

ESTTA Tracking number: **ESTTA651471**

Filing date: **01/21/2015**

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	Voyetra Turtle Beach, Inc.
Granted to Date of previous extension	01/21/2015
Address	100 Summit Lake Drive, Suite 100 Valhalla, NY 10595 UNITED STATES
Attorney information	Susan Hwang Sheppard, Mullin, Richter & Hampton LLP 333 South Hope Street, 43rd Floor Los Angeles, CA 90071 UNITED STATES laipdocketing@smrh.com, shwang@sheppardmullin.com Phone:(213) 620-1780

Applicant Information

Application No	86259098	Publication date	09/23/2014
Opposition Filing Date	01/21/2015	Opposition Period Ends	01/21/2015
Applicant	D.M. Merchandising, Inc. 835 N Church Court Elmhurst, IL 60126 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Ear buds; Headphones

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.	4091021	Application Date	06/23/2011
Registration Date	01/24/2012	Foreign Priority Date	NONE
Word Mark	TURTLE BEACH		

Design Mark	<h1>TURTLE BEACH</h1>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2005/03/28 First Use In Commerce: 2005/03/28 DIGITAL MUSIC PLAYERS AND RECORDERS; COMPUTER CONTROLLERS FOR REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; RF AUDIO TRANSMITTERS; REMOTE CONTROLS FOR CD PLAYERS, FOR DVD PLAYERS AND FOR COMPUTERS; COMPUTER PERIPHERALS FOR CONNECTING PERSONAL COMPUTERS TO CONSUMER ELECTRONICS HOME ENTERTAINMENT PRODUCTS; SOFTWARE FOR CONTROLLING REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; COMPUTER VOICE ANNOTATION PROGRAMS; LOUDSPEAKERS; CD RECORDERS AND PLAYERS; MP3, CD, DVD AND COMPUTER RECORDERS, SAMPLERS AND COMPOSING INTERFACES FOR COMPUTERS; PRERECORDED SOUND SAMPLES ON CD, DVD AND COMPUTER MEMORIES IN THE FIELD OF MUSIC; MUSIC TEACHING SOFTWARE; HOME ENTERTAINMENT SYSTEMS CONTROLLERS; SOUND CARDS FOR COMPUTERS AND VIDEO GAMES; COMPUTER GAME PLAYERS AND SOFTWARE; DIGITAL AUDIO PLAYBACK DEVICE IN THE NATURE OF A NETWORK DIGITAL MUSIC PLAYER FOR CONNECTION TO HOME STEREO EQUIPMENT AND CONNECTABLE TO A PERSONAL COMPUTER FOR TRANSFER TO AUDIO DATA FROM THE PERSONAL COMPUTER TO THE DEVICE FOR DECODING TO PRODUCE AN ACOUSTIC OUTPUT THROUGH THE HOME STEREO EQUIPMENT; COMPUTER PROGRAMS FOR CONTROLLING SETTINGS ON PC SOUND CARDS; MUSIC SYNTHESIZERS; MUSIC INTERFACES FOR COMPUTERS; EARPHONES, HEADPHONES

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TURTLE BEACH		
Goods/Services	Ear buds		

Attachments	85353878#TMSN.png(bytes) 203234- Beach Buds NotOfOppn.pdf(214528 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	/Susan Hwang/
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Name	Susan Hwang
Date	01/21/2015

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

Voyetra Turtle Beach, Inc.)	Opposition No. _____
)	
Opposer,)	Serial No. 86/259,098
)	
v.)	Filed: April 22, 2014
)	
D.M. Merchandising, Inc.,)	Mark: BEACH BUDS
)	
Applicant.)	Published: September 23, 2014
)	
_____)	

NOTICE OF OPPOSITION

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

Madam:

Opposer, Voyetra Turtle Beach, Inc., a corporation organized and existing under the laws of the State of Delaware, having a place of business at 100 Summit Lake Drive , Suite 100, Valhalla, New York 10595 ("Turtle Beach"), believes that it will be damaged by registration of the mark BEACH BUDS in International Class 9 for "Ear buds; Headphones," shown in application Serial No. 86/259,098, filed April 22, 2014 by Applicant, D.M. Merchandising, Inc. ("D.M. Merchandising"), upon information and belief a corporation organized and existing under the laws of the State of Illinois, having an address at 835 N Church Court, Elmhurst, Illinois 60126 ("D.M. Merchandising"), and hereby opposes the same.

As grounds for opposition, Opposer Turtle Beach alleges that:

1. Opposer Turtle Beach is engaged, among other things, in the business of manufacturing and selling headphones and earbuds, under its mark TURTLE BEACH.

