ESTTA Tracking number: **ESTTA562844**

Filing date: **10/03/2013**

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

Proceeding	91208501
Party	Plaintiff DIRECTV Sports Networks, LLC
Correspondence Address	DORI ANN HANSWIRTH HOGAN LOVELLS US LLP 875 THIRD AVENUE NEW YORK, NY 10022 UNITED STATES dori.hanswirth@hoganlovells.com, benjamin.fleming@hoganlovells.com, boxip@hoganlovells.com
Submission	Other Motions/Papers
Filer's Name	Benjamin A. Fleming
Filer's e-mail	benjamin.fleming@hoganlovells.com
Signature	/Benjamin Fleming/
Date	10/03/2013
Attachments	2013-10-03 Notice of Motion for Leave to Amend.pdf(5593 bytes) 2013-10-03 Memorandum of Law.pdf(25787 bytes) 2013-10-03 Hanswirth Declaration with Exhibits.pdf(114201 bytes)

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

DIRECTV SPORTS NETWORKS, LLC, Opposer,	:	Opposition No. 91208501
v.	:	Serial No. 85523657
HENG DAI MEDIA, LLC (d/b/a Music City Roots), Applicant.	:	Mark: ROOTS RADIO

OPPOSER DIRECTV SPORTS NETWORKS, LLC'S NOTICE OF MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

Opposer DIRECTV Sports Networks, LLC, pursuant to Federal Rule of Civil Procedure 15(a) and 37 C.F.R. § 2.107(a), hereby moves the Board for leave to file an Amended Notice of Opposition. Grounds for the motion are set forth in the Memorandum of Law in Support of Opposer DIRECTV Sports Networks, LLC's Motion for Leave to File an Amended Notice of Opposition, dated October 3, 2013, and the supporting Declaration of Dori Ann Hanswirth, dated October 3, 2013, and the exhibits annexed thereto, all of which are filed concurrently.

Dated: October 3, 2013
New York, New York

HOGAN LOVELLS US LLP

By: /s/ Dori Ann Hanswirth

Dori Ann Hanswirth
Benjamin A. Fleming
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Attorneys for Opposer
DIRECTV Sports Networks, LLC

To: Paul W. Kruse, Esq.
Bone McAllester Norton PLLC
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Nashville, Tennessee 37219-1780
trademarks@bonelaw.com

Attorneys for Applicant
Heng Dai Media, LLC

CERTIFICATE OF SERVICE

I, Benjamin A. Fleming, hereby certify that on October 3, 2013, I caused a true and complete copy of the foregoing OPPOSER DIRECTV SPORTS NETWORKS, LLC'S NOTICE OF MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION to be served via Federal Express on Applicant's attorney at the address shown below:

Paul W. Kruse
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219-1780

trademarks@bonelaw.com

By: /s/ Benjamin A. Fleming
Benjamin A. Fleming

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

DIRECTV SPORTS NETWORKS, LLC,	:	
Opposer,	:	Opposition No. 91208501
	:	
v.	:	Serial No. 85523657
	:	
HENG DAI MEDIA, LLC	:	Mark: ROOTS RADIO
(d/b/a Music City Roots),	:	
Applicant.	:	**CONFIDENTIAL**

OPPOSER DIRECTV SPORTS NETWORKS, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

Opposer DIRECTV Sports Networks, LLC ("DIRECTV" or "Opposer"), by and through its undersigned attorneys, submits this memorandum of law in support of its motion, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.107(a), for leave to file an Amended Notice of Opposition.[1]

PRELIMINARY STATEMENT

DIRECTV's motion for leave to amend is based on facts learned and admissions made by Applicant Heng Dai Media, LLC ("Heng Dai") during discovery in this proceeding. Specifically, DIRECTV has learned that Heng Dai uses its proposed ROOTS RADIO mark in connection with an internet radio service that plays "roots music." Heng Dai has also admitted, through the deposition testimony of its corporate representative, that "roots" is a genre of music

[1] The facts necessary for determination of this issue are set forth in the declaration of Dori Ann Hanswirth, sworn to the 3rd day of October 2013 (the "Hanswirth Decl."), and the exhibits annexed thereto. A copy of DIRECTV's proposed Amended Notice of Opposition is annexed to the Hanswirth Decl. as Exhibit C. Pursuant to Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §507.01, a red-lined copy of DIRECTV's Amended Notice of Opposition showing DIRECTV's proposed amendments is annexed to the Hanswirth Decl. as Exhibit D.

and that the term ROOTS in the ROOTS RADIO mark refers to that genre of music. As such, Heng Dai has admitted that its proposed mark is either generic or merely descriptive and thus not eligible for the registration Heng Dai seeks.

