad Boy Entertainment 1540 Broadway, 30th Fl.
New York, NY 10036
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

musical sound recordings; video recordings featuring music and musical based entertainment;
downloadable musical sound recordings

Basis: 1(a)

First Use Date: 2001-07-10

First Use in Commerce Date: 2001-07-10

International Class: 016

Class Status: Active

posters

Basis: 1(a)

First Use Date: 2002-00-00

First Use in Commerce Date: 2002-00-00

International Class: 025

Class Status: Active

t-shirts

Basis: 1(a)

First Use Date: 2001-00-00

First Use in Commerce Date: 2001-00-00

International Class: 038

Class Status: Active

streaming of audio and visual recordings featuring music and musical based entertainment over a global computer network

Basis: 1(a)

First Use Date: 2003-00-00

First Use in Commerce Date: 2003-00-00

International Class: 041

Class Status: Active

entertainment services, namely live musical performances; providing a website on a global computer network featuring information on entertainment, a musical performer and producer and his musical performances, biography, productions, sound and video recordings, appearances, concerts, other recording artists, and the like

Basis: 1(a)

First Use Date: 2001-00-00

First Use in Commerce Date: 2001-00-00

International Class: 042

Class Status: Active

providing a web site of information about fashion and popular culture

Basis: 1(a)

First Use Date: 2001-00-00

First Use in Commerce Date: 2001-00-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-06-27 - Registered - Principal Register

2006-05-17 - Law Office Registration Review Completed

2006-03-17 - Assigned To LIE

2006-03-15 - Allowed for Registration - Principal Register (SOU accepted)

2006-03-03 - Assigned To Examiner

2006-03-02 - Statement of use processing complete

2006-02-10 - Amendment to Use filed

2006-02-10 - TEAS Statement of Use Received

2005-08-19 - Extension 5 granted

2005-08-08 - Extension 5 filed

2005-08-08 - PAPER RECEIVED

2005-04-01 - Extension 4 granted

2005-02-11 - Extension 4 filed

2005-02-14 - PAPER RECEIVED

2004-10-19 - Assigned To Examiner

2004-09-01 - Extension 3 granted

2004-08-11 - Extension 3 filed

2004-08-13 - PAPER RECEIVED

2004-08-09 - Case File In TIGRS

2004-04-26 - Assigned To Examiner

2004-02-27 - Extension 2 granted

2004-02-11 - Extension 2 filed
2004-02-13 - PAPER RECEIVED
2003-09-05 - Extension 1 granted
2003-08-11 - Extension 1 filed
2003-08-13 - PAPER RECEIVED
2003-02-11 - Notice of allowance - mailed
2002-11-19 - Published for opposition
2002-10-30 - Notice of publication
2002-06-28 - Approved for Pub - Principal Register (Initial exam)
2002-06-05 - Communication received from applicant
2002-06-05 - PAPER RECEIVED
2002-05-01 - Letter of suspension mailed
2002-02-25 - Communication received from applicant
2001-08-30 - Non-final action mailed
2001-08-24 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lawrence E. Apolzon

Correspondent

LAWRENCE E. APOLZON
FROSS ZELNICK LEHRMAN & ZISSU P C
866 UNITED NATIONS PLZ
NEW YORK NY 10017-1822
Phone Number: 212-813-5900

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-01-14 11:01:55 ET

Serial Number: 78690920 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

DIDDY

(words only): DIDDY

Standard Character claim: Yes

Current Status: Further action on the application has been suspended.

Date of Status: 2008-12-29

Filing Date: 2005-08-11

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 115

Attorney Assigned:
KIM YONG OH

Current Location: M60 -TMO Law Office 115

Date In Location: 2008-12-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Combs, Sean "Puffy"

Address:
Combs, Sean "Puffy"
c/o Bad Boy Entertainment, Inc. 1710 Broadway, 4th Floor

New York, NY 10019

United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 003

Class Status: Active

Fragrances for personal use, body and beauty care preparations; hair care preparations; cosmetics; non-medicated bath preparations; non-medicated skin care preparations; room fragrances; potpourri

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 009

Class Status: Active

Musical sound recordings; video recordings featuring music and musical based entertainment; downloadable musical sound recordings; downloadable visual recordings featuring music and musical based entertainment; sunglasses, eyeglasses and eyeglass frames; audio equipment and accessories, namely stereos, speakers, sub-woofers, power amplified musical instruments, amplifiers for musical instruments and control devices for musical instruments; cellular phones; cellular phone equipment and accessories, namely phone cases, phone batteries, phone chargers, phone jacks, phone belt clips, phone antennas, hand free kits, headsets and faceplates, cables; specialty holsters for carrying personal digital assistants and; personal digital assistants; cellular phones; digital cameras; MP3 players and portable and handheld digital audio electronic players and computers for recording, organizing, transmitting, manipulating and reviewing audio files; portable telecommunication instant messaging devices