2. Opposer Turtle Beach is the owner of U.S. Registration No. 4,091,021 for the mark TURTLE BEACH, registered on January 24, 2012 in connection with, *inter alia*, earphones and headphones in International Class 9 (“TURTLE BEACH Mark”). A true and correct copy of the registration certificate and the current TSDR printout is attached hereto as Exhibit A.

3. Opposer’s Registration No. 4,091,021 is valid, subsisting and in full force and effect under 15 U.S.C. § 1051, *et seq.*

4. Opposer Turtle Beach first used the mark TURTLE BEACH in the United States and in interstate commerce since at least as early as 2005, in connection with earphones and headphones, and intends to continue so using the mark TURTLE BEACH in the future.

5. Opposer Turtle Beach first used the mark TURTLE BEACH on a common law basis, in the United States and in interstate commerce, since at least as early as 2012 in connection with earbuds, and intends to continue so using the mark TURTLE BEACH in the future.

6. On April 22, 2014, Applicant D.M. Merchandising filed an application, Serial No. 86/259,098, with the U.S. Patent and Trademark Office to register BEACH BUDS in connection with “Ear buds; headphones” in International Class 9. The application asserts an intent-to-use filing basis.

7. Applicant D.M. Merchandising's application Serial No. 86/259,098 was published for opposition on September 24, 2014.

8. Opposer Turtle Beach, through the use of its TURTLE BEACH Mark, from a time prior to Applicant D.M. Merchandising's filing of its application to register the mark BEACH BUDS, and by virtue of the quality of Opposer Turtle Beach's goods, has built up a valuable goodwill and reputation in connection with its TURTLE BEACH Mark.

9. Opposer Turtle Beach's TURTLE BEACH Mark is a distinctive and strong mark.

10. Applicant D.M. Merchandising's proposed mark BEACH BUDS is identical and/or highly similar in appearance, sound, connotation, and commercial impression to Opposer Turtle Beach's TURTLE BEACH Mark.

11. Applicant D.M. Merchandising's goods and Opposer Turtle Beach's goods under their respective marks are identical and/or similar.

12. Opposer Turtle Beach believes that it will be damaged by the registration of Applicant D.M. Merchandising's proposed mark BEACH BUDS and opposes application Serial No. 86/259,098 because Applicant D.M. Merchandising's registration and use of its proposed mark BEACH BUDS in connection with the goods set forth in application Serial No. 86/259,098 is likely to cause confusion, to cause mistake, and to deceive customers, potential customers and others, thereby injuring Opposer Turtle Beach and the consuming public and jeopardizing the valuable goodwill and reputation Opposer Turtle Beach has built up in connection with its TURTLE BEACH Mark.

13. Accordingly, for each and every reason stated above, Opposer Turtle Beach believes that it will be damaged by the registration of Applicant D.M. Merchandising's BEACH BUDS mark and opposes application Serial No. 86/259,098.

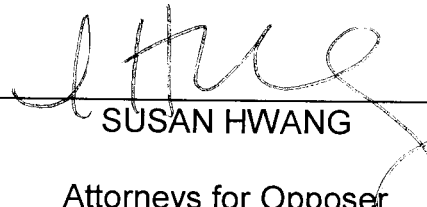
WHEREFORE, Opposer Turtle Beach prays that this opposition be sustained and that the registration of Applicant D.M. Merchandising's BEACH BUDS mark in application Serial No. 86/259,098 be refused. Opposer requests that the Board charge Deposit Account No. 19-1853 for the filing fee of \$300 under 37 C.F.R. § 2.6(a)(17) and any additional fees as necessary.

January 21, 2015

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: _____




SUSAN HWANG

Attorneys for Opposer
Voyetra Turtle Beach, Inc.

333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Telephone: (213) 620-1780
Facsimile: (213) 620-1398

CERTIFICATE OF TRANSMISSION

I hereby certify that this Notice of Opposition is being transmitted electronically through the ESTTA Filing System to the United States Patent and Trademark Office on this day, January 21, 2015.



