

ESTTA Tracking number: **ESTTA917033**

Filing date: **08/21/2018**

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	XO Trademarks LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	16000 Ventura Boulevard Suite 600 Encino, CA 91436 UNITED STATES		

Attorney information	Peter E. Nussbaum Chiesa Shahinian & Giantomasi PC One Boland Drive West Orange, NJ 07052 UNITED STATES pnussbaum@csglaw.com, ajremore@csglaw.com, risrael@csglaw.com, tm-docketing@csglaw.com 973-530-2025		
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Applicant Information

Application No	87837241	Publication date	07/31/2018
Opposition Filing Date	08/21/2018	Opposition Period Ends	08/30/2018
Applicant	MyoBlox, LLC 23 W. 41st. Ave. San Mateo, CA 94403 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4421959	Application Date	03/22/2013
Registration Date	10/22/2013	Foreign Priority	NONE

		Date	
Word Mark	THE WEEKND		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2011/03/00 First Use In Commerce: 2011/03/00 Sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet</p> <p>Class 025. First use: First Use: 2011/03/00 First Use In Commerce: 2011/03/00 Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual-footwear</p> <p>Class 041. First use: First Use: 2011/03/00 First Use In Commerce: 2011/03/00 Entertainment in the nature of live performances by a musical artist</p>		

Attachments	85884123#TMSN.png(bytes) MyoBlox WEEKND Notice of Opposition.pdf(5910332 bytes) MyoBlox WEEKND Opposition Exhibits A-C.pdf(1618473 bytes)
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Signature	/Peter E. Nussbaum/
Name	Peter E. Nussbaum
Date	08/21/2018

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

In the matter of Application Serial No. 87/837,241 Published in the Official Gazette on July 31, 2018 at TM 6198.

XO TRADEMARKS LLC,

Opposer,

v.

MyoBlox, LLC,

Applicant.

Opposition No. _____

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

NOTICE OF OPPOSITION

XO Trademarks LLC, a limited liability company organized under the laws of Delaware with a principal address of 16000 Ventura Boulevard, Suite 600, Encino, California 91436 (“XOTL”), hereby opposes registration of application Serial No. 87/837,241 for WEEKND in Class 5 for *dietary and nutritional supplements*, filed on March 16, 2018 by MyoBlox, LLC, a limited liability company organized under the laws of California with a principal address of 23 West 41st Avenue, San Mateo, California 94403 (hereinafter “Applicant”), and published for purposes of opposition in the Official Gazette dated July 31, 2018 at page TM 6198.

XOTL is the trademark holding company of Abel Tesfaye (“Tefsaye”), an internationally famous musician who performs and records under the name THE WEEKND, and XOTL is a

limited liability company established and solely controlled by Tesfaye that is charged with the ownership of Tesfaye's intellectual property (XOTL and Tesfaye shall hereinafter be collectively referred to as "Opposer.")

Opposer believes it will be damaged should Application Serial No. 87/837,241 mature into registration and sets forth the following grounds for opposition:

Opposer's Mark THE WEEKND

1. Opposer is the owner of the registered trademark and service mark THE WEEKND that Opposer uses in connection with musical sound recordings, entertainment services in the nature of live performances of music and a variety of merchandise. As set forth in further detail herein, THE WEEKND is one of the most popular and well-known recording artists in both the United States and elsewhere throughout the world.

2. XOTL, by way of assignment from Tesfaye, is the owner of all right, title and interest in and to United States Trademark and Service Mark Registration No. 4,421,959 for THE WEEKND, which is presently valid and subsisting in law and covers the following goods and services:

- a. *Class 9: sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet;*
- b. *Class 25: Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear; and*
- c. *Class 41: Entertainment in the nature of live performances by a musical artist.*

Printouts from the United States Patent and Trademark Office's ("USPTO") online database of Opposer's THE WEEKND Registration and status and title information from the USPTO's

Trademark Status & Document Retrieval system (“TSDR”) for its pleaded Registration are attached hereto as **Exhibit A**.