These new facts and admissions were not known to DIRECTV at the time that it filed its initial opposition herein (based on likelihood of confusion). Their disclosure justifies amendment of DIRECTV's pleading to add two new grounds for opposition: (1) that the proposed ROOTS RADIO mark is a generic term for a radio station that plays "roots music"; and/or (2) in the alternative, ROOTS RADIO is merely descriptive of the radio services provided by Heng Dai. Both new grounds—if proven by DIRECTV at trial—would bar Heng Dai from obtaining the registration sought. Heng Dai will suffer no prejudice as a result of the proposed amendment, as DIRECTV's initial testimony period does not open until October 24, 2013, and DIRECTV has made the instant motion only days after the transcript of Heng Dai's corporate representative was finalized. Accordingly, the Board should grant DIRECTV leave to amend its pleading to add two additional grounds for opposition.

FACTS

DIRECTV is the owner of six registrations and three pending applications for the mark ROOT SPORTS in the fields of, among other things: [b]roadcasting programs via a global computer network; [s]treaming of audio and video material on the Internet, other computer networks, wireless networks and electronic communication networks; television programming; and on-going television programs featuring sports and entertainment. (*See* Dkt. No. 1.) On December 18, 2012, DIRECTV filed a Notice of Opposition ("Opposition") to Heng Dai's proposed registration of ROOTS RADIO for "entertainment services, namely, providing ongoing radio programming in the field of music." (*Id.*) In its application, Heng Dai disclaimed rights in

the term "radio." (*Id.*) The ground for opposition alleged at that time was likelihood of confusion with DIRECTV's registered marks pursuant to 15 U.S.C. § 1052(d). (*Id.*)

On June 17, 2013, after missing the May 28, 2013 deadline to serve responses to Opposer DIRECTV Sports Networks, LLC's Requests for Admission, Applicant moved, pursuant to Federal Rule of Civil Procedure 36(b), to withdraw or amend its admissions (the "Motion to Withdraw"). (*See* Dkt. No. 5.) DIRECTV opposed that motion on July 8, 2013. (*See* Dkt. No. 6.) The Board has not yet issued a ruling on the Motion to Withdraw. At present, DIRECTV's trial period begins on October 24, 2013 and Applicant's trial period begins on December 23, 2013. (*See* Dkt. No. 2.)

On August 15, 2013, DIRECTV took the deposition of Heng Dai through its principal, John Walker. (Hanswirth Decl., Ex. A.) At the deposition, Walker testified that "roots," as used in the ROOTS RADIO mark, referred to a genre of music:

> Q: Are you aware of a song by Bob Marley called Roots Rock Reggae?
> A: No. However, if I were, it wouldn't have given me pause, if I could save you some time.
> Q: Okay, why is that?
> A: Because I feel that the distinction between an individual entity with that word in its name is different than this, as, you know, referring to a genre of music.

(*Id.* at 39:17-40:2.) Walker also testified that Heng Dai's ROOTS RADIO mark was used in connection with an internet radio station (called "Roots Radio") that played music from the "roots" genre:

> Q: What type of music is played on Roots Radio?
> A: We play roots music, but we play music that is recorded on the Music City Roots show as individual songs.

(*Id.* at 33:16-20.) Later in the deposition, in response to questioning from Heng Dai's attorney, Walker again testified that the term "roots" referred to a genre of music:

> Q: Mr. Walker, do you consider roots to be a genre of music?

A: Yes.
Q: What are some other genres of music?
A: Rock, Jazz, country, folk, punk, heavy metal – the list could go on and on.

(*Id.* at 109:23-110:4.)

The transcript of that deposition was provided to the parties by the court reporter on August 27, 2013. Upon receipt of the deposition transcript, Walker received 30 days (or until September 26, 2013) in which to make any corrections to the transcript and sign it. (Hanswirth Decl. ¶¶ 3-4; Ex. B.) Walker did not sign the transcript or make any changes to the testimony within that 30-day period. (*Id.* ¶ 4.) Accordingly, the deposition transcript was deemed finalized and signed as of September 26, 2013. *See* Fed. R. Civ. P. 30(e).

