

ESTTA Tracking number: **ESTTA847837**

Filing date: **09/22/2017**

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	RLP Ventures, LLC
Granted to Date of previous extension	09/23/2017
Address	Times Square Station PO Box 2605 New York, NY 10108-2605 UNITED STATES

Correspondence information	RLP Ventures, LLC RLP Ventures, LLC Times Square Station PO Box 2605 New York, NY 10108-2605 UNITED STATES Email: rlpvllc@gmail.com
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Applicant Information

Application No	86865063	Publication date	07/25/2017
Opposition Filing Date	09/22/2017	Opposition Period Ends	09/23/2017
Applicant	ELLUM Audio LLC 15564 SW 12th Terrace Miami, FL 33194 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: Merchandise, namely, downloadable video-game programs, downloadable electronic publications in the nature of magazines in the field of nightclub parties, downloadable video recordings, downloadable electronic publications in the nature of magazines, blogs, and online journals in the field of nightclub parties, downloadable application software for smart phones for use in obtaining information about nightclub parties, and downloadable podcasts in the field of nightclub parties
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Arranging and conducting nightclub parties

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. Application No.	87226106	Application Date	11/04/2016
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MOSAEC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1998/09/00 First Use In Commerce: 1998/09/00 Computer application software for desktop computers and mobile devices, namely, software for compilations, rankings, ratings, reviews, referrals and recommendations relating to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation and leisure activities; Computer application software for desktop computers and mobile devices, namely, software for entering, accessing and tracking data related to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation, leisure activities and social networking; Computer application software for desktop computers and mobile devices, namely, software for uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; Computer application software for desktop computers and mobile devices, namely, software for displaying and sharing a user's location and finding, locating, and interacting with other users and places; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; Downloadable electronic newsletters in the field of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation and leisure activities; Downloadable mobile applications for entering, accessing and tracking data related to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation, leisure activities and social networking; Computer e-commerce software to allow users to perform electronic business transactions via a global computer network</p>		

U.S. Application No.	86587316	Application Date	04/03/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MOSAEC		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 041. First use: First Use: 1998/09/03 First Use In Commerce: 1998/09/03</p> <p>Entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; Entertainment services, namely, providing on-line reviews of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, and dance; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing information, news and commentary in the field of entertainment; Providing information, news and commentary in the field of recreation and leisure activities; Provision of information relating to children's entertainment</p>

Attachments	87226106#TMSN.png(bytes) 86587316#TMSN.png(bytes) Notice of Opposition re 86865063.pdf(245114 bytes)
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Signature	/Ramona Prioleau/
Name	RLP Ventures, LLC
Date	09/22/2017

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

<p>RLP Ventures, LLC</p> <p style="text-align: right;">Opposer,</p> <p style="text-align: center;">v.</p> <p>ELLUM Audio LLC</p> <p style="text-align: right;">Applicant.</p>	<p>Opposition No. _____</p> <p>Mark: MOSAIC BY MACEO Serial No. 86/865,063 Filed: January 4, 2016</p>
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NOTICE OF OPPOSITION

RLP Ventures, LLC (“Opposer”), a New York limited liability company, having an address at Times Square Station, P.O. Box 2605, New York, New York 10108-2605, believes that it will be damaged by registration of the mark shown in the above-identified application for the goods and services in International Classes 9 and 41, and hereby opposes the same.

The grounds for opposition are as follows:

Background on the Parties

A. The Opposer and the Origins of the Opposer’s Mark

1. The Opposer is the owner and operator of an entity that uses the trademark “MOSAEC” (“Opposer’s Mark”). The MOSAEC platform is a commerce, content, entertainment, advertising, technology and social media ecosystem that spotlights film, music, art, theater, dance, literature, fashion, sports and locales as well as recreational and leisure activities. In addition, via the MOSAEC platform, the Opposer distributes consumer goods, buys and sells advertising, and seeks funding from individuals, corporations and governments.

2. The MOSAEC ecosystem allows for the planning of recreational and leisure activities as well as includes downloadable applications related to games and electronic publications in the nature of magazines, blogs, and online journals in the field of recreational and leisure activities; downloadable application software for computers and mobile devices for use in obtaining information about recreational and leisure activities; and downloadable media in the field of recreational and leisure activities.

3. The use of the Opposer’s Mark commenced as early as September 1998. The concept for the MOSAEC platform was developed during calendar years 1996 – 1998. The MOSAEC-branded service was initially conceptualized in paper form and later transitioned to a digital

format. Aspects of the business plan and source code for the MOSAEC platform were developed by the Opposer during calendar years 1996 – 1999 during courses the Opposer’s owner took at New York University and other schools.

