

ESTTA Tracking number: **ESTTA544602**

Filing date: **06/23/2013**

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	Oulipo Inc.
Granted to Date of previous extension	06/23/2013
Address	#505-377 Sherbrooke Ouest Montreal, H3E1B5 CANADA

Correspondence information	Alex Mateesco 155-288 East Georgia Street Vancouver, V6A4H8 CANADA alex@mateesco.com
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**Applicant Information**

Application No	85137251	Publication date	12/25/2012
Opposition Filing Date	06/23/2013	Opposition Period Ends	06/23/2013
Applicant	Boxee Inc. 4th Floor 57 W. 16th Street New York, NY 10011 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. All goods and services in the class are opposed, namely: Remote controls for televisions; media players; hardware, namely, set-top boxes and digital TV tuners for allowing users to access and view movies, television shows and video from the internet on a television screen
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**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.	4144590	Application Date	12/02/2009
Registration Date	05/22/2012	Foreign Priority Date	NONE

Word Mark	BOXXY
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2006/01/15 First Use In Commerce: 2006/01/15 On-line retail store services featuring consumer goods in the fields of audio, video, and visual arts</p> <p>Class 041. First use: First Use: 2006/01/15 First Use In Commerce: 2006/01/15 Entertainment services, namely, an online activity where you create your own music videos; Entertainment services, namely, providing a radio program in the field of music, concerts, videos, photography, media and film via a global computer network; Entertainment services, namely, providing on-going television programs in the field of music, concerts, videos, photography, media and film via a global computer network. Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; Entertainment services, namely, providing on-line reviews about movies and music; Entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; Online journals, namely, blogs in the fields of art, entertainment, fashion, real estate, automotive, employment, music, concerts, videos, television, photography, media, film, news, sports, nutrition, health, fitness, games and cultural events; provision of non-downloadable films and television programs via a video-on-demand service</p>

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U.S. Application No.	77917469	Application Date	01/22/2010
Registration Date	NONE	Foreign Priority Date	12/10/2009
Word Mark	BOXXY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 007. First use:          (Based on Intent to Use) (Based on 44(d) Priority Application) electric generators, gas operated power generators, and solar-powdered electricity generators; air filters for vehicle motors and engines; electric vacuum cleaners</p> <p>Class 009. First use:          (Based on Intent to Use) (Based on 44(d) Priority Application) Computer Software which works as a digital jukebox; Downloadable video recordings; Computer software for processing, reproducing, and streaming digital music files and audio content; Multimedia computer software for processing, reproducing, and streaming digital audio files and audio content; Computer Software for transmission of computer information and data via wireless networks; Computer Software for transmission of computer information, content, video, audio, and data via wireless networks; Computer software for wireless content delivery, and processing; computer software for wireless Internet applications; Computer Software for transmission of computer information and data via wireless networks; Computer software, namely, computer software for communication between computers and entertainment centers (Based on Intent to Use) Computer software for communication between computers and home entertainment systems; multimedia computer software for the reproduction, processing and streaming of audio content; Computer software for communication between computers and home entertainment systems; multimedia computer software for the reproduction, processing and streaming of audio content; Computer Software, namely, software allowing users to remotely control music and videos on computers; Computer software, namely, computer software allowing users to remotely control Music, Audio, Video and Media playing on computers, music players, or entertainment centers via a wireless interface Computer software, namely, computer software for communication between computers and wireless devices; Computer Software for synchronizing to computer applications and network environments to and from networks and wireless devices, namely, handheld computers, personal digital assistants, mobile telephones, laptop computers, and other wireless computing devices; Computer Software which works as a digital jukebox, that may be downloaded from a global computer network; Computer software platforms for processing digital music files; Computer Software, namely, software enabling users to control computers connected to entertainment centers, computers, entertainment centers, via pocket pc's handheld computers, computers, personal digital assistants, cell phones, laptops, and any other wireless capable devices; Computer software for manipulating digital audio information for use in audio media applications; Computer software to control and improve computer and audio equipment sound quality; computer software, namely, software for the reproduction, processing, playback, and streaming of audio content via wireless devices and other computer systems, and /or entertainment centers; Computer software to enable the transmission of photographs to mobile telephones. Computer software to enhance the audio-visual capabilities of multimedia applications, namely, communication between computers and entertainment centers; Computer software for manipulating digital audio information for use in</p>		