ARGUMENT

THE BOARD SHOULD GRANT DIRECTV LEAVE TO SUBMIT AN AMENDED NOTICE OF OPPOSITION BECAUSE DISCOVERY IN THIS PROCEEDING REVEALED NEW GROUNDS FOR DENYING REGISTRATION OF THE PROPOSED ROOTS RADIO MARK

Amendment to pleadings in *inter partes* proceedings is governed by Rule 15 of the Federal Rules of Civil Procedure. *See* 37 C.F.R. § 2.107(a); Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 507.01. Under that rule, a party may amend its pleading before trial with the leave of court, and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In that spirit, "the Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." *Zanella Ltd. v. Nordstrom, Inc.*, 90 U.S.P.Q.2d 1758, 1759 (T.T.A.B. 2008). *See also Commodore Elect. Ltd. v. Cbm Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993) ("in deciding opposer's motion for leave to amend, the Board must consider whether there is any undue prejudice to applicant and whether the amendment is legally sufficient"). Further, this

liberal approach to amendments applies "even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint." *Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1702 (T.T.A.B. 2000) (granting opposer's motion to amend pleading to add dilution claim to existing opposition alleging likelihood of confusion); *see also* TBMP § 507.02 (citing cases).

A. The Proposed Amendments Contain Valid Grounds for Opposition under 15 U.S.C. § 1052(e)(1)

Here, DIRECTV's proposed amendment to its Opposition is legally sufficient. DIRECTV need only plead facts that would, if proven, establish a further statutory ground to oppose registration. *See Commodore*, 26 U.S.P.Q.2d at 1505. DIRECTV seeks to amend its Opposition to allege that the ROOTS RADIO mark: (1) is generic for a radio programming service that offers roots music; and/or (2) in the alternative, is merely descriptive of the radio programming services provided by Applicant. Either of those grounds, if proven, would prevent Heng Dai from registering the ROOTS RADIO mark on the Principal Register. *See* 15 U.S.C. § 1052(e)(1); *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (merely descriptive mark); *In re Hotels.com, L.P.*, 573 F.3d 1300, 1302 (Fed. Cir. 2009) (generic mark); *see also* J. Thomas McCarthy, *Trademarks and Unfair Competition*, § 20:19 (4th ed. 2013) ("An opposer may rely upon Lanham Act § 2(e)(1) as a ground of opposition, asserting that the mark sought to be registered is merely descriptive, is generic, or is deceptively misdescriptive.").

"Whether a particular term is generic is a question of fact." *In re Health Sci. Funding LLC*, No. 2013-1054, 2013 WL 5203979, at *1 (Fed. Cir. Sept. 13, 2013) (citing *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 1378 (Fed. Cir. 2007)). DIRECTV has alleged that: (1) the proposed ROOTS RADIO mark will be used in connection with radio services that

provide roots music to consumers; and (2) the relevant consuming public primarily identifies the term "ROOTS RADIO" to refer to radio services that provide roots music. Accordingly, DIRECTV has sufficiently alleged that Heng Dai's mark is generic. *See H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989 (Fed. Cir. 1986) (describing elements of genericism claim).

The descriptiveness of a proposed mark is analyzed "in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the mark would have to the average purchaser of the goods or services because of the manner of its use." *In re Positec Group Limited*, No. 77920346, 2013 WL 5467010, at *2 (T.T.A.B. Sept. 13, 2013) (precedential) (holding SUPERJAWS merely descriptive of machine tools used for clamping). Further, as the Board recently held in *Positec*:

> When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive

Id. at *3 (citing decisions finding PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents and for tracking the status of the records by means of the Internet; URBANHOUZING merely descriptive of real estate brokerage, real estate consultation and real estate listing services; and SMARTTOWER merely descriptive of commercial and industrial cooling towers).

Here, DIRECTV has alleged that the term ROOTS merely describes the genre of music played on Heng Dai's internet radio station, and Heng Dai itself has disclaimed the term RADIO in its application. Thus, DIRECTV has alleged that the ROOTS RADIO mark is "merely

descriptive" within the meaning of 15 U.S.C. § 1052(e)(1), and the proposed Amended Notice of Opposition includes two new "legally sufficient" grounds for opposition, making leave to amend proper. *See Commodore Elec.*, 26 U.S.P.Q.2d at 1505.