4. The MOSAEC platform was released first in a “beta” form during the fall of 1998. The beta version of the website was used, in part, to recruit talent, seek funding, and sell ads. The “gamma” version of the platform was launched in the spring of 1999. Since its 1999 launch, the MOSAEC platform has been accessible throughout the United States (including, without limitation, in Florida – the apparent base of operations for the Applicant) and internationally, with users engaging with the platform’s content and purchasing its consumer goods. Contributors to the MOSAEC platform have resided throughout the United States. Through the use of the MOSAEC platform, consumer goods have been distributed to its users and contractors (throughout the United States, including in Florida).

5. The Opposer built the MOSAEC platform from the ground up, investing substantial amounts of time and money, including promoting the MOSAEC platform via national and international advertising channels, including in Florida. With great effort, the Opposer has continued to operate the MOSAEC platform through market downturns (2001 and 2009).

6. Since the adoption of the Opposer’s Mark, the MOSAEC platform has been used and accessed by a notable number of users. For example, since 2008, there have been over 740,000 YouTube views of videos incorporating the MOSAEC brand in connection with the Opposer’s services. Since 2009, there have been over 146,000 likes recorded in connection with the Facebook presence associated with the MOSAEC platform. On Twitter, since 2009, the MOSAEC platform’s page has garnered over 10,000 followers. Branded tweets have been retweeted by Tribeca Film Festival (@TribecaFilm), which has over 208,000 followers; tweeted by Michael Skolnik (@MichaelSkolnik), who has over 209,000 followers; and retweeted by Brad Gilbert (@bgtennisnation), who has over 136,000 followers. The LinkedIn presence for the MOSAEC platform has been in existence since 2009 and an Instagram presence has been recently added. Within the Google environment, the term “MOSAEC” has been a part of over 2,000 search results.

B. Applicant’s Mark

7. ELLUM Audio LLC (“Applicant”) filed an intent-to-use (Section 1(b)) application to register the mark MOSAIC BY MACEO (“Applicant’s Mark”), Serial No. 86/865,063 on the Principal Register of the United States Patent and Trademark Office on January 4, 2016 and published for opposition on July 25, 2017, covering the following goods and services (collectively, “Applicant’s Goods and Services”):

“Merchandise, namely, downloadable video game programs, downloadable electronic publications in the nature of magazines in the field of nightclub parties, downloadable video recordings, downloadable electronic publications in the nature of magazines, blogs, and online journals in the field of nightclub parties, downloadable application software for smart phones for use in obtaining information about nightclub parties, and downloadable podcasts in the field of nightclub parties” in Class 9; and

“Arranging and conducting nightclub parties” in Class 41;

8. Upon information and belief, the Applicant has not commenced use in interstate commerce of the Applicant’s Mark in connection with any of its covered goods and services in International Classes 9 and 41.

Prior Communications between the Parties

9. On or about June 1, 2017, the Opposer sent the attorney of record for the Applicant’s application a cease and desist letter.

Prosecution in the United States Patent and Trademark Office

10. The Opposer has priority based on its prior use of the Opposer’s Mark in commerce in connection with the Opposer’s Goods and Services (defined below). The Opposer used the Opposer’s Mark in commerce in connection with the Opposer’s Goods and Services before the filing date of U.S. Trademark Application No. 86/865,063. Furthermore, the Opposer has used the Opposer’s Mark in commerce before any date of first use that the Applicant may establish in connection with the Applicant’s Mark.

11. The Opposer has filed use-based (Section 1(a)) applications for the registration of the Opposer’s Mark in International Classes 9 and 41, covering goods and services in connection with which the Opposer’s Mark is used. Notable in the list of services are the following:

Opposer’s Mark	Registration or US Serial No.	Good/Services (collectively, the “Opposer’s Goods and Services”)	Registration or Application Date
MOSAEC	87/226,106	<i>“Computer application software for desktop computers and mobile devices, namely, software for compilations, rankings, ratings, reviews, referrals and recommendations relating to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation and leisure activities; Computer application software for desktop computers and mobile devices, namely, software for entering, accessing and tracking data related to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation, leisure activities and social networking; Computer application software for desktop computers and mobile devices, namely, software for</i>	November 4, 2016