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 012

Class Status: Active

Sports utility vehicles, automobiles and trucks, accessories and furnishings therefor, namely, hub caps and wheel rims for vehicles

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 014

Class Status: Active

jewelry and watches

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 016

Class Status: Active

Posters; printed materials, namely, a series of nonfiction books about fashion, entertainment, popular culture, photography, social issues and charity, music, musical performance and the musical industry;

personal diaries; souvenir programs featuring entertainment, information concerning a musical performer and producer and his musical performances, his biography and productions sound and video recordings, live appearance and concert schedules, and information on other recording artists; nonmagnetic encoded telephone calling cards; party supplies, namely, paper napkins, paper gift wrap, paper party decorations and printed invitations, paper table clothes, plates, cups; desk supplies, namely, pencils, pens, erasers, notebooks and desk sets

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 018

Class Status: Active

Handbags; pocketbooks; small leather articles, namely, wallets and key cases, agendas, coin purses; tote bags; backpacks; sport bags; fashion and personal accessories, namely, messenger bags, cosmetic and toiletry bags and cases sold empty; purses

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 020

Class Status: Active

Furniture; home furnishings and home furnishing accessories, namely, pillows picture frames, mirrors, window shades, frames for paintings, shelves

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 024

Class Status: Active

Bed, and bath and home furnishings and accessories, namely, mattress pads, bed sheets, pillow cases/shams, bed blankets, comforters, bedspreads, comforter covers, bed covers, pillow protectors, mattress protectors, curtains, table linens, bed linens, bath linens, beddings, window coverings

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 025

Class Status: Active

Men's, women's and children's clothing, namely, jogging and running suits, polo shirts, pullovers, fleece pullovers, fleece jackets, soccer jerseys, sportshirts, rugby jerseys, suits, cloaks, overcoats, shorts, sweatpants, overalls, blouses, skirts dresses, vests, rainwear, sleepwear, loungewear, swimwear, knit shirts, t-shirts, jackets, pants shirts, coats, bandanas, sweatshirts, and screen-printed underwear and loungewear; footwear; headwear and fashion accessories, namely, belts, ties, gloves, scarves, socks, hosiery, underwear, men's briefs, boxerbriefs, boxer shorts and women's lingerie

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 035

Class Status: Active

Retail store services, online retail store services and mail order services, all featuring fragrances,

cosmetics, personal care products, sunglasses and eyeglasses, audio equipment and accessories, cellular phones, cellular phone equipment and accessories, electronic goods, cars and accessories, jewelry, printed matter, paper goods, desk and office supplies, personal accessories, clothing, bags, leather goods, furniture, home, bed and bath furnishings accessories, sound recordings, audiovisual sound recordings

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 038

Class Status: Active

Streaming of audio and visual recordings featuring music and musical based entertainment over a global computer network; webcasting services; providing online chat rooms and online bulletin boards for transmission of messages among users in the fields of music, entertainment, recording artists, music concerts, popular culture, fashion, design, music production; telecommunications services, namely, the electronic transmission of data, video, audio, information, text over wired and wireless telecommunications networks

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 041

Class Status: Active

Entertainment services, namely, live musical performances; hosting live television events; hosting and performing at award shows; hosting recorded television events; production and distribution of motion pictures and television shows; production of musical sound recordings and audiovisual recordings; internet services, namely, providing a web site on a global computer network featuring information on entertainment, information concerning a musical performer and producer and his musical performances, his biography and productions, live appearances and concert schedules, and information on other recording artists, photography, social issues and charity, and sound and video recordings

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-12-29 - Report Completed Suspension Check Case Still Suspended

2008-06-26 - Report Completed Suspension Check Case Still Suspended

2008-06-20 - Assigned To LIE

2007-12-20 - Report Completed Suspension Check Case Still Suspended

2007-06-20 - Report Completed Suspension Check Case Still Suspended

2007-06-20 - Assigned To LIE

2006-12-19 - Letter of suspension mailed

2006-12-18 - Suspension Letter Written

2006-10-26 - Amendment From Applicant Entered

2006-09-11 - Communication received from applicant

2006-09-11 - PAPER RECEIVED

2006-03-06 - Non-final action mailed

2006-03-04 - Non-Final Action Written

2006-03-01 - Assigned To Examiner

2005-08-26 - Applicant amendment prior to exam entered

2005-08-26 - TEAS Preliminary Amendment Received

2005-08-18 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lawrence E. Apolzon, Esq.