Susan Hwang

CERTIFICATE OF SERVICE

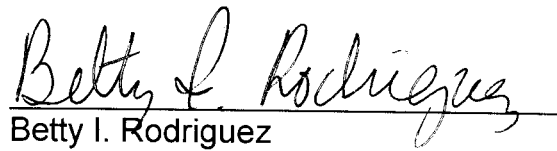
I hereby certify that this Notice of Opposition is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to counsel for applicant, on this day, January 21, 2015:

Harold J. Fassnacht

Miller, Matthias & Hull, LLP

1 N Franklin St Ste 2350

Chicago, Illinois 60606-3549



Betty I. Rodriguez

Exhibit A

United States of America

United States Patent and Trademark Office

TURTLE BEACH

Reg. No. 4,091,021

Registered Jan. 24, 2012

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

VOYETRA TURTLE BEACH, INC. (DELAWARE CORPORATION)
SUITE 162
150 CLEARBROOK ROAD
ELMSFORD, NY 10523

FOR: DIGITAL MUSIC PLAYERS AND RECORDERS; COMPUTER CONTROLLERS FOR REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; RF AUDIO TRANSMITTERS; REMOTE CONTROLS FOR CD PLAYERS, FOR DVD PLAYERS AND FOR COMPUTERS; COMPUTER PERIPHERALS FOR CONNECTING PERSONAL COMPUTERS TO CONSUMER ELECTRONICS HOME ENTERTAINMENT PRODUCTS; SOFTWARE FOR CONTROLLING REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; COMPUTER VOICE ANNOTATION PROGRAMS; LOUDSPEAKERS; CD RECORDERS AND PLAYERS; MP3, CD, DVD AND COMPUTER RECORDERS, SAMPLERS AND COMPOSING INTERFACES FOR COMPUTERS; PRERECORDED SOUND SAMPLES ON CD, DVD AND COMPUTER MEMORIES IN THE FIELD OF MUSIC; MUSIC TEACHING SOFTWARE; HOME ENTERTAINMENT SYSTEMS CONTROLLERS; SOUND CARDS FOR COMPUTERS AND VIDEO GAMES; COMPUTER GAME PLAYERS AND SOFTWARE; DIGITAL AUDIO PLAYBACK DEVICE IN THE NATURE OF A NETWORK DIGITAL MUSIC PLAYER FOR CONNECTION TO HOME STEREO EQUIPMENT AND CONNECTABLE TO A PERSONAL COMPUTER FOR TRANSFER TO AUDIO DATA FROM THE PERSONAL COMPUTER TO THE DEVICE FOR DECODING TO PRODUCE AN ACOUSTIC OUTPUT THROUGH THE HOME STEREO EQUIPMENT; COMPUTER PROGRAMS FOR CONTROLLING SETTINGS ON PC SOUND CARDS; MUSIC SYNTHESIZERS; MUSIC INTERFACES FOR COMPUTERS; EARPHONES, HEADPHONES, IN CLASS 9 (U.S. C.I.S. 21, 23, 26, 36 AND 38).



FIRST USE 3-28-2005; IN COMMERCE 3-28-2005.

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

OWNER OF U.S. REG. NO. 2,683,185.

SER. NO. 85-353,878, FILED 6-23-2011.

JIM RINGLE, EXAMINING ATTORNEY

David J. Kybas

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Generated on: This page was generated by TSDR on 2015-01-21 16:43:27 EST

Mark: TURTLE BEACH

TURTLE BEACH

US Serial Number: 85353878

Application Filing Date: Jun. 23, 2011

US Registration Number: 4091021

Registration Date: Jan. 24, 2012

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jan. 24, 2012

Publication Date: Nov. 08, 2011

Mark Information

Mark Literal Elements: TURTLE BEACH

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 2683185

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: DIGITAL MUSIC PLAYERS AND RECORDERS; COMPUTER CONTROLLERS FOR REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; RF AUDIO TRANSMITTERS; REMOTE CONTROLS FOR CD PLAYERS, FOR DVD PLAYERS AND FOR COMPUTERS; COMPUTER PERIPHERALS FOR CONNECTING PERSONAL COMPUTERS TO CONSUMER ELECTRONICS HOME ENTERTAINMENT PRODUCTS; SOFTWARE FOR CONTROLLING REPRODUCING, PRODUCING AND RECORDING MUSIC AND GENERATING MUSIC NOTATION; COMPUTER VOICE ANNOTATION PROGRAMS; LOUDSPEAKERS; CD RECORDERS AND PLAYERS; MP3, CD, DVD AND COMPUTER RECORDERS, SAMPLERS AND COMPOSING INTERFACES FOR COMPUTERS; PRERECORDED SOUND SAMPLES ON CD, DVD AND COMPUTER MEMORIES IN THE FIELD OF MUSIC; MUSIC TEACHING SOFTWARE; HOME ENTERTAINMENT SYSTEMS CONTROLLERS; SOUND CARDS FOR COMPUTERS AND VIDEO GAMES; COMPUTER GAME PLAYERS AND SOFTWARE; DIGITAL AUDIO PLAYBACK DEVICE IN THE NATURE OF A NETWORK DIGITAL MUSIC PLAYER FOR CONNECTION TO HOME STEREO EQUIPMENT AND CONNECTABLE TO A PERSONAL COMPUTER FOR TRANSFER TO AUDIO DATA FROM THE PERSONAL COMPUTER TO THE DEVICE FOR DECODING TO PRODUCE AN ACOUSTIC OUTPUT THROUGH THE HOME STEREO EQUIPMENT; COMPUTER PROGRAMS FOR CONTROLLING SETTINGS ON PC SOUND CARDS; MUSIC SYNTHESIZERS; MUSIC INTERFACES FOR COMPUTERS; EARPHONES, HEADPHONES

