

ESTTA Tracking number: **ESTTA722956**

Filing date: **01/27/2016**

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                                  | G. Michael Roebuck,P.C.  |
| Granted to Date of previous extension | 02/24/2016   |
| Address                               | 6750 West Loop SouthSuite 920<br>Bellaire, TX 77401<br>UNITED STATES |

|                      |   |
|----------------------|---|
| Attorney information | G. Michael Roebuck<br>Michael Roebuck, PC<br>6750 West Loop SouthSuite 920<br>Bellaire, TX 77401<br>UNITED STATES<br>mroebuck@roebuckiplaw.com Phone:7133763053 |
|----------------------|---|

**Applicant Information**

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 86609919  | Publication date       | 10/27/2015 |
| Opposition Filing Date | 01/27/2016  | Opposition Period Ends | 02/24/2016 |
| Applicant              | Wild Rabbit LLC<br>PO Box 2058<br>Bellingham, WA 98227<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

|   |
|---|
| Class 009. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Audio and video recordings featuring music and artistic performances |
| Class 041. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Entertainment, namely, live music concerts                           |

**Grounds for Opposition**

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

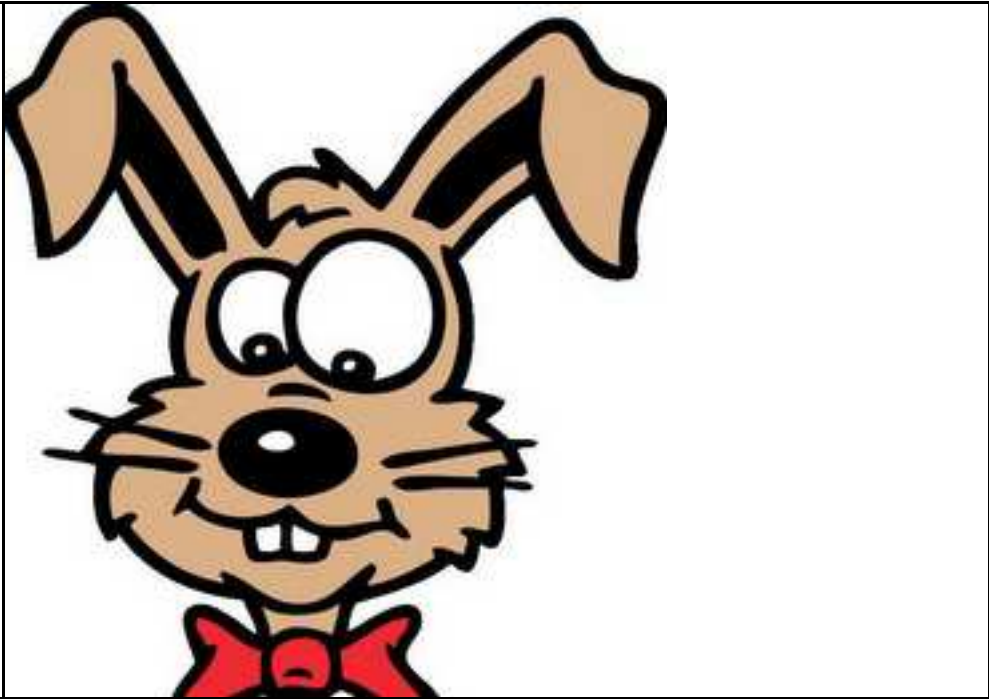
**Marks Cited by Opposer as Basis for Opposition**

|                      |             |                       |            |
|----------------------|-------------|-----------------------|------------|
| U.S. Application No. | 86672357    | Application Date      | 06/24/2015 |
| Registration Date    | NONE        | Foreign Priority Date | NONE       |
| Word Mark            | WILD RABBIT |                       |            |

