

ESTTA Tracking number: **ESTTA331833**

Filing date: **02/12/2010**

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	Blackwave Media Holdings, LLC
Granted to Date of previous extension	02/14/2010
Address	P.O. Box 3222 Louisville, KY 40201 UNITED STATES

Attorney information	Julie Ann Gregory Middleton Reutlinger 2500 Brown and Williamson Tower Louisville, KY 40202 UNITED STATES jgregory@middreut.com Phone:5025841135
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Applicant Information

Application No	77469246	Publication date	08/18/2009
Opposition Filing Date	02/12/2010	Opposition Period Ends	02/14/2010
Applicant	Blackwave Creative LLC 601 Jefferson Road, Suite 104 Parsippany, NJ 07054 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. All goods and services in the class are opposed, namely: Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Creative marketing design services; Design of advertising materials for others; Design of internet advertising

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3500330	Application Date	03/21/2006
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Registration Date	09/09/2008	Foreign Priority Date	NONE
Word Mark	BLACKWAVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2006/08/00 First Use In Commerce: 2006/08/00 Management and agency representation of performing artists; publicity agents; marketing and promotion of performing artists; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with celebrities, performing artists and/or events of others; marketing consultation for others; marketing and promoting events of others; production of radio and television commercials</p> <p>Class 041. First use: First Use: 2006/08/00 First Use In Commerce: 2006/08/00 Entertainment services, namely, personal appearances by movie stars, television stars, radio personalities, musical performing artists; music production and recording services; music publishing services; audio recording and production services; production of film and motion pictures; production of radio and television programs and video programs; production of compact disks, DVDs</p>		

U.S. Application No.	77829255	Application Date	09/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BLACKWAVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: business management and consultation services		

Attachments	78980467#TMSN.jpeg (1 page)(bytes) 77829255#TMSN.jpeg (1 page)(bytes) Notice of Opposition 77469246.pdf (5 pages)(198397 bytes) Exhibit A--Reg. No. 3500330.pdf (1 page)(44431 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Julie Ann Gregory/
Name	Julie Ann Gregory
Date	02/12/2010

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

In Re Trademark Application Serial No.: 77/469,246

Mark: BLACKWAVE CREATIVE

Filed: 05/08/2008

Published: 08/18/2009

BLACKWAVE MEDIA HOLDINGS, LLC)

Opposer)

v.)

BLACKWAVE CREATIVE LLC)

Applicant)
_____)

Opposition No. _____

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY ELECTRONIC MAIL TO THE TRADEMARK TRIAL AND APPEAL BOARD, UNITED STATES PATENT AND TRADEMARK OFFICE, THIS 12th DAY OF FEBRUARY, 2010.

/JULIE ANN GREGORY/

NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. §1063 and 37 C.F.R. §§2.101 and 2.104, Opposer, Blackwave Media Holdings, LLC (“Blackwave” or “Opposer”), believes it would be damaged by the registration of the above-referenced trademark, and hereby opposes the application to register same with the United States Patent & Trademark Office (“USPTO”), on the grounds set forth below.

1. Opposer, Blackwave Media Holdings, LLC, is a limited liability company organized under the laws of Ohio with a current business address of P.O. Box 3222, Louisville, Kentucky 40201.

2. Upon information and belief, Applicant, Blackwave Creative LLC (“Blackwave Creative” or “Applicant”), is a limited liability company organized under the laws of New Jersey with a current business address of 601 Jefferson Road, Suite 104, Parsippany, New Jersey 07054.

3. Opposer is a multi-media company providing services in the music, film, television and sports industries.

4. Opposer is the owner of U.S. Reg. No. 3,500,330 for the mark BLACKWAVE for use in connection with “management and agency representation of performing artists; publicity agents; marketing and promotion of performing artists; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with celebrities, performing artists and/or events of others; marketing consultation for others; marketing and promoting events of others; production of radio and television commercials” in International Class 35 and “entertainment services, namely, personal appearances by movie stars, television stars, radio personalities, musical performing artists; music production and recording services; music publishing services; audio recording and production services; production of film and motion pictures; production of radio and television programs and video programs; production of compact disks, DVDs” in International Class 41 (“the ‘330 Registration”). See Exhibit A attached hereto. Opposer’s application to register its mark was filed with the USPTO on March 21, 2006 and registration issued on September 9, 2008. Opposer first used its BLACKWAVE mark anywhere at least as early as August 2006, and first used its BLACKWAVE mark in commerce at least as early as August 2006. Opposer has developed substantial goodwill and consumer recognition in the ‘330 Registration and the services provided thereunder.

5. Opposer is the owner of Application Ser. No. 77/829,255 for the mark BLACKWAVE for use in connection with “business management and consultation services” in International Class 35 (“the ‘255 Application”). Opposer filed its application to register its mark with the USPTO in connection with these services on September 17, 2009.

6. Opposer is also the owner of all common law rights in and to the mark BLACKWAVE for use in connection with Opposer’s goods and services.

7. On May 8, 2008, Applicant filed an intent-to-use application to register the mark BLACKWAVE CREATIVE with the USPTO for use in connection with “advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; creative marketing design services; design of advertising materials for others; design of internet advertising” in International Class 35. Ser. No. 77/469,246 was assigned to the application (“the ‘246 Application”).

8. Opposer has priority of use and registration of the mark BLACKWAVE, which is similar in sight, sound and meaning to Applicant’s mark, BLACKWAVE CREATIVE.