B. Applicant Will Suffer No Prejudice as a Result of DIRECTV's Promptly-Made Proposed Amendments, Especially Because the Trial Period Has Not Yet Begun

Neither will Applicant be prejudiced by the amendment. DIRECTV's initial testimony period opens on October 24, 2013, and thus the proceeding is still in the pretrial stage. *See Hurley Int'l LLC v. Volta*, 82 U.S.P.Q.2d 1339, 1342 (T.T.A.B. 2007) (granting motion to amend to add claim of fraud to opposition based on likelihood of confusion and non-use where "opposer's motion for leave to file an amended notice of opposition was filed prior to the start of trial"). Further, Applicant has not delayed in bringing the instant motion to amend. DIRECTV acquired the facts relevant to its new claims only as a result of discovery in this proceeding, and obtained the most salient facts—Heng Dai's own descriptions of the nature of its services—on August 27, 2013, or just over one month ago. And Heng Dai's 30-day window to sign and amend the deposition transcript closed only on September 26, 2013. *See, e.g.*, *EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 265-71 (3d Cir. 2010) (describing effect of failure to submit errata sheet within 30-day period specified in Fed. R. Civ. P. 30(e)); *Del. Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1380-81 (Fed. Cir. 2010) (affirming district court's refusal to consider changes to deposition transcript when deponent "did not attempt to submit an errata sheet to make substantive changes to his unequivocal testimony until after the thirty days permitted under Rule 30(e)").

Thus, DIRECTV's proposed amendments have been promptly made. *See Zanella*, 90 U.S.P.Q.2d at 1759 (finding no delay where movant obtained information relevant to amendment

through discovery and moved to amend promptly thereafter); *see also Karsten Mfg. Corp. v. Editoy AG*, 79 U.S.P.Q.2d 1783, 1786 (T.T.A.B. 2006) (granting motion to amend where opposer learned information supporting new allegations "in a discovery deposition in February 2003, and filed its motion on May 8, 2003").

Nor will Applicants be prejudiced by the fact that discovery has closed in the proceeding, as "the factual basis for the motion to amend was obtained by the moving party through discovery taken from the non-moving party." TBMP § 507.02(a). *See also Hurley*, 82 U.S.P.Q.2d at 1342 (granting motion where "all evidence relevant to [claim to be added] that may benefit applicants is already in the applicants' possession and control"). However, "in granting a motion for leave to amend, the Board may, in its discretion, reopen the discovery period so as to avoid any prejudice to the adverse party by reason of the amendment." *Boral*, 59 U.S.P.Q.2d at 1702. *See also Focus 21 Int'l Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316, 1318 (T.T.A.B. 1992) ("The motion to amend was filed prior to opening of petitioner's testimony period and thus the discovery period may be reopened without undue prejudice to respondent."). Thus, the Board can cure any residual prejudice to Applicant by exercising its discretion to reopen discovery on the new claims.[2]

CONCLUSION

For all the foregoing reasons, DIRECTV requests that the Board enter an order granting DIRECTV leave to submit an Amended Notice of Opposition, and such other relief as it seems proper.

[2] DIRECTV is also moving to suspend proceedings pending the Board's action on this motion and the Motion to Withdraw or extend the trial schedule. *See* Motion to Suspend Proceedings or Extend Time for Trial Testimony, filed concurrently.

Respectfully submitted,

Dated: October 3, 2013
New York, New York

HOGAN LOVELLS US LLP

By: /s/ Dori Ann Hanswirth/

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Email: timothy.lyden@hoganlovells.com

Attorneys for Opposer
DIRECTV Sports Networks, LLC

CERTIFICATE OF SERVICE

I, Benjamin A. Fleming, hereby certify that on October 3, 2013, I caused a true and complete copy of the foregoing OPPOSER DIRECTV SPORTS NETWORKS, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION to be served via Federal Express on Applicant's attorney at the address shown below:

Paul W. Kruse
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219-1780

trademarks@bonelaw.com

By: /s/ Benjamin A. Fleming /
Benjamin A. Fleming

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

DIRECTV SPORTS NETWORKS, LLC, Opposer,	:	Opposition No. 91208501
v.	:	Serial No. 85523657
HENG DAI MEDIA, LLC (d/b/a Music City Roots), Applicant.	:	Mark: ROOTS RADIO **CONFIDENTIAL**

DECLARATION OF DORI ANN HANSWIRTH IN SUPPORT OF OPPOSER DIRECTV SPORTS NETWORKS, LLC's MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

DORI ANN HANSWIRTH declares:

1. I am a partner with Hogan Lovells US LLP, counsel for opposer DIRECTV Sports Networks, LLC ("DIRECTV") in the above-captioned proceeding. I respectfully submit this declaration in support of DIRECTV's Motion for Leave to File an Amended Notice of Opposition (the "Motion to Amend") from applicant Heng Dai Media, LLC ("Heng Dai"). I make this declaration from my personal knowledge.

2. A true and correct copy of excerpts from the deposition of Heng Dai (through its corporate representative, John Walker), dated August 15, 2013, is annexed hereto as Exhibit A.[1]

3. A true and correct copy of a letter from the court reporting service to counsel for Heng Dai, copying my colleague Benjamin A. Fleming, dated August 27, 2013, is annexed hereto as Exhibit B.