audio media applications; Computer software to control and improve computer and audio equipment sound quality; Computer software for processing, reproducing, and streaming digital music files and audio content; Multimedia computer software for processing, reproducing, and streaming digital audio files and audio content; Computer Software to monitor and control the functioning of other electronic devices; computer software, namely, software for the reproduction, processing, playback, and streaming of audio content via wireless devices and other computer systems, and/or entertainment centers; computer software for wireless Internet applications; Computer Software for transmission of computer information and data via wireless networks; Computer Software for synchronizing to computer applications and network environments to and from networks and wireless devices, namely, handheld computers, personal digital assistants, mobile telephones, laptop computers, and other wireless computing devices; Computer Software which works as a digital jukebox; Computer software for wireless content delivery, and processing; Communications software for connecting entertainment centers, computers, users, and wireless devices; Computer application software for mobile phones; Computer software for wireless content delivery; Computer Software, namely, software enabling users to control computers connected to entertainment centers, computers, entertainment centers, via pocket pc's, handheld computers, computers, personal digital assistants, cell phones, laptops, and any other wireless capable devices; Computer Software, namely, software allowing users to remotely control music and videos on computers; Computer software, namely, computer software allowing users to remotely control Music, Audio, Video and Media playing on computers, music players, or entertainment centers via a wireless interface; Computer software, namely, computer software for communication between computers and wireless devices; Computer Software for synchronizing to computer applications and network environments to and from networks and wireless devices, namely, handheld computers, personal digital assistants, mobile telephones, laptop computers, and other wireless computing devices; Computer software, namely, computer software for communication between computers and wireless devices; Computer Software for transmission of computer information and data via wireless networks; Computer Software, namely, wireless or wired software allowing users to control music, video, and MP3 files with wireless devices, namely, handheld computers, personal digital assistants, mobile telephones, laptop computers, using a computer network; computer software design for others; computer software development; Computer interfaces

Class 012. First use:

(Based on Intent to Use) (Based on 44(d) Priority Application) bikes;(Based on Intent to Use) trailers; campers

Class 020. First use:

(Based on Intent to Use) (Based on 44(d) Priority Application) furniture

Class 028. First use:

(Based on Intent to Use) Gaming devices, namely, video game consoles and interfaces(Based on Intent to Use) (Based on 44(d) Priority Application) skis; snowboards

Class 035. First use:

(Based on Use in Commerce)Providing advertising service to distribute advertisements for display on Internet, namely, in websites, social conversations over the Internet, emails, microblogs, blogs, electronic messages, instant messages, text messages, multimedia messages, social networks, status updates, forums, electronic bulletin boards; Providing a website featuring non-downloadable videos; Providing a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for entertainment purposes; Providing on-line directory information services also featuring hyperlinks to other web sites; providing an

on-line showroom for the goods and services of others in the field of services, products, materials, trade, business, and goods; promoting the goods and services of others by preparing and placing advertisements in a website accessed through a global computer network; dissemination of advertising matter; dissemination of advertisements and of advertising material, namely, flyers, brochures, leaflets and samples; advertising through all public communication means; Providing on-line directory information services also featuring hyperlinks to other websites; providing an online showroom for the goods and services of others; promoting the content, goods and services of others by preparing and placing advertisements in a website accessed through a global computer network; dissemination of advertising mailer; advertising through all public communication means; Dissemination of advertising for others via an online communications network on the Internet(Based on Intent to Use)direct mail advertising; auction management services provided to others over an online web site accessed through a global computer network; organization of Internet auctions; telephone and television auction; on-line trading services in which seller posts products and services to be auctioned and bidding is done via the Internet; on-line trading services in which seller posts products, content, and services to be auctioned and bidding is done via the Internet; Consumer survey services; Survey design and research(Based on Use in Commerce) (Based on 44(d) Priority Application)arranging and conduction of auction sales

Class 036. First use:

(Based on Intent to Use) (Based on 44(d) Priority Application) Rental of apartments; car rental; Rental of moving vans; Rental of shopping centre space; Rental of boats; Rental of mailboxes; Credit and loan service; charitable services, namely, providing computer equipment to schools; charitable services, namely, providing web site design for others

Class 038. First use:

(Based on Use in Commerce) (Based on 44(d) Priority Application) Telecommunication services, namely, electronic transmission of streamed and downloadable audio and video files and content via computer and other communications networks; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, vidoes, television, film, news, sports, games and cultural events; delivery of messages by electronic transmission(Based on Use in Commerce)Video streaming services via the Internet, featuring independent films and movies; Providing e-mail and instant messaging services

Class 039. First use:

(Based on Intent to Use) (Based on 44(d) Priority Application) Moving van services; Rental of moving vans; Warehouse storage services; car rental

Class 041. First use:

(Based on Intent to Use) (Based on 44(d) Priority Application) Entertainment services, namely, providing information and content in the field of film, video, movies, motion pictures, audiovisual works, and multimedia via a global computer network; production and distribution of motion pictures, films, and commercials; editing and recording of sounds and images; Provision of downloadable and non-downloadable films and TV programs via a video-on-demand service; Digital video, audio, and multimedia publishing services; Entertainment services, namely, providing downloadable video games, Motion picture and video rental services; Entertainment services, namely, providing temporary use of non-downloadable video games(Based on Use in Commerce) (Based on 44(d) Priority Application) Post-production editing services in the field of music, videos and film; Production and distribution of television shows and movies, Providing audio or video studios; Rental or Sales of pre-recorded videos that may be downloaded from an Internet web site; Rental and computerized on-

line rental services featuring interactive software and hardware home entertainment and consumer electronics in the nature of motion pictures, films, movies, prerecorded digital versatile discs (or DVDs), prerecorded videotape cassettes, audio, audio recordings in a variety of genres

Class 042. First use: First Use: 2006/01/15 First Use In Commerce: 2006/01/15 (Based on Use in Commerce) Providing a web site that gives computer users the ability to upload, exchange and share photos, videos and other content; Providing a web site and system that gives computer users the ability to upload and share user-generated videos, essays and articles on a wide variety of topics and subjects; Providing a web site that gives computer users the ability to upload and share videos and other media content; Providing a web site featuring technology that enables Internet users to share documents, images and video; Providing technology that enables users to share documents, images and video via cell phones and other portable devices; Providing a website featuring technology that enables users to upload and share user-generated videos on a wide variety of topics and subjects; Computer services, namely, digital formatting and compression of music and images, namely, processing of digital music and video images into downloadable products; Computer services, namely, hosting an interactive web site that allows users to record and display profiles, interests, audio and video content; Design and development of software and solutions for audio and video producers and creators; Hosting the digital audio and video content of others for the purpose of enabling users at home, on portable devices, and other locations, as well as website visitors, to download the content for free, or on a pay per view basis; computer services, namely, creating indexes of information, sites and other resources available on computer networks; computer services, namely, creating and maintaining web sites for others(Based on Intent to Use)Computer services, namely, hosting an interactive web site that allows families to record and display family profiles, relationships, interests, audio and video content ;COMPUTER services, namely, designing and implementing web sites for others; computer services, namely, remote and on-site management of electronic messaging systems and applications for others; creation and maintenance of web sites for others; design and development of multimedia products; design for others in the field of multimedia products, branding and product and product packaging; design of homepages and web-sites; design of homepages and websites; design, creation, hosting, maintenance of websites for others; computer graphics services; Design and development of wireless communication systems for transmission and reception of voice, data and video; Digital transfer services for transferring home videos and film to DVD and the Internet; application service provider (ASP) featuring software in the field of website design,commercial and graphic art design, graphic design, 3D graphic design, architectural design, product design, user interaction computer design, human computer interface design and computer site design; application service provider (ASP), namely, hosting computer software applications of others; commercial art design; e-mail system design and implementation for others; graphic art design; graphic design services; hosting of digital content on the Internet; programming of multimedia applications; research and development and consultation related thereto in the field of website design, human computer interface design, commercial and graphic art design, product design, graphic design, 3D graphic design, architectural design, user interaction computer design and computer site design for communications and multimedia products; development of new technology for others in the field of sound production, print and graphic design, human computer interaction; industrial design; installation of computer software; intellectual property consultation; planning, development of electronic communications networks; product development; product development consultation; product development for others; product research; product research and development; rental of computers and software; shop interior design; temporary interior and exteriorhome decoration consultation, namely, home staging consultation for the purpose of making homes more appealing to