9. Opposer believes that it would be damaged by registration of Applicant’s mark and pursuant to Section 13 of the Trademark Act, hereby opposes same. 15 U.S.C. §1063. Furthermore, Opposer states that Applicant’s ‘246 Application has been cited against Opposer’s ‘255 Application as grounds for refusal of Opposer’s application pursuant to Section 2(d) of the Trademark Act. To that end, Opposer has grounds to oppose Applicant’s application herein.

10. On information and belief, Opposer will be damaged by the registration of the ‘246 Application because the dominant portion of Applicant’s mark is phonetically identical to Opposer’s mark, and further because Applicant’s mark otherwise so resembles Opposer’s mark, such that when used in connection with the services identified in Applicant’s Application, it is

likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant or Applicant's services by Opposer. 15 U.S.C. §1052(d).

11. On information and belief, Opposer and Applicant market, advertise for sale, and sell, or will market, advertise, and sell their respective goods and services under their respective marks in the same channels of trade, in the same outlets, and to the same customers or consumer groups. In the alternative, Opposer states that Applicant's services, markets, channels of trade, and relevant consumers are sufficiently related to those of Opposer such that Opposer will be damaged by the registration of Applicant's mark.

12. On information and belief, Applicant's mark is confusingly and deceptively similar to Opposer's mark such that the use and registration of Applicant's mark for the services identified in the '246 Application will be likely to cause confusion in the minds of consumers as to the source of Opposer's or Applicant's goods and services, and will be likely to confuse and deceive the trade and purchasing public into believing that Applicant's services originate with or are otherwise authorized, licensed, or sponsored by Opposer. 15 U.S.C. §1052(d).

13. On information and belief, Applicant's use and registration of its mark may disparage or falsely suggest a connection between Applicant's services and Opposer. 15 U.S.C. §1052(a).

14. Opposer's BLACKWAVE mark is famous as defined by the Lanham Act and is therefore entitled to further protection under 15 U.S.C. §1125(c).

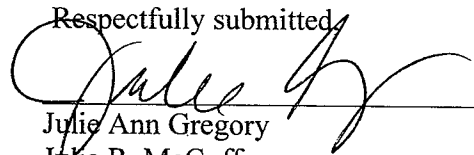
15. Opposer submits that Applicant's mark, when used in association with the services identified in the '246 Application, is likely to cause dilution of Opposer's famous BLACKWAVE mark in violation of 15 U.S.C. §1125(c).

16. Based upon the foregoing, Opposer believes it will be damaged by registration of the '246 Application and hereby opposes same.

WHEREFORE, Opposer, Blackwave Media Holdings, LLC, respectfully requests that this Notice of Opposition be sustained, and that registration of Application Ser. No. 77/469,246 for the mark BLACKWAVE CREATIVE be denied.

The filing fee of \$300.00 per class is enclosed herewith.

Respectfully submitted



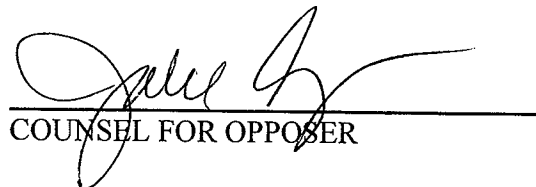
Julie Ann Gregory
Julia R. McGuffey

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Counsel for Opposer
Dated: February 12, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Notice of Opposition has been served via US First Class Mail, postage prepaid, on February 12, 2010, on the following counsel of record for Applicant:

Christopher J. Day
Law Office of Christopher Day
301 East Bethany Home Road
Suite A-213
Phoenix, Arizona 85012



COUNSEL FOR OPPOSER

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102, and 107

United States Patent and Trademark Office

Reg. No. 3,500,330

Registered Sep. 9, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

BLACKWAVE

BLACKWAVE MEDIA HOLDINGS, LLC (OHIO
LIMITED LIABILITY COMPANY)
P.O. BOX 3222
LOUISVILLE, KY 40201

FOR: MANAGEMENT AND AGENCY REPRESENTATION OF PERFORMING ARTISTS; PUBLICITY AGENTS; MARKETING AND PROMOTION OF PERFORMING ARTISTS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY ARRANGING FOR SPONSORS TO AFFILIATE THEIR GOODS AND SERVICES WITH CELEBRITIES, PERFORMING ARTISTS AND/OR EVENTS OF OTHERS; MARKETING CONSULTATION FOR OTHERS; MARKETING AND PROMOTING EVENTS OF OTHERS; PRODUCTION OF RADIO AND TELEVISION COMMERCIALS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-0-2006; IN COMMERCE 8-0-2006.

FOR: ENTERTAINMENT SERVICES, NAMELY, PERSONAL APPEARANCES BY MOVIE STARS,

TELEVISION STARS, RADIO PERSONALITIES, MUSICAL PERFORMING ARTISTS; MUSIC PRODUCTION AND RECORDING SERVICES; MUSIC PUBLISHING SERVICES; AUDIO RECORDING AND PRODUCTION SERVICES; PRODUCTION OF FILM AND MOTION PICTURES; PRODUCTION OF RADIO AND TELEVISION PROGRAMS AND VIDEO PROGRAMS; PRODUCTION OF COMPACT DISKS, DVDS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 8-0-2006; IN COMMERCE 8-0-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-980,467, FILED 3-21-2006.

HOWARD SMIGA, EXAMINING ATTORNEY

Exhibit A