

ESTTA Tracking number: **ESTTA763487**

Filing date: **08/09/2016**

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

Proceeding	91229067
Party	Defendant Kurt Schemers
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Submission	Answer
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Date	08/09/2016
Attachments	Answer to Notice of Opposition.pdf(106259 bytes )

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

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MINNESOTA PUBLIC RADIO,

Opposer,

v.

Opposition No. 91229067

KURT SCHEMERS,

Applicant.

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**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

In response to the Notice of Opposition (hereafter “Notice”) filed by MINNESOTA PUBLIC RADIO (hereafter “Opposer”) on July 20, 2016, the Applicant, KURT SCHEMERS (hereafter “Applicant”), answers the Notice identified above as follows:

1. In response to the allegations of paragraph 1 of the Notice, the Applicant is without knowledge.
2. In response to the allegations of paragraph 2 of the Notice, the Applicant is without knowledge.
3. In response to the allegations of paragraph 3 of the Notice, the Applicant is without knowledge.
4. In response to the allegations of paragraph 4 of the Notice, the Applicant is without knowledge.
5. In response to the allegations of paragraph 5 of the Notice, the Applicant is without knowledge.
6. Applicant denies the allegations of paragraph 6 of the Notice.

7. Applicant admits that he is an individual with a principal mailing address of 40001 N Curie Ct, Phoenix, AZ 85086. Any and all remaining allegations contained within paragraph 7 are denied.
8. Applicant admits that he is the owner of Application Serial No. 86/892,123, which was filed on January 30, 2016, and claims a date of first use of at least as early as January 21, 2005. Any and all remaining allegations contained within paragraph 8 are denied.
9. In response to the allegations of paragraph 9 of the Notice, the Applicant is without knowledge.
10. Applicant denies the allegations of paragraph 10 of the Notice.
11. Applicant denies the allegations of paragraph 11 of the Notice.
12. Applicant denies the allegations of paragraph 12 of the Notice.

**Affirmative Defenses**

In further answer to the Notice, the Applicant asserts that:

**First Affirmative Defense**

13. Opposer's Notice fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

**Second Affirmative Defense**

14. Upon information and belief, Opposer has no priority of use to the MARKET FLASH mark.

**Third Affirmative Defense**

15. There is no similarity between Applicant's MARKET FLASH mark and Opposer's mark as to appearance. Specifically, the Applicant's mark contains the additional word

FLASH. In contrast, the Opposer's mark contains the additional and different word PLACE.

#### Fourth Affirmative Defense

16. The Opposer's mark does not sound like the Applicant's mark. Specifically, the Applicant's mark forces the consumer to pronounce the additional word "flash" (*flash*). In strong contrast, the Opposer's mark forces the consumer to pronounce the different word "place" (*plās*).

#### Fifth Affirmative Defense

17. The connotation of Opposer's mark is fundamentally different from Applicant's mark. Namely, the Applicant's mark is for the phrase MARKET FLASH, which implies that Applicant's services are offered quickly, suddenly, and over a short period of time (i.e., in a flash). The Opposer's mark, however, is for the phrase MARKETPLACE, which not only lacks the impression created by use of the word "flash," but implies that Opposer's services are otherwise offered with particularity over a longer period of time (i.e., for a determined length of time with an emphasis on detail). Furthermore, the Applicant has disclaimed the word "MARKET" from the Application, meaning that the respective marks are properly evaluated as FLASH compared with PLACE. Accordingly, both marks carry significant differences in commercial impression.

#### Sixth Affirmative Defense

18. Purchasers of services sold along with the relevant marks are careful and sophisticated, thus making any confusion or mistake amongst potential overlapping consumers highly unlikely.

Seventh Affirmative Defense

19. The respective trademarks, as appears on each party's respective goods and services, do not create the same or overall commercial impression when viewed separately by the ordinary consumer.

Eighth Affirmative Defense

20. Ordinary Consumers would not confuse or conclude that the parties' products share a common source or affiliation or connection.

Ninth Affirmative Defense

21. On information and belief, Opposer's services are more expensive than that of the Applicant; thus, Consumers are unlikely to purchase Opposer's services supposing they derive from Applicant or vice versa.

Tenth Affirmative Defense

22. Opposer has no examples of any actual confusion amongst consumers with regards to Applicant's MARKET FLASH mark and Opposer's marks.

Applicant reserves the right to amend this Answer to assert any additional affirmative defenses arising from any applicable facts or law that may be revealed during discovery.

**Relief Requested**

**WHEREFORE**, the Applicant asks that this Opposition proceeding be dismissed forthwith.

By:           /Francis John Ciaramella/            
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and

By:           /Rick Ruz/            
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Dated: August 9, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on the following via first class mail:

Peter M. Routhier  
Faegre Baker Daniels LLP  
2200 Wells Fargo Center  
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Minneapolis, MN 55402

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