[1] Pursuant to the Board's standard confidentiality order, which governs this proceeding, Heng Dai designated the entire transcript of the deposition as "confidential." Consistent with that confidentiality order, the deposition excerpts have been redacted in the publicly filed version of this declaration.

4. At Heng Dai's deposition, the parties agreed that, consistent with Fed. R. Civ. P. 30(e), the deponent would have 30 days after receipt of the transcript to sign it and submit any corrections. The deadline for such corrections was September 26, 2013. To date, Walker has not submitted a signature page of the transcript or an errata sheet.

5. A true and correct copy of DIRECTV's proposed Amended Notice of Opposition is annexed hereto as Exhibit C.

6. A true and correct copy of a red-lined version of the Amended Notice of Opposition showing DIRECTV's proposed changes is annexed hereto as Exhibit D.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 3, 2013
New York, New York

/s/ Dori Ann Hanswirth_/

DORI ANN HANSWIRTH

CERTIFICATE OF SERVICE

I, Benjamin A. Fleming, hereby certify that on October 3, 2013, I caused a true and complete copy of the foregoing DECLARATION OF DORI ANN HANSWIRTH IN SUPPORT OF OPPOSER DIRECTV SPORTS NETWORKS, LLC's MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION to be served via Federal Express on Applicant's attorney at the address shown below:

Paul W. Kruse
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219-1780

trademarks@bonelaw.com

By: /s/ Benjamin A. Fleming
Benjamin A. Fleming

Exhibit A

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

DIRECTV SPORTS NETWORKS, LLC,	)	
	)	Opposition
OPPOSER,	)	No. 91208501
	)	
vs.	)	Serial No.
	)	85523657
HENG DAI MEDIA, LLC,	)	
	)	Mark: ROOTS RADIO
APPLICANT,	)	

DEPOSITION OF JOHN WALKER
Nashville, Tennessee
August 15, 2013

* * C O N F I D E N T I A L * *

Reported by:
Priscilla Smith
JOB 64633

J. WALKER

A. I don't know.

Q. Did you consider calling that internet radio station Music City Roots Radio?

A. No.

Q. What's the difference between, in your mind, the Music City Roots business venture that you have and Roots Radio?

A. Music City Roots is a show, and Roots Radio is a radio station.

Q. Is the Music City Roots show ever played on Roots Radio?

A. No.

Q. Never?

A. No.

Q. What type of music is played on Roots Radio?

A. We play roots music, but we play music that is recorded on the Music City Roots show as individual songs.

Q. So you will take maybe five minutes from a Music City Roots show -- that's one song -- and put it on Roots Radio; is that correct?

A. Not -- It's not necessarily five minutes, but we will take an individual song from

syndicated basis?

A. Yes. The same thing.

Q. You're aware that the use of the word "roots" is prevalent in connection with the names of music groups and other types of music ventures?

A. I don't know of any music groups.

Q. Are you aware of a music group called The Roots?

A. No.

Q. Are you aware of a musical group called Rusted Root?

A. No.

Q. Are you aware of a music group or former musical group called The Grass Roots?

A. I don't think so.

Q. Are you aware of a song by Bob Marley called Roots Rock Reggae?

A. No. However, if I were, it wouldn't have given me pause, if I could save you some time.

Q. Okay, why is that?

A. Because I feel that the distinction between an individual entity with that word in its name is different than this, as, you know,

referring to a genre of music.

Q. Did you look at any documents to prepare yourself for this deposition today?

A. Yes.

Q. What documents did you look at?

A. I looked over the various questions and interrogatories that had been sent and the -- our business overview, and I reviewed -- I looked up the meaning of the word "root" and "roots" in the dictionary, to look at the various applications of that particular word.

Q. Did you gather information from anybody in order to be able to provide testimony on all of the topics in the notice that we marked as Exhibit 1?

A. The documents were copies of the documents that had been previously provided to me, were again provided to me by my attorneys.

Q. So I don't want -- I am not getting into what you and your attorneys talked about, but my question is, did you talk to Mr. Mayo, for example, to be able to gather information or refresh your own memory about anything so that you could testify here today?

J. WALKER

MS. HANSWIRTH: Do you have any?

MR. ZRALEK: I may. I don't know.

MS. HANSWIRTH: All right. Let's go off the record.

(Discussion held off the record.)

Q. Mr. Walker, there was a just a brief discussion off the record, and now I am going to ask you, is there any place on the internet that you believe we may be able to locate the Connect radio show that Mr. Havighurst produces?