|                     |   |  |  |
|---------------------|---|--|--|
| Design Mark         | <h1>Wild Rabbit</h1>  |  |  |
| Description of Mark | NONE  |  |  |
| Goods/Services      | Class 041. First use: First Use: 0 First Use In Commerce: 0<br>Entertainment, namely, live performances by a musical band |  |  |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 4055935   | Application Date      | 03/29/2011 |
| Registration Date     | 11/15/2011  | Foreign Priority Date | NONE       |
| Word Mark             | WILD RABBIT SALAD   |                       |            |
| Design Mark           | <h1>WILD RABBIT SALAD</h1>  |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 041. First use: First Use: 2009/09/18 First Use In Commerce: 2009/09/18<br>Entertainment, namely, live performances by a musical band |                       |            |

|                      |          |                       |            |
|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86574463 | Application Date      | 03/24/2015 |
| Registration Date    | NONE     | Foreign Priority Date | NONE       |
| Word Mark            | NONE     |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | The mark consists of a cartoon smiling rabbit with floppy ears, buck teeth, large eyes , one eye larger than the other and wearing a bow tie.   |
| Goods/Services      | Class 025. First use: First Use: 2011/12/31 First Use In Commerce: 2015/03/24<br>Graphic T-shirts; Shirts<br>Class 041. First use: First Use: 2011/12/31 First Use In Commerce: 2011/12/31<br>Entertainment services in the nature of live music by a musical group |

|             |  |
|-------------|--|
| Attachments | 86672357#TMSN.png( bytes )<br>85280374#TMSN.png( bytes )<br>86574463#TMSN.png( bytes )<br>Notice of Opposition 1.27.2016 AsFiled.pdf(38847 bytes ) |
|-------------|--|

### 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 | /G. Michael Roebuck/ |
| Name      | G. Michael Roebuck   |
| Date      | 01/27/2016           |

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

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| G. Michael Roebuck, PC,<br>Opposer, | § | Mark: RABBIT WILDE    |
|                                     | § |                       |
|                                     | § |                       |
| vs                                  | § | Serial No. 86609919   |
|                                     | § |                       |
| Wild Rabbit, LLC                    | § | Filed: April 25, 2015 |
|                                     | § |                       |
|                                     | § | Opposition No.        |

**APPLICANT’S NOTICE OF OPPOSITION**

In the matter of application Serial No. 86609919 filed on April 25, 2015 by Applicant, Wild Rabbit, LLC (Applicant), DBA Rabbit Wilde, PO Box PO Box 2058, Bellingham, WA 98227 a Washington Corporation to register Rabbit Wilde as trademark for use in connection with “Entertainment, namely, live music concerts” in Class 41 and “Audio and video recordings featuring music and artistic performances” in Class 9, which was published in the Official Gazette on October 27, 2015, in which Opposer G. Michael Roebuck, PC, a Professional Corporation whose address is 6750 West Loop South, Suite 920, Bellaire, Texas 77401, Opposer has filed extensions of time for 90 days to file a notice of opposition, which was granted until February 24, 2016. Opposer files this Notice of Opposition.

Opposer pleads and avers as follows:

1. Opposer has obtained the necessary extension of 30 plus 60 days to within which to file this Notice of Opposition.
2. Opposer owns 1 trademark registration, 4 trademark applications and common law rights, in the Marks “Wild Rabbit Salad” and “Wild Rabbit” in classes 9 and 41, and the Wild Rabbit Logo described below and hereinafter collectively referred to herein as “The

Opposer's Marks". Opposer owns the trademark registration no 4055935 "Wild Rabbit Salad" for "Entertainment, namely, live performances by a musical band" Registered on November 15, 2011. Opposer has used the mark "Wild Rabbit Salad" in commerce in the class 41 for "Entertainment, namely, live performances by a musical band" continuously at least as early as September 18, 2009. Applicant filed for the registration on March 29, 2011.