	<p>prospective buyers;computer site design; Networking of home controls, namely, wireless and wired lighting controls, thermostat and heating controls, rolling shutters and door controls, appliance controls, namely, oven, washer, dryer, refrigerator, dishwasher, lawn and garden irrigation controls, home audio and video; Providing a web site featuring use of downloadable software allowing web site users to upload, post and display online videos for sharing with others for entertainment purposes; designing of packaging and wrapping materials; designing websites for advertising purposes; development, design and updating of home pages; computer project management services; design of production facilities; design of specialty interior and exterior environment settings (Based on Intent to Use) (Based on 44(d) Priority Application) Providing a website featuring video games and other forms of entertainment, for free, for sale, and for rent; Animation and special-effects design for others; DVD authoring services</p> <p>Class 043. First use: (Based on Intent to Use) (Based on 44(d) Priority Application) Leasing of storage space</p> <p>Class 045. First use: (Based on Intent to Use)registration of domain names for identification of users on a global computer network; preparing and filing incorporation papers; stock photography services, namely, leasing reproduction rights of videos, photographs and transparencies to others; copyright management</p>
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Attachments	BOXXYOppositionSubmit.pdf(69500 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	/alex mateesco/
Name	Alex Mateesco
Date	06/23/2013

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

IN THE MATTER OF Serial No. 85137251

Filed on Sept 24, 2010 and Published on Dec 25 2012

Trademark : BOXEE

OULIPO INC. )

)

Opposer )

v. )

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

)

BOXEE INC. )

)

Applicant )

\_\_\_\_\_ )

## NOTICE OF OPPOSITION

OULIPO INC., a Limited Liability Company organized under the laws of Canada, with an office at #505-377 Sherbrooke Ouest Montreal CANADA H3E1B5 believes it will be damaged by the registration in international class (009) of the mark BOXEE as shown in Application Serial No. 85137251 by BOXEE, Inc. "Applicant" a DELAWARE corporation, with a mailing address at 4th Floor 57 W. 16th Street New York NEW YORK 10011, and published in the Official Gazette of December 25, 2012 and hereby opposes registration of said application on the following grounds:

1. Opposer is the owner of Registration [4144590](#) for the BOXXY trademark for goods and services including, inter alia, "On-line retail store services featuring consumer goods in the fields of audio, video, and visual arts. ..." Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; Entertainment services, namely, providing on-line reviews about movies and music; Entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; Online journals, "..."; provision of non-downloadable films and television programs via a video-on-demand service". Opposer's application for this registration was filed on December 2, 2009 and matured to registration on May 22 2012.

2. Opposer is the owner of the trademark BOXXY for various goods and services including, inter alia, "On-line retail store services featuring consumer goods in the fields of audio, video, and visual arts. ..." Entertainment services, namely, an online activity where you create your own music videos;

Entertainment services, namely, providing a radio program in the field of music, concerts, videos, photography, media and film via a global computer network; "..."; Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; Entertainment services, namely, providing on-line reviews about movies and music; Entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; "..."; provision of non-downloadable films and television programs via a video-on-demand service; "..."; Providing advertising service to distribute advertisements for display on Internet; "..."; Providing a website featuring non-downloadable videos; Providing a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for entertainment purposes; Providing on-line directory information services also featuring hyperlinks to other web sites; "..."; Dissemination of advertising for others via an online communications network on the Internet" and has been continuously using the BOXXY mark since at least as early as January 15 2006

3. Opposer is the owner of the BOXXY trademark Application 77917469. Opposer has adopted and has filed its BOXXY trademark, including, inter alia, BOXXY Application number 77917469 for various goods and services, including, inter alia "Computer Software which works as a digital jukebox; Downloadable video recordings; "..."; Computer Software, namely, software allowing users to remotely control music and videos on computers; "..."; "Computer Software for synchronizing to computer applications and network environments to and from networks and wireless devices, namely, handheld computers, personal digital assistants, mobile telephones, laptop computers, and other wireless computing devices; "..."; "Gaming devices, namely, video game consoles and interfaces; "..."; Providing a website featuring non-downloadable videos; Providing a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for

entertainment purposes; Providing on-line directory information services also featuring hyperlinks to other web sites; "...”Providing a web site that gives computer users the ability to upload, exchange and share photos, videos and other content; Providing a web site and system that gives computer users the ability to upload and share user-generated videos, essays and articles on a wide variety of topics and subjects; Providing a web site that gives computer users the ability to upload and share videos and other media content;”...”Dissemination of advertising for others via an online communications network on the Internet”( the "BOXXY Mark").