A. Produces? I do believe that you will find them available at the Tumblr blog. I am fairly certain that they're out there somewhere. If not, we could certainly produce links to them, which would be easier than going through the other process.

MS. HANSWIRTH: Thank you.

MR. ZRALEK: I may have a few questions.

EXAMINATION

BY MR. ZRALEK:

Q. Mr. Walker, do you consider roots to be a genre of music?

A. Yes.

J. WALKER

Q. What are some other genres of music?

A. Rock, jazz, country, folk, punk, heavy metal -- the list could go on and on.

Q. You looked at Exhibit 4. Could you turn to Exhibit 4 again. I believe that's the definitions that you found online for "root" and "roots."

A. Yes, okay.

Q. Did you have any takeaways after examining Exhibit 4?

A. I do. You know, there are some glaring differences in the definition of the word "root" and even more when you add the word S to the word "root," becoming "roots."

Q. The letter?

A. The letter S, becoming "roots."

This particular dictionary lists ten definitions of it as a noun; it lists three as an intransitive verb, four as a transitive verb.

And it also, way at the bottom here, it lists two definitions that refer to audible encouragement or applause to a contestant or team, cheer, to lend support to someone or something, which is in my view glaringly different than the

Exhibit B

August 27, 2013

Mr. Stephen Zralek Esq.
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, TN 37219

Dear Mr. Zralek,

Enclosed please find the Original transcript from the deposition of Mr. Walker ("the deponent") on 8-15-2013. Unless otherwise agreed to by counsels, the deponent has 30 days from the date of receipt of this letter to review and make any changes on the Errata sheet that is included in the back of the transcript. If counsels have established an agreement to the contrary, then it takes precedence over the 30 day recommended period. TSG is not the authority for determining the deadline to execute the Errata sheet.

Only the deponent may make corrections on the Errata sheet. The deponent is then to sign the bottom of the Errata sheet where indicated. Please forward a COPY of the executed Errata sheet directly to the attorney(s) listed below. *(The addresses can be found on the Appearance Page of the transcript.)* The Original transcript must be returned to TSG Reporting within 30 days. Please retain a copy of the Errata sheet for your records.

If you have any questions, please let us know.

Sincerely,

Brian O'Donnell

cc: Benjamin Fleming Esq.

Exhibit C

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

In re Application Serial No. 85/523,657
Filed: January 24, 2012
For Mark: ROOTS RADIO
Published in the Official Gazette: June 26, 2012

DIRECTV SPORTS NETWORKS, LLC, Opposer,	:	Opposition No. 91208501
v.	:	**AMENDED NOTICE OF OPPOSITION**
HENG DAI MEDIA, LLC (d/b/a Music City Roots), Applicant.	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DIRECTV Sports Networks, LLC ("Opposer"), a Delaware limited liability company with offices at 601 Union Street, Seattle, Washington, 98101, believes it will be damaged by registration of the standard character word mark ROOTS RADIO ("Applicant's Mark") for the goods and services in International Class 41 as shown in Application Serial No. 85/523,657 (the "Application"), and having been granted extensions of time to oppose up to and including December 23, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. On information and belief, Heng Dai Media, LLC ("Applicant") is a Tennessee limited liability company with an address of 783 Walter Morris Road, Lebanon, Tennessee, 37087.

2. Opposer – which is part of the DIRECTV family of companies that is a leading provider of digital satellite television in the United States and Latin America – owns three regional cable and satellite television networks that broadcast live sports events, entertainment, and other original content. These networks are known, respectively, as ROOT SPORTS Northwest, ROOT SPORTS Pittsburgh and ROOT SPORTS Rocky Mountain. These networks are highly well-known within their regional broadcasting areas, reaching millions of subscribers and featuring exclusive live sports telecasts and related programming in distribution partnerships with seven major league sports franchises and several major college sports conferences. These networks are also available nationally via DIRECTV and DISH Network, another provider of digital satellite television.

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4. Opposer employs several commentators that appear on air on television and as radio correspondents on radio stations in the same markets. These employees, called "ROOT SPORTS on-air reporters," provide commentary and analysis using the ROOT SPORTS marks on radio stations in the Denver, Pittsburgh, and Seattle markets. Radio commentary by "ROOT SPORTS on-air reporters" is available to a national audience via broadcasts streamed over the Internet by most of those radio stations.

5. Since prior to January 24, 2012, Applicant's constructive first use date, Opposer and/or its authorized licensee has used the name or mark ROOT SPORTS, alone or with other word, letter and/or design elements (the "ROOT SPORTS Marks"), in connection with a variety of goods and services including but not limited to television broadcasting, television

programming, sporting events, and streaming online sports highlights. Opposer has offered these goods and rendered these services in commerce.