		<p><i>uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; Computer application software for desktop computers and mobile devices, namely, software for displaying and sharing a user's location and finding, locating, and interacting with other users and places; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; Downloadable electronic newsletters in the field of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation and leisure activities; Downloadable mobile applications for entering, accessing and tracking data related to entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, restaurants, recreation, leisure activities and social networking; Computer e-commerce software to allow users to perform electronic business transactions via a global computer network;” in Class 009.</i></p>	
MOSAEC	86/587,316	<p><i>“Entertainment services, namely, providing information by means of a global computer network in the fields of celebrities, entertainment, and popular culture; Entertainment services, namely, providing on-line reviews of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, and dance; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing a website featuring entertainment information in the field(s) of entertainment, film, fine arts, museums, literature, culture, music, sports, fashion, theater, dance, and news; Providing information, news and commentary in the field of entertainment; Providing information, news and commentary in the field of recreation and leisure activities; Provision of information</i></p>	April 3, 2015

		<i>relating to children's entertainment</i> ” in Class 041.	
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The dates of first use given are as early as September 1998.

Specific Grounds Alleged For Opposition - Likelihood of Confusion

12. The Opposer asserts that the Opposer’s Mark and the Applicant’s Mark are confusingly similar in sound, appearance and commercial impression. Applicant’s Mark incorporates MOSAIC which is confusingly similar in sound, appearance and commercial impression to the Opposer’s Mark. Note that the only difference in the Applicant’s use of the word MOSAIC is the “I” in the MOSAIC portion of Applicant’s Mark. Furthermore, the addition of the phrase “BY MACEO” is unlikely to dispel confusion because the dominant feature of the Applicant’s Mark is MOSAIC because it is the first term in the mark.

13. As the result of the foregoing, the Opposer holds rights in the term MOSAEC and variations thereof which are superior to any alleged rights of Applicant with respect to Applicant’s Goods and Services.

14. On information and belief, Applicant’s Mark will be used in connection with goods and services for users that are within the same group targeted by Opposer.

15. The Opposer asserts that the goods and services to be offered by Applicant in connection with the Applicant’s Mark are related to some of the goods and services offered by Opposer in connection with which Opposer’s Mark is used prior to the use of the Applicant’s Mark. Upon information and belief, the goods and services will be offered through overlapping channels to overlapping classes of customers in conditions that do not demand lengthy examination, strict scrutiny and a long period of deliberation. Moreover, to the extent that Applicant’s and Opposer’s goods and services do not already overlap, Applicant’s Goods and Services are within Opposer’s zone of natural expansion.

16. Applicant’s Mark is likely to cause consumer confusion, mistake or deception with consequent injury to Opposer and the public. Use of such mark will likely lead to the mistaken belief that Applicant’s Goods and Services originate with, are affiliated with, or are sponsored or approved by Opposer. Members of the relevant public upon seeing Applicant’s Mark for Applicant’s Goods and Services would reasonably assume in error that there is a relationship between Applicant and Opposer as to the source of the goods.

17. If Applicant is granted a registration for Applicant’s Mark, it would obtain, thereby, at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

18. If Applicant is permitted to continue its registration of Applicant’s Mark in International Classes 9 and 41, confusion of the relevant trade and public is likely to result, which deprives Opposer of control over its own reputation and is likely to damage and injure Opposer.

19. Accordingly, Applicant's Mark so resembles Opposer's prior used mark as to be likely to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d), when used on or in connection with Applicant's Goods and Services.

20. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused, and/or deceived into believing that Applicant's Goods and Services are those of Opposer, or are sponsored by Opposer, to Opposer's damage and will place a cloud over Opposer's title to Opposer's Mark, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

21. Registration should be refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) on the grounds that Applicant's Mark so resembles Opposer's Mark as to cause confusion, mistake and/or deception, all to the damage of Opposer.

22. Opposer will be damaged by registration of the Applicant's Mark because the registration will block registration of Opposer's Mark, for which Opposer has applied. Therefore, U.S. Serial No. 86/865,063 is a source of damage and injury to Opposer.

WHEREFORE, the Opposer prays that this Opposition be sustained and that the Applicant's Application opposed herein be denied in International Classes 9 and 41.

Dated: September 22, 2017

Respectfully submitted,

By:



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OPPOSER

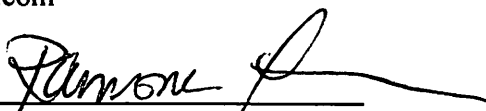
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Notice of Opposition was served on the Attorney for the Applicant on the date listed below via U.S. Mail and email:

Manjul Dahiya
MarkScience, PLLC
84 Manchester Street
Nashua, New Hampshire 03064
Manjul@MarkScience.com

Dated: September 22, 2017

By:



Ramona Prioleau