Correspondent

LAWRENCE E. APOLZON, ESQ.
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 UNITED NATIONS PLZ
NEW YORK, NY 10017-1822
Phone Number: 212-813-5900
Fax Number: 212-813-5901

EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/690920

APPLICANT: Combs, Sean "Puffy"

78690920

CORRESPONDENT ADDRESS:

LAWRENCE E. APOLZON, ESQ.
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 UNITED NATIONS PLZ
NEW YORK, NY 10017-1822

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: DIDDY

CORRESPONDENT'S REFERENCE/DOCKET NO: PFD
0509662

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/690920

The assigned examining attorney has reviewed the referenced application and determined the following.

Prior Pending Application

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), the examining attorney encloses information regarding pending Application Serial No. 78-615932. 37 C.F.R. §2.83.

There may be a likelihood of confusion between the applicant's mark and the mark in the above noted

application under Section 2(d) of the Act. The filing date of the referenced application precedes the applicant's filing date. If the earlier?filed application matures into a registration, the examining attorney may refuse registration under Section 2(d).

Action on this application will be SUSPENDED pending the disposition of Application Serial No. 78-615932, upon receipt of the applicant's response resolving the following informalities.

Signed Declaration Required

The application must be signed, and verified or supported by a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.33. No signed verification or declaration was provided. Therefore, the applicant must provide a signed verification or signed declaration attesting to the facts set forth in the application, and attesting that applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. §§2.34(a)(2)(i), (a)(3)(i) and (a)(4)(ii); TMEP §§804.02, 806.01(b), 806.01(c), 806.01(d) and 1101.

The following declaration is provided for the applicant's convenience:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), 1126(d) or 1126(e), he/she believes applicant to be entitled to use such mark in commerce; *that the applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the application filing date*; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

Indefinite Identifications

The identifications of applicant's goods and services are unacceptable as indefinite as noted below. The applicant may adopt the following identifications, if accurate (the examining attorney's comments and suggestions are highlighted in bold type):

Fragrances for personal use, namely, cologne and perfume; personal care

products, namely, body lotion; in International Class 3.

Musical sound recordings; video recordings featuring music and musical based entertainment; downloadable musical sound recordings; downloadable visual recordings featuring music and musical based entertainment; sunglasses, eyeglasses and eyeglass frames; **audio equipment, namely, <specify common commercial name(s) of equipment and accessories>; cellular phone equipment and accessories, namely, <specify common commercial name(s) of equipment and accessories>;** specialty holsters for carrying personal digital assistants and cellular phones; personal digital assistants; cellular phones; digital cameras; MP3 players and portable and handheld **digital audio electronic players** and computers for recording, organizing, transmitting, manipulating and reviewing audio files; in International Class 9.

Sports utility vehicles, automobiles and trucks, and accessories and furnishings therefor, namely, hub caps and wheel rims for vehicles; in International Class 12.

International Class 14 is acceptable as filed.

Posters; printed materials, **namely,** a series of nonfiction books about fashion, entertainment, popular culture, photography, social issues and charity; personal diaries; **souvenir programs concerning <specify subject matter or event>;** nonmagnetic encoded telephone calling cards; party supplies, **namely,** paper napkins, paper gift wrap, paper party decorations and printed invitations; desk supplies, **namely** , pencils, pens, erasers, notebooks and desk sets; in International Class 16.

Handbags, small leather articles, **namely,** wallets and key cases; pocketbooks, backpacks and sport bags; **fashion and personal accessories, namely, <specify common commercial name(s) of accessories; NOTE that classification may change depending on goods identified>;** in International Class 18.

Furniture, **home furnishings, namely, <specify common commercial name(s) of goods; NOTE that classification may change depending on goods identified>; home furnishing accessories, namely, <specify common commercial name(s) of goods; NOTE that classification may change depending on goods identified>;** in International Class 20.

Bed, bath and home furnishings and accessories, namely, <specify common commercial name(s) of goods; NOTE that classification may change depending on goods identified>; in International Class 24.

Men's, women's and children's clothing, **namely,** t-shirts, jackets, pants, shirts, coats, bandanas, sweatshirts, footwear, headwear and fashion accessories, **namely,** belts, ties, gloves, scarves, socks, hosiery, underwear, boxer shorts and women's lingerie; in International Class 25.

Retail store services, online retail store services and mail order services, **all featuring**

<specify types of goods offered under services>; in International Class 35.