6. Opposer is the owner of nine U.S. registrations and applications for the ROOT SPORTS Marks as follows:

a. U.S. Registration Nos. 4,122,672, 4,122,677 and 4,122,795 for the mark ROOT SPORTS for "Broadcasting programs via a global computer network; Video-on-demand transmission services; Transmission of pay-per-view television and other audio, video, and audiovisual materials; Streaming of audio and video material on the Internet, other computer networks, wireless networks and electronic communication networks; Electronic transmission of data via global computer networks, wireless networks and electronic communication networks" in International Class 38, issued April 3, 2012;

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networks; Entertainment services, namely, providing a website in the field of sports featuring non-downloadable television programs, sports information, previews, interviews, alerts, electronic scheduling guides, contests, video clips, photographs, highlights of sporting events, online sports games, articles and entertainment and sports related news; Production and distribution of television programs featuring sports and entertainment; On-line newsletters featuring general information relating to sports; online journals, namely, blogs featuring information in the field of sports, general interest, current sports news and entertainment; entertainment services, namely, providing podcasts in the field of sports, news and entertainment; Providing on-line information via the Internet in the field of fantasy sports leagues; Promotional Sweepstakes" in International Class 41, issued April 3, 2012; and

c. Application Serial Nos. 85/195,372, 85/195,617 and 85/217,874 for the mark ROOT SPORTS for "Pre-recorded video cassettes, video discs and DVD's containing television shows in the field of sports, news and variety; downloadable television shows featuring sports, news and variety; downloadable software in the nature of a mobile application for viewing television programming on a mobile communication device" in International Class 9; Nos. 85/195,372 and 85/195,617 were made on December 10, 2010, and No. 85/217,874 was made on January 14, 2011.

7. Since prior to January 24, 2012, Applicant's constructive first use date, Opposer has widely and actively promoted and advertised the sale and distribution of goods and services bearing or offered in connection with the ROOT SPORTS Marks including but not limited to

television broadcasting, television programming, sporting events, and streaming online sports highlights. These activities include but are not limited to sponsorship of numerous national and local events, contests and other promotions, and direct consumer outreach on social media and other formats. Opposer also widely publicizes its programming and broadcasting services on its websites. Opposer likewise promotes its services through the employment of radio correspondents, whose appearances on local and national media outlets spread awareness of the ROOT SPORTS brands to consumers nationwide. Opposer also purchases commercial advertising inventory on radio stations in the Denver, Pittsburgh and Seattle markets.

8. As a result of the widespread and active sale, promotion and distribution of its goods and services bearing or offered in connection with the ROOT SPORTS Marks, Opposer has established valuable goodwill in the ROOT SPORTS Marks, and said goodwill has become closely associated and identified with Opposer.

9. On January 24, 2012, Applicant filed the Application for Applicant's Mark for "entertainment services, namely, providing ongoing radio programming in the field of music" in International Class 41, based on intent to use.

10. Upon information and belief, Applicant did not use the ROOTS RADIO mark in United States commerce prior to January 24, 2012, the date of Applicant's constructive first use.

LIKELIHOOD OF CONFUSION

11. Opposer has both priority of use and of registration over Applicant for the ROOT SPORTS Marks, and thus Opposer's rights in the ROOT SPORTS Marks precede any rights Applicant may have in Applicant's Mark.

12. Applicant's Mark is highly similar to the ROOT SPORTS Marks.

13. The services covered by the Application are identical and/or closely related to the goods offered and services rendered in connection with Opposer's ROOT SPORTS Marks. For example, according to the Application, the Applicant intends to use ROOTS RADIO in connection with "on-going radio programming in the field of music." This service is closely related to services described within the ROOT SPORTS Marks' registrations including "television programming" and "on-going television programs featuring sports and entertainment." On information and belief, Applicant uses or intends to use Applicant's Mark on goods or services that travel in the same or similar channels of trade as goods or services sold or offered by Opposer.

14. Registration of Applicant's Mark is likely to cause confusion among the relevant consuming public and will likely cause the relevant consuming public to mistakenly conclude that Applicant's goods and services are associated with Opposer, when they are not.

15. Registration of Applicant's Mark is likely to cause injury to Opposer's business reputation and to injure and impair Opposer's rights in the ROOT SPORTS Marks by causing confusion, mistake, and/or deception as to the respective rights of the parties and as to the source or sponsorship of such goods and services.

