

ESTTA Tracking number: **ESTTA377162**

Filing date: **11/05/2010**

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	Stillwater Designs and Audio, Inc.
Granted to Date of previous extension	11/06/2010
Address	3100 N. Husband Stillwater, OK 74075 UNITED STATES

Attorney information	Mary M. Lee MARY M. LEE, P.C. 1300 E. 9th Street, No. 4 Edmond, OK 73034-5760 UNITED STATES mml@marymlee.com Phone:405-285-4490
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**Applicant Information**

Application No	85014826	Publication date	09/07/2010
Opposition Filing Date	11/05/2010	Opposition Period Ends	11/06/2010
Applicant	DinnerMates, LLC 275 Madison Avenue, 4th Floor New York, NY 10016 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. All goods and services in the class are opposed, namely: Software in the nature of mobile applications for comparing, creating and sharing music, playlists, video and other media, and for facilitating the streaming of music, video and other media
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1462647	Application Date	04/03/1987
Registration Date	10/27/1987	Foreign Priority Date	NONE
Word Mark	KICKER		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1983/04/11 First Use In Commerce: 1983/04/13 STEREO SPEAKERS

U.S. Registration No.	1888305	Application Date	03/21/1994
Registration Date	04/11/1995	Foreign Priority Date	NONE

Word Mark	K KICKER
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1993/02/00 First Use In Commerce: 1993/02/00 speakers

Related Proceedings	Opposition against application no 85/014,811 for the mark MEDIA KICKER, assigned ESSTA tracking number ESTTA377155
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Attachments	74502866#TMSN.gif ( 1 page )( bytes ) 7560-193 Notice of Opposition AUDIOKICKER.pdf ( 5 pages )(17367 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	/Mary M. Lee/
Name	Mary M. Lee
Date	11/05/2010

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

*In the matter of application Serial No. 85/014,826  
For the Mark AUDIOKICKER  
Published in the Official Gazette on September 7, 2010*

Stillwater Designs and Audio, Inc.,  
Opposer

v.

DinnerMates, Inc.,  
Applicant

Opposition No. \_\_\_\_\_

COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Commissioner:

Opposer, Stillwater Designs and Audio, Inc. (“Stillwater Designs”), a corporation organized and existing under the laws of the State of Oklahoma, having a business address at 3100 N. Husband, Stillwater, Oklahoma 74075, hereby opposes registration of the mark AUDIOKICKER shown in Serial No. 85/014,826 and, as grounds for the opposition, alleges as follows:

1. Stillwater Designs is a manufacturer of a wide range of audio products for automotive, home, and marine applications. Since at least about 1983, Stillwater Designs’ products have been sold under the mark KICKER. KICKER car audio products include enclosed and component subwoofers, mid-range speakers and tweeters, amplifiers, crossovers, boxes and enclosures, signal processors, and car audio accessories, such as wiring, hardware, fuses, signal cable, etc. KICKER marine audio

products include subwoofers and enclosures, component and coaxial speaker systems, tower systems, and amplifiers. KICKER home and personal audio products include speaker docks for IPOD and Zune devices, headphones, earbuds and in-ear monitors, and full-range speakers. Additionally, Stillwater Designs sells an IPOD/IPHONE interface for Honda and Acura vehicles.

2. KICKER products are currently sold by approximately 1,500 authorized dealers in the United States. These locations are served by 15 manufacturers' representative firms. Export sales are managed through a network of distributors serving over 2,000 dealers in approximately 50 countries.

3. Stillwater Designs aggressively markets its KICKER products throughout the United States and worldwide. Consequently, Stillwater Designs has developed a valuable reputation and extensive good will in the KICKER mark, and KICKER mark has become widely known and famous in the audio industry by consumers and retailers alike.

4. Stillwater Designs is the owner of U.S. Reg. No. 1,462,647, granted August 27, 1987, for the mark KICKER for stereo speakers in International Class 9. The '647 Registration is presently in good standing and has become incontestable.

5. Stillwater Designs is the owner of U.S. Registration No. 1,888,305, granted April 11, 1995, for the mark KICKER (stylized and with "K" logo) for speakers in International Class 9. The '305 Registration is presently in good standing and has become incontestable.

6. Upon information and belief, Applicant is a Delaware limited liability company having an address at 275 Madison Ave., New York, New York 10016.

7. On April 15, 2010, Applicant filed U.S. Trademark Application No. 85/014,826 for the mark AUDIOKICKER for “software in the nature of mobile applications for comparing, creating and sharing music, playlists, video and other media, and for facilitating the streaming of music, video and other media,” in International Class 9, hereafter “Applicant’s Application.” Applicant’s Application was filed based on proposed use (Section 1(b)), and was published for opposition in the Official Gazette on September 7, 2010.

8. Since Stillwater’s actual use of the mark KICKER and its Registrations long precede Applicant’s Application, Stillwater has priority of use.

9. The products identified in Applicant’s Application are closely related to the goods marketed by Stillwater Designs under the KICKER mark.

10. Applicant’s AUDIOKICKER mark so nearly resembles Stillwater’s KICKER mark as to be likely, if and when used in connection with the goods recited in Applicant’s application, to cause confusion, to cause mistake, and to deceive. Applicant’s mark is deceptively similar to Stillwater Design’s mark so as to cause confusion and lead to deception as to the origin of the Applicant’s goods bearing the AUDIOKICKER mark.

11. Registration and use of the mark AUDIOKICKER by Applicant, as specified in Applicant’s application herein opposed, will likely cause confusion in trade resulting in damage and injury to Stillwater Designs.

12. If registration were issued on Applicant's mark, Applicant would thereby gain at least a prima facie exclusive right to the use thereof and, therefore, such registration would do damage and injury to Stillwater.

13. Accordingly, Stillwater believes that it will be damaged by registration of the mark AUDIOKICKER shown in Serial No. 85/014,826.

WHEREFORE, Stillwater prays that the application Serial No. 85/014,826 for the mark AUDIOKICKER be rejected and that registration for the mark therein sought be denied and refused.

Respectfully Submitted,

/Mary M. Lee/

Mary M. Lee, Reg. No. 31,976  
1300 E. 9<sup>th</sup> Street, No. 4  
Edmond, OK 73034-5760  
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Attorney for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant by mailing the same by first-class mail, postage prepaid, to:

Robert B. Burlingame, Esq.  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
P.O. Box 7880  
San Francisco, CA 94120-7880

on November 5, 2010.

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/Mary M. Lee/