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 28, 2005

Use in Commerce: Mar. 28, 2005

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: VOYETRA TURTLE BEACH, INC.

Owner Address: suite 162

150 Clearbrook Road
Eimsford, NEW YORK 10523
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Susan Hwang

Docket Number: 40ZE-200435

Attorney Primary Email Address: laipdocketing@smrh.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Susan Hwang
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CALIFORNIA 90071
UNITED STATES

Phone: (213) 620-1780

Fax: (213) 620-1398

Correspondent e-mail: laipdocketing@smrh.com shwang@sheppardmullin.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 21, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 21, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Apr. 09, 2014	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 24, 2012	REGISTERED-PRINCIPAL REGISTER	
Nov. 08, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 08, 2011	PUBLISHED FOR OPPOSITION	
Oct. 06, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 06, 2011	ASSIGNED TO EXAMINER	78325
Jun. 29, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 27, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 24, 2012

Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Registrant: VOYETRA TURTLE BEACH, INC.

Assignment 1 of 3

Conveyance: SECURITY INTEREST

Reel/Frame: [4848/0061](#)

Pages: 7

Date Recorded: Aug. 23, 2012

Supporting Documents: [assignment-tm-4848-0061.pdf](#)

Assignor

Name: [VOYETRA TURTLE BEACH, INC.](#)

Execution Date: Aug. 22, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [PNC BANK](#)

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized: UNITED STATES

Address: 500 FIRST AVENUE

PITTSBURGH, PENNSYLVANIA 15219

Correspondent

Correspondent Name: JONES DAY
Correspondent Address: 901 LAKESIDE AVENUE
NORTH POINT
CLEVELAND, OH 44114-1190

Domestic Representative - Not Found

Assignment 2 of 3

Conveyance: TERMINATION AND RELEASE OF IP SECURITY AGREEMENT
Reel/Frame: 5251/0825 **Pages:** 7
Date Recorded: Apr. 04, 2014
Supporting Documents: assignment-tm-5251-0825.pdf

Assignor

Name: PNC BANK **Execution Date:** Mar. 31, 2014
Legal Entity Type: NATIONAL ASSOCIATION, AS AGENT **State or Country Where Organized:** No Place Where Organized Found

Assignee

Name: VOYETRA TURTLE BEACH, INC.
Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE
Address: 100 SUMMIT LAKE DRIVE, SUITE 100
VAHALLA, NEW YORK 10594

Correspondent

Correspondent Name: BUCHALTER NEMER (EVANGELINE TSANG)
Correspondent Address: 1000 WILSHIRE BOULEVARD, SUITE 1500
LOS ANGELES, CA 90017

Domestic Representative - Not Found

Assignment 3 of 3

Conveyance: MEMORANDUM AND NOTICE OF SECURITY INTEREST IN INTELLECTUAL PROPERTY
Reel/Frame: 5251/0838 **Pages:** 7
Date Recorded: Apr. 04, 2014
Supporting Documents: assignment-tm-5251-0838.pdf

Assignor

Name: VOYETRA TURTLE BEACH, INC. **Execution Date:** Mar. 31, 2014
Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Assignee

Name: BANK OF AMERICA, N.A., AS AGENT
Legal Entity Type: NATIONAL BANKING ASSOCIATION **State or Country Where Organized:** UNITED STATES
Address: 333 SOUTH HOPE STREET, SUITE 1300
LOS ANGELES, CALIFORNIA 92064

Correspondent

Correspondent Name: BUCHALTER NEMER (EVANGELINE TSANG)
Correspondent Address: 1000 WILSHIRE BOULEVARD, SUITE 1500
LOS ANGELES, CA 90017

Domestic Representative - Not Found