16. Opposer would thereby be damaged by the granting to Applicant of a certificate of registration for Applicant's Mark.

17. Registration of Applicant's Mark would be inconsistent with the trademark rights of Opposer.

APPLICANT'S MARK IS GENERIC AND/OR MERELY DESCRIPTIVE

18. Opposer hereby incorporates the allegations contained in paragraphs 1 through 17.

19. Applicant's Mark is generic.

20. On information and belief, the word "roots," as applied to the field of music, refers to a genre of music.

21. The genus of services at issue is providing ongoing radio programming of roots music.

22. "Radio" is a generic term for the service of "providing ongoing radio programming in the field of music."

23. Applicant has disclaimed the term "radio" in the Application.

24. The term ROOTS RADIO is primarily understood by the relevant consuming public to refer to a radio programming service that broadcasts or offers roots music.

25. In the alternative, Applicant's Mark is merely descriptive.

26. On information and belief, Applicant uses or intends to use Applicant's Mark in connection with an online radio station that plays roots music.

27. Applicant's Mark is merely descriptive of the services offered by Applicant because it describes the characteristics of the services offered by Applicant – namely, an online radio station that plays roots music.

28. Accordingly, Applicant's Mark is merely descriptive of providing ongoing radio programming in the field of music when such radio programming consists of roots music.

29. Upon information and belief, Applicant's Mark has not become distinctive of the services offered in connection with it and no customer recognition of the term as a valid mark identifying Applicant as the source of particular radio programming services had been achieved at the time that Applicant filed its application to register Applicant's Mark on the Principal Register of the United States.

WHEREFORE, Opposer respectfully requests that the registration of the mark ROOTS RADIO as shown by Application Serial No. 85/523,657 be denied under Sections 2(d) and 2(e) of the Lanham Act, 15 U.S.C. §§ 1052(d)-(e), and that this Opposition be sustained.

Please direct all communications to Dori Ann Hanswirth, Esq. at the address listed below.

Dated: New York, New York
October 3, 2013

Respectfully submitted,

HOGAN LOVELLS US LLP

By: /s Dori Ann Hanswirth /

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Attorneys for Opposer DIRECTV Sports Networks, LLC

CERTIFICATE OF SERVICE

I, Benjamin A. Fleming, hereby certify that on October 3, 2013, I caused a true and complete copy of the foregoing AMENDED NOTICE OF OPPOSITION to be served via Federal Express on Applicant's attorney at the address shown below:

Paul W. Kruse
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219-1780

trademarks@bonelaw.com

By: /s/ Benjamin A. Fleming
Benjamin A. Fleming

Exhibit D

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

In re Application Serial No. 85/523,657
Filed: January 24, 2012
For Mark: ROOTS RADIO
Published in the Official Gazette: June 26, 2012

DIRECTV SPORTS NETWORKS, LLC,	:	
Opposer,	:	Opposition No. 91208501
	:	
v.	:	**AMENDED NOTICE**
	:	~~**NOTICE**~~ **OF OPPOSITION**
HENG DAI MEDIA, LLC	:	
(d/b/a Music City Roots),	:	
Applicant.	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DIRECTV Sports Networks, LLC ("Opposer"), a Delaware limited liability company with offices at 601 Union Street, Seattle, Washington, 98101, believes it will be damaged by registration of the standard character word mark ROOTS RADIO ("Applicant's Mark") for the goods and services in International Class 41 as shown in Application Serial No. 85/523,657 (the "Application"), and having been granted extensions of time to oppose up to and including December 23, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. On information and belief, Heng Dai Media, LLC ("Applicant") is a Tennessee limited liability company with an address of 783 Walter Morris Road, Lebanon, Tennessee, 37087.

2. Opposer – which is part of the DIRECTV family of companies that is a leading provider of digital satellite television in the United States and Latin America – owns three regional cable and satellite television networks that broadcast live sports events, entertainment, and other original content. These networks are known, respectively, as ROOT SPORTS Northwest, ROOT SPORTS Pittsburgh and ROOT SPORTS Rocky Mountain. These networks are highly well-known within their regional broadcasting areas, reaching millions of subscribers and featuring exclusive live sports ~~telecast~~telecasts and related programming in distribution partnerships with seven major league sports franchises and several major college sports conferences. These networks are also available nationally via DIRECTV and DISH Network, another provider of digital satellite television.

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Dated: New York, New York
~~December 18~~October 3, ~~2012~~2013

Respectfully submitted,

HOGAN LOVELLS US LLP
~~Attorneys for Opposer~~

By: /s ~~Timothy J. Lyden~~Dori Ann Hanswirth /

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