3. Opposer is the owner of the BOXXY trademark, including, inter alia, Canadian application APPLICATION NUMBER: 1462301 filed on December 10th, 2009 for similar goods and services as the above.

4. Opposer owns and operates the website ([www.BOXXY.com](http://www.BOXXY.com)) where it promotes various goods and services, and also provides information on its BOXXY branded services and goods which originate with or are authorized by opposer, since at least as early Jan 15 2006.

5. Opposer has for many years, and since prior to any date of first use upon which Applicant can rely upon, adopted and continuously used the term “BOXXY” as a trademark for a variety of services and goods, including ,inter alia “telecommunication services, and transmission of videos and content via computers and other communication networks.

6. Opposer's BOXXY Mark has been featured online, including on various websites , including, inter alia, [www.boxxy.com](http://www.boxxy.com) .

7. Opposer has advertised , promoted, and marketed its BOXXY Mark for

various goods and services including , inter alia, "Telecommunication services, namely, electronic transmission of streamed and downloadable audio and video files and content via computer and other communications networks;" ...""..."Providing a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for entertainment purposes; Providing on-line directory information services also featuring hyperlinks to other web sites; "...”Providing a web site that gives computer users the ability to upload, exchange and share photos, videos and other content;”..." Providing a web site that gives computer users the ability to upload and share videos and other media content;”..."Dissemination of advertising for others via an online communications network on the Internet”" in the United States so as to identify goods and services which originate with or are authorized by Opposer prior to any of applicant's applications or dates of first use .

8. Upon information and belief , on September 24, 2010, applicant filed an intent-to use application to register the mark BOXEE for " Remote controls for televisions; media players; hardware, namely, set-top boxes and digital TV tuners for allowing users to access and view movies, television shows and video from the internet on a television screen" in International Class 009 . This application was assigned serial no. 85137251 and was published for opposition in the official gazette of December 25 2012

9. Since prior to Applicant's filing date, Opposer has used, advertised , applied for, and promoted the mark "BOXXY" for goods and services including , inter alia, "Telecommunication services, namely, electronic transmission of streamed and downloadable audio and video files and content via computer and other communications networks;" ..." Providing a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for entertainment purposes; Providing on-line directory information services also featuring hyperlinks to

other web sites; "...”Providing a web site that gives computer users the ability to upload, exchange and share photos, videos and other content; Providing a web site and system that gives computer users the ability to upload and share user-generated videos, essays and articles on a wide variety of topics and subjects; Providing a web site that gives computer users the ability to upload and share videos and other media content;"

10. Opposer's date of first use of its mark is prior to the filing date of the Applicant's Intent to Use Application . As a result, Opposer has priority of use and owns the senior rights to the mark BOXXY.

11. Opposer's applications, and registrations were filed long prior to any any dates of application upon which applicant can rely on, thus giving it priority and seniority over Applicant.

12. Opposer's date of first use predate any use by applicant, thus giving Opposer priority and seniority over applicant.

13. Opposer's BOXXY Mark has been featured online commencing prior to the Applicant's filing date.

14. Starting prior to Applicant's filing date, Opposer has used, and is currently using, Opposer's mark in connection with goods and services that include or are closely related to the goods included in Applicant's proposed goods .

15. Applicant has no connection with Opposer and Opposer has not given permission to Applicant to use the Opposed mark.

16. Applicant has no connection with Opposer and no license was granted to Applicant to use the Opposed Mark.

17. Applicant's use or proposed of the BOXEE mark for " Remote controls for televisions; media players; hardware, namely, set-top boxes and digital TV tuners for allowing users to access and view movies, television shows and video from the internet on a television screen" constitutes use of a mark that is confusingly similar to Opposer's BOXXY mark.

18. The BOXEE Mark is virtually identical to Opposer's mark in , spelling and appearance, and identical in sound. Furthermore, Applicant's mark subsumes Opposer's BOXXY Mark. Also, the goods and/or services covered by Applicant's BOXEE Mark are virtually identical and /or related to those of Opposer. This would likely confuse and/or deceive the average purchaser into believing that Applicant's goods and services marketed and sold under the BOXEE Mark also originate with or are authorized or endorsed by Opposer.