3. Opposer owns the trademark application no 86672357 for Wild Rabbit.
4. Venues and fans have referred to the Wild Rabbit Salad band as "Wild Rabbit" or the "Wild Rabbits".
5. Opposer owns the trademark application no 86574463 for the Wild Rabbit Logo.
6. Opposer owns the common law rights in the mark "Wild Rabbit Salad" for "Audio and video recordings featuring music and artistic performances" in Class 9. Opposer has used the mark Wild Rabbit Salad in commerce in the class 41 for "Audio and video recordings featuring music and artistic performances" continuously. Opposer owns the proprietary common law rights to the Opposer's marks, Wild Rabbit, Wild Rabbit Salad and Wild Rabbit Logo based on Opposer's use of the marks in commerce in the classes of Live Musical Performances by a band, Musical Recordings and Tee shirts.
7. There is no issue as to priority as Opposer has been using the mark since 2009, long before the Applicant adopted the mark.
8. The Applicant is seeking registration in same classes 9 and 41 as described above that the Opposer possesses registered and common law rights in the Opposer's Marks, "Wild Rabbit Salad" and "Wild Rabbit" and the Wild Rabbit Logo.

9. The Opposer's marks are strong arbitrary marks deserving broad protection. The Opposer's mark are strong also because the Opposer has continuously spent money on advertising, promoted and advertised the Opposer's marks on good and services for live musical performances and musical recordings using the mark.
10. There has been actual confusion between the registered mark "Wild Rabbit Salad" and the proposed mark "Rabbit Wilde". This actual confusion between Wild Rabbit Salad and Rabbit Wilde to the extent that a consumer to whom Wild Rabbit Salad was recommended, wanted to purchase music from Wild Rabbit Salad, was confused and mistakenly went to purchase a Rabbit Wilde CD thinking they were Wild Rabbit Salad and that Wild Rabbit Salad had changed its name to Rabbit Wilde.
11. The dominant feature of the Opposer's Marks "Wild Rabbit Salad" and "Wild Rabbit" is "Wild Rabbit". The dominant feature of the Applicant's proposed mark "Rabbit Wilde" is "Wild Rabbit". Applicant's dominant feature for the Opposer's marks and the dominant feature for Applicant's proposed Mark "Rabbit Wilde" are essentially identical. Reversing the order of elements in a mark, does nothing to avoid confusion between the reversed elements from the mark. i.e., changing "Wild Rabbit" to "Rabbit Wilde", does not address the Applicant's obligation to avoid confusion with a senior mark.
12. The Applicant has an obligation to avoid confusion with a senior mark, however, instead of avoiding confusion, he Applicant is inducing confusion between the Opposer's mark and the Applicant's proposed mark. Searches for Wild Rabbit on Face Book, Google and Bing point to Rabbit Wilde. Applicant is redirecting internet traffic, for example, the Applicant's web site and music using the meta tag "Wild Rabbit" in its Rabbit Wilde website and has apparently created meta tags "Wild Rabbit" on Facebook, Twitter,

Instagram, YouTube, Magnify, Spotify and iTunes, Kickstarter, Magnifi.FM as both Google searches and Bing searches for “Wild Rabbit” redirect the searcher to Applicant’s “Rabbit Wilde” web site and music on iTunes, Spotify and other music performance and music streaming and music selling web sites and services. The Opposer uses the same channels of trade and advertising to market Opposer’s own recorded music and live musical performances. Applicant is selling CDs and music online using the mark Wild Rabbit. WildRabbitMusic, Wild Rabbit, LLC, Wild Rabbit are all confusingly similar to the Opposer’s marks.

13. Applicant is still using willdrabbitmusic.com and has named its company Wild Rabbit, LLC, which was hastily formed after abandoned its original name, “Bre’r Rabbit” it had been using for two years. Applicant had been using the mark Wild Rabbit for about 1 month when Opposer sent a demand letter to cease and desist using the name “Wild Rabbit”, which was followed by the federal law suit for trademark infringement and cancellation of the Applicant’s application for the mark “Wild Rabbit”.
14. Opposer sued Applicant in Federal Court for Trademark infringement for using the mark Wild Rabbit. The Applicant had applied for a trademark for “Wild Rabbit” in classes 9 and 41 as described above, serial number 86564331, now cancelled by Applicant. Opposer dismissed the suit without prejudice to pursue the issue of likelihood of confusion and seniority on the applied for mark in the Trademark Trial and Appeal board. Opposer advised the Applicant that Opposer had dismissed the suit and would instead pursue the issue of likelihood of confusion and seniority in the Trademark Trial and Appeal board. The Applicant then summarily cancelled Applicant’s trademark application serial number 86564331 for the Wild Rabbit mark. The Applicant also filed a