3. THE WEEKND began his extremely successful career as a musical artist in 2011. His first recordings released under the mark THE WEEKND received instant notoriety and attention from both consumers and the music press. In March 2011, THE WEEKND released his first full length recording entitled “House of Balloons” which was selected as a nominee for the 2011 Polaris Music Prize and was the first of three “mix tape” recordings THE WEEKND would release within the next year. In 2012, THE WEEKND embarked on his first tour of the United States which included a performance at the immensely popular music festival Coachella and concluded with two sold out shows in New York City. In 2012, THE WEEKND released a compilation of his three mix tape recordings entitled “Trilogy” that was an instant success (debuting at number four on the U.S. Billboard chart). The release of Trilogy sparked a period where THE WEEKND received numerous offers from major record labels. THE WEEKND ultimately signed with Republic Records.

4. In 2013, THE WEEKND released his first studio album for Republic Records entitled “Kiss Land” which debuted at number two on the U.S. Billboard 200, sold over 273,000 copies in the United States and received positive reviews from music critics. Between the years 2013-2014, THE WEEKND embarked on music tours with major recording artists such as Justin Timberlake and Drake, and collaborated on recordings by Beyoncé, Ariana Grande and several others.

5. In 2015, THE WEEKND released his second studio album entitled “Beauty Behind The Madness” which debuted at number one on the Billboard 200, earning 412,000 album equivalent units in its first week. The album reached the top ten in over ten countries,

including reaching number one in Canada, Australia, Norway, and the United Kingdom. The album went on to earn double platinum in the United States and has sold 1.5 million copies worldwide. The album was promoted by THE WEEKND via a large scale tour across the United States, which included headlining various summer music festivals such as Lollapalooza, the Hard Summer Music Festival, and the Bumbershoot Festival. THE WEEKND's singles from "Beauty Behind The Madness" album included "The Hills" and "Can't Feel My Face," both of which reached number one on the Billboard Hot 100 Chart. On September 8, 2015, THE WEEKND became the first male artist to simultaneously hold the top three spots on the Billboard Hot R&B Songs chart.

6. On September 20, 2016, THE WEEKND announced the impending release of his third full-length album entitled "Starboy." The first single from the album (also entitled "Starboy") was a massive and instant success, reaching number one on the charts in the United States, Canada, Denmark, France, New Zealand, Norway, Mexico and Sweden. THE WEEKND's "Starboy" single occupied the number two spot on the Billboard Hot 100 chart for eight weeks before reaching number one on the Billboard Hot 100 chart the week of January 7, 2017, becoming THE WEEKND's third song to reach number one on the Billboard Hot 100. To date, THE WEEKND has sold well over 1.5 million copies of the "Starboy" single in the United States alone. The accompanying music video for "Starboy" was released on September 28, 2016 and has over 1.3 billion views on YouTube, making it one of the top 50 most viewed YouTube videos in history.

7. On November 25, 2016, Opposer released his third full length album under THE WEEKND mark entitled "Starboy." The album debuted at number one on the US Billboard 200 chart. In June 2017, the "Starboy" album was certified double Platinum by the Recording

Industry Association of America, and the album won the Grammy Award for Best Urban Contemporary Album at the 60th Annual Grammy Awards in 2018.

8. On February 17, 2017, THE WEEKND began “The Starboy: Legend Of The Fall Tour” to support his “Starboy” album. The tour began in Stockholm and ran for nearly a year, featuring concerts held at major venues throughout the United States and North America, as well as Europe, South America and Australia. In connection with “The Starboy: Legend Of The Fall Tour,” Opposer engaged in an extensive advertising, promotional and marketing campaign for the tour that prominently featured THE WEEKND mark.