19. The BOXEE mark's resemblance to Opposer's mark is likely, when applied to the proposed goods or services of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage to Opposer and Opposer's reputation.

20. Applicant's Mark's extreme similarity to Opposer's Mark. When applied to the highly related of goods and services offered under Applicant's and Opposer's respective marks, is likely to cause confusion or mistake or to deceive purchasers as to the sponsorship , origin, or source of the goods and services.

21. Applicant's goods and/or services are likely to be offered in trade channels and markets closely related to those of opposer.

22. As a result of the similarity between Opposer's Marks and Applicant's Mark, and the highly related nature of the goods and services offered by Opposer and Applicant under their respective marks, Applicant's mark is likely to cause confusion, mistake or deception in the trade and among customers as to the source ,origin or sponsorship of the parties respective goods and services.

23. The opposed Mark so closely resembles Opposers previously used mark that its use, in connection with the goods listed in the Application, is likely to cause confusion, or to cause mistake or deceive, in violation Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a). Purchasers may likely assume that Opposer is affiliated with, endorses, or licenses, Applicant's use of the Opposed Mark, when Opposer is not connected to the Applicant or the use of the Opposed Mark.

24. Additionally, Opposed Mark so closely resembles Opposer's previously used mark that its use, in connection with the goods listed in the Application, is likely to cause confusion, or to cause mistake or deceive, in violation Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d). Purchasers may likely assume that Opposer is affiliated with, endorses, or licenses, Applicant's use of the Opposed Mark, when Opposer is not connected to the Applicant or the use of the Opposed Mark.

25.Registration of the mark in the application and use of Applicant's mark are likely to dilute Opposer's BOXXY Marks, resulting in damage to Opposer, its good will and the strength and value of Opposer's

mark.

26. Pursuant to the above allegations, A very strong likelihood of confusion thus exists under Section 2(d) of the Trademark Act between Applicant's mark and Opposer's mark and Registration of applicant's mark will result to substantial damage to opposer under the provisions of §2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and §43(c) of the Lanham Act, 15 U.S.C. §1125(c)

27. Opposer has invested considerable efforts and resources in developing the BOXXY brand and in promoting and advertising its services and products with consumers. In light of this, if the Applicant's Intent to Use Application were to proceed to registration, the Applicant would obtain exclusive rights for the mark which would trump and render obsolete the rights the Opposer has rightfully established , worked for, and is entitled to.

28. Opposer's date of first use for the Mark BOXXY predates the filing date of the Application for the mark BOXEE. As a result, registration of the Opposed Mark would be inconsistent with Opposer's senior rights at common law and trademark law. Registration of the mark in the Application and use of Applicant's Mark will cause harm to opposer.

29. If the applicant's application is permitted to register and be used by applicant , this would lead to confusion in trade which would result in irreparable damage and injury to opposer due to the similarities between Applicant and Opposer's marks and services and/or goods offered. Objections , defects or faults found with Applicant's goods and/or services would be reflected on the reputation of opposer's reputation and brand.

30. If the application is permitted to register, the registration would presumptively

entitle Applicant to prima facie exclusive ownership and rights to the mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant's goods and Opposer's Goods and Services and the relationship of Opposer to Applicant, therefore damaging Opposer's goodwill in Opposer's Mark, diluting the value thereof , and resulting in irreparable harm to Opposer's business and reputation, all to the detriment of Opposer.

31. Opposer does not believe Applicant had a bona fide intent to use its applied for mark on the goods and/or services in the application at the date it applied for its mark, and based on this, Opposer requests that registration of U.S. Trademark Application Serial No. (85137251) be denied.

WHEREFORE , Opposer believes that it will be damaged by the registration of the Applicant's mark, and prays that this Opposition be sustained and that the registration of U.S. Trademark Application Serial No. (85137251) be denied.

DATED this 23 day of June , 2013

Respectfully submitted,

/Alex Mateesco/

President for Opposer

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Boxee, Inc. by mailing said copy on June 23 2013 via First Class Mail, postage prepaid to:

Boxee, Inc

4th Floor 57 W. 16th Street

New York NEW YORK 10011

/Alex Mateesco/

Alex Mateesco

President for Opposer

June 23 2013