trademark application for the mark now opposed, Rabbit Wilde. Opposer had previously told the Applicant that reversing the order of the elements of the mark from Wild Rabbit to Rabbit Wilde had little or no bearing or significance in avoiding a likelihood of confusion with the Opposer's marks. Applicant's attorney stated that the Applicant chose the "Rabbit Wilde" mark so that their fans who knew them as "Wild Rabbit" would not be too confused.

15. Upon information and belief, Applicant's cancellation of its trademark application for the mark "Wild Rabbit" and adaptation of the mark "Rabbit Wilde" with knowledge that the Applicant's application for the mark "Wild Rabbit" would be opposed constitutes prejudice and an admission against interest by the Applicant that the Applicant's applied for mark for "Wild Rabbit" is confusingly similar to the registered mark "Wild Rabbit Salad". Likewise, the applied for mark of the elements reversed, "Rabbit Wilde" is confusingly similar with the mark registered Wild Rabbit Salad as well as Opposer's other registered, applied for and common law rights in the Opposer's marks. Reversal of the elements of a mark of the mark does little or nothing to obviate a likelihood of confusion. Opposer communicated with the Applicant and cited case law regarding the negligible effect of reversing the elements of the mark to avoid confusion and requested that Applicant not choose the name Rabbit Wild. Moreover, adding the letter "e" to the reversed mark to form "Rabbit Wilde" has negligible effect on avoiding confusion between the marks as Rabbit Wild and Rabbit Wilde are phonetically identical.

16. Upon information and belief, there is a likelihood of confusion, mistake or deception as to the source or origin of Applicant's goods by creating the erroneous



impression that Applicant's goods originate with, are sponsored, approved, endorsed or licensed by, are affiliated or associate with, or are in some way connected to Opposer.

17. Upon information and belief, the granting of a trademark registration for the Rabbit Wilde mark to Applicant would be contrary to 15 USC § 1052(d) and would diminish the prior and superior rights of the Opposer the Opposer's Marks and in Opposer's "Wild Rabbit Salad" and "Wild Rabbit" and Logo trademarks. Upon information and belief there is likelihood of confusion, mistake or deception as to the source or origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored, approved, endorsed or licensed by, are affiliated or associate with, or are in some way connected to Opposer.

18. Upon information and belief, there is overlap between the goods and services listed in the Opposer's registrations and common law rights the Opposer's marks including but not limited to the Opposer's rights in the "Wild Rabbit Salad" and "Wild Rabbit" and Logo trademarks and Applicant's application. Thus the there is a basis for a likelihood of confusion the Opposer's registration and Applicant's application and the Opposition should be dismissed.

WHEREFORE, Applicant asks the opposition no. \_\_\_\_\_ to Application Serial Number 8609919 be granted and that the Applicant's proposed registration be refused in favor of Opposer.

Respectfully submitted,

Date: January 27, 2016

/G. Michael Roebuck/  
G. Michael Roebuck  
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Facsimile: 713-400-1106  
ATTORNEY FOR APPLICANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Opposer's Notice of Opposition has been served on opposing counsel by mailing said copy on January 27, 2016, via first class mailed, postage prepaid to the following:

Wild Rabbit LLC  
DBA Rabbit Wilde  
PO Box 2058  
Bellingham, WA 98227

JOSEPH D. BOWEN  
Attorney at Law, P.S.  
401 South 2nd Street  
Mount Vernon, Washington 98273

/G. Michael Roebuck/

G. Michael Roebuck

January 27, 2016

Date