9. On March 30, 2018, THE WEEKND released his most recent musical sound recording, an EP entitled “My Dear Melancholy.” The album was streamed more than 26 million times on its first day of release on Apple Music and up to 29 million times on Spotify. “My Dear Melancholy” sold 169,000 album-equivalent units and reached number one on the U.S. Billboard 200.

10. THE WEEKND is currently ranked among the top ten musical artists within Nielsen’s ranking of the most popular musical artists in the world, which is measured by total album consumption statistics, a metric that includes all musical sales, streaming data figures and digital downloads. Between the years 2015-2017, THE WEEKND was ranked among the top ten on Billboard’s Year-End Chart of Top Artists. In addition, between the years 2015-2017, THE WEEKND was the third most streamed artist on Spotify.com and held the top position of most streamed artists at several points during that period.

11. Since 2011, Opposer has sold a wide variety of merchandise under mark THE WEEKND, including t-shirts, sweatshirts, jackets, hats, posters, coffee mugs, ashtrays, lighters and other types of merchandise.

12. THE WEEKND has performed on highly rated television programs many times. For example, THE WEEKND has performed on the extremely popular television programs Saturday Night Live, The Ellen DeGeneres Show, Jimmy Kimmel Live, The Tonight Show, The Late Show with David Letterman, the 88th Annual Academy Awards, the 2016 American Music Awards, the 2016 and 2017 Grammy Awards and NBC's The Voice. In addition, THE WEEKND's music videos have aired on well-known music television channels countless times and have been streamed online billions of times.

13. THE WEEKND also has a substantial social media following, including over 18.5 million followers on Instagram, over 9.47 million followers on Twitter and over 7.3 million "likes" and followers on Facebook.

14. THE WEEKND's fame, popularity and tremendous success have been recognized and acknowledged numerous times by various media outlets. By way of example only, in 2016, THE WEEKND came in ninth on Forbes Magazine's list of the World's Highest-Paid Celebrities Under 30 and in 2017 THE WEEKND came in sixth on Forbes Magazine's list of the World's Highest Paid Celebrities (and was featured on the cover of that year's Celebrity 100 issue). In addition, THE WEEKND won the 2016 People's Choice Award for Favorite R & B Artist and currently holds two Guinness World Records – the first for "Most Streamed Album on Spotify in One Year" for "Beauty Behind the Madness" and the second for "Most Consecutive Weeks in the Top 10 of Billboard's Hot 100 by a Solo Male Artist."

15. Based on Opposer's extensive and continuous use of the mark THE WEEKND in connection with its goods and services, Opposer's mark THE WEEKND has come to be widely recognized among the relevant consuming public as a designator of origin with respect to Opposer's goods and services.

16. Opposer has invested a tremendous amount of time, money and other resources advertising, promoting, and marketing its goods and services provided under THE WEEKND mark. As a result of Opposer's substantial efforts, Opposer's mark THE WEEKND has acquired substantial consumer recognition and good will. Opposer's mark THE WEEKND has become an important source indicator which identifies the quality goods and services sold and provided by Opposer. For all of the foregoing reasons, Opposer's mark THE WEEKND is an exceedingly valuable asset of Opposer.

17. As a result of its distinctiveness and widespread use and promotion throughout the United States, Opposer's mark THE WEEKND is a famous trademark and service mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c) and became famous prior to the filing date of the opposed application or any other priority date on which the Applicant may rely.

18. In addition to goods and services relating to THE WEEKND's music, Opposer began a massively successful clothing line under the name and mark XO via which Opposer has sold many millions of dollars' worth of clothing goods and merchandise bearing THE WEEKND mark. Opposer's merchandise has been sold via Opposer's website, at Opposer's live performances, via major retail chains (such as Urban Outfitters, Hot Topic, Walmart, H&M and others) as well as at "pop-up" stores operated by Opposer in major cities throughout the United States.