Streaming of audio and visual recordings featuring music and musical based entertainment over a global computer network; **webcasting services; providing online chat rooms and online bulletin boards for transmission of messages among users in the field of <specify field or subject matter>; telecommunications services, namely, <specify particular services>;** in International Class 38.

Entertainment services, namely, live musical performances; hosting live television events and <clarify nature of "other events">; production and distribution of motion pictures and television shows; production of musical sound recordings and audiovisual recordings <NOTE that the distribution of such recordings is not an acceptable service in Class 41>; Internet services, namely, providing a web site on a global computer network featuring information on entertainment, information concerning a musical performer and producer and his musical performances, his biography and productions, sound and video recordings, live appearance and concert schedules, and information on other recording artists; in International Class 41.

TMEP §1402.01.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods or services that are not within the scope of goods and services set forth in the present identifications.

For assistance with identifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>.

Multiple Class Application

Applicant has paid the fee for **12** classes and, as such, must either: (1) restrict the application to the number of class(es) covered by the fee already paid, or (2) pay the required fee for each additional class(es) applicant wishes to adopt. 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1401.04, 1401.04(b) and 1403.01.

If applicant chooses to adopt additional classes, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

- (1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>). 37 C.F.R. §2.86(a)(2); TMEP §§810 and 1403.01.

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

/Yong Oh (Richard) Kim/
Trademark Examining Attorney
Law Office 115
(571) 272-9476

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*, not the postmarked date.** To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Mar 3, 2006

78615932

DESIGN MARK

Serial Number

78615932

Status

SUSPENSION LETTER - MAILED

Word Mark

IDIDDY

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PACIFIC RIM MARKETING INC CORPORATION CALIFORNIA 1306 Via Tornasol
APTOS CALIFORNIA 95003

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Headphones and cases for MP3 players, Cell phones and video players.
First Use: 2005/04/06. First Use In Commerce: 2005/04/06.

Concurrent Use Statement

The Mark has been used in commerce since the date of application. Name
was registered on the internet and began use: Domain Name: ididdy.com
Created on.....: 06 Apr 2005 12:28:56 Expires
on.....: 06 Apr 2006 12:28:56 The identification of goods
Should read Headphones and cases for MP3 players, Cell phones and
video players.

Filing Date

2005/04/25

Examining Attorney

SMITH, BRIDGETT

ididdy

EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/690920

APPLICANT: Combs, Sean "Puffy"

78690920

CORRESPONDENT ADDRESS:

LAWRENCE E. APOLZON, ESQ.
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 UNITED NATIONS PLZ
NEW YORK, NY 10017-1822

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: DIDDY

CORRESPONDENT'S REFERENCE/DOCKET NO: PFD
0509662

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/690920

NOTICE OF SUSPENSION

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **78-615932**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **was sent previously**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The following refusals/requirements are maintained:

- a) Identification of goods in Class 9
 - *"electronically amplified musical instruments"*: these goods are outside the scope of the originally filed description and must be deleted.
 - *"control devices for musical instruments"*: applicant must clarify the nature of the control, e.g., volume control.
 - *"hand-free kits"*: applicant must specify the components of the kits, e.g., hand-free kits consisting of devices for hands-free use of mobile phones.
 - *"specialty holsters for carrying personal digital assistants and;"*: the "and;" portion of the description is unnecessary and should be deleted.
 - *"portable telecommunication instant messaging devices"*: these goods are outside the scope of the originally filed description and must be deleted.
- b) Identification of goods in Class 16
 - *"plates, cups"*: these goods are classified in Class 21 and must be limited to "party supplies".
- c) Identification of goods in Class 18
 - *"agendas"*: these goods are outside the scope of the originally filed description. In addition, agendas are classified in Class 16.
 - *"tote bags"*: these goods must be limited to "small leather articles". Otherwise, the goods are outside the scope of the originally filed description and must be deleted.
- d) Identification of goods in Class 24
 - *"pillow cases/shams"*: the slash should be replaced with an "and" to remove any ambiguities.
 - *"beddings"*: applicant must clarify the nature of the goods.
 - *"window coverings"*: applicant must specify the types of coverings and clarify that they are fabric, e.g., "fabric window coverings, namely, curtains and draperies"
- e) Identification of goods in Class 25

- *"boxerbriefts"*: applicant must insert a space after "boxer"

The following issues have been resolved pursuant to applicant's response filed September 6, 2006, under a certificate of mailing:

- a) Signed declaration
- b) Identification of goods in Classes 3, 12 and 20
- c) Recitation of services in Classes 35, 38 and 41
- d) International Class 14 remains acceptable as filed.

/Yong Oh (Richard) Kim/
Trademark Examining Attorney
Law Office 115
(571) 272-9476