19. XOTL, by way of assignment from Tesfaye, is the owner of all right, title and interest in and to United States Trademark and Service Mark Registration No. 4,473,980 for the XO and design mark (pictured below), which is presently valid and subsisting in law and covers the following goods and services:



- a. Class 9: *sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet;*
- b. Class 25: *clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear; and*
- c. Class 41: *entertainment in the nature of live performances by a musical artist.*

Printouts from the USPTO's online database of Opposer's XO and design Registration and status and title information from TSDR for its pleaded Registration are attached hereto as **Exhibit B**.

The Opposed Application for WEEKND

20. Applicant is the owner of a pending intent to use based application, Serial No. 87/837,241 for WEEKND in Class 5 for *dietary and nutritional supplements*. This application was filed on March 16, 2018.

21. Upon information and belief, Applicant filed the above-referenced application for the mark WEEKND in order to trade upon the tremendous fame and goodwill associated with Opposer's mark THE WEEKND.

22. On May 9, 2018, Opposer's counsel sent Applicant's counsel a demand letter indicating that Applicant's attempted registration of the mark WEEKND would create both a likelihood of consumer confusion and a likelihood of dilution, and requested that Applicant expressly abandon the application that is the subject of this Opposition.

23. On May 10, 2018, Opposer's counsel received an email from Applicant's counsel indicating that it was Applicant's position that no likelihood of confusion would exist. In his email, Opposer's counsel further indicated that notwithstanding that the subject application covers "dictary and nutritional supplements," Applicant's product to be sold under the mark WEEKND was an "energy drink."

24. Importantly, Applicant is also the owner of Registration No. 5,205,684 for XO SERIES in Class 5 for *Dietary and nutritional supplements*.

25. In light of the fame of Opposer's XO and design mark and XO clothing brand, Applicant's efforts to register both the marks WEEKND and XO SERIES will further cause consumers to believe that Applicant's goods are associated with, sponsored by or affiliated with Opposer, which they are not.

26. In addition, in the email dated May 10, 2018 referenced above, Applicant's counsel included an attachment demonstrating Applicant's use of the XO SERIES mark, which depicted a logo mark that includes two small hearts over the letters XO in a similar fashion to the depiction of a heart over the letters XO in Opposer's registered XO and design mark. The similarity between the respective design marks further increases the likelihood confusion and demonstrates that Applicant is engaged in a pattern of attempting to trade upon Opposer's goodwill. A printout of the above-referenced attachment is attached hereto as **Exhibit C**.

27. Given that Applicant has engaged in a pattern of attempting to trade upon Opposer's goodwill, a strong inference can be drawn that Applicant did not file the subject application in good faith.

COUNT I – Likelihood Of Confusion

28. Opposer repeats and re-alleges each and every allegation set forth in paragraphs 1-27 as if fully set forth herein.

29. By the application herein opposed, Applicant seeks to register the virtually identical and confusingly similar mark WEEKND in Class 5 for *dietary and nutritional supplements*.

30. Applicant's proposed mark WEEKND so resembles Opposer's mark THE WEEKND as to be likely, when applied to Applicant's goods, to cause confusion, mistake and/or to deceive as well as cause damage to Opposer and the consuming public.

31. Applicant's proposed mark WEEKND is virtually identical and confusingly similar to Opposer's mark THE WEEKND and Applicant's registration of the applied-for mark would be inconsistent with, and damaging to, Opposer's prior rights in and to Opposer's mark THE WEEKND.

32. Opposer has priority of use in connection with Opposer's mark THE WEEKND by virtue of its earlier date of first use of said mark over any date that can be established by Applicant in connection with Applicant's pending application filed on March 16, 2018, which date is many years after Opposer's date of first use in commerce of Opposer's THE WEEKND mark in March, 2011.

33. Although the identification of goods in the subject application for the mark WEEKND covers "dietary and nutritional supplements," Applicant's counsel has indicated that the goods Applicant intends to sell under the mark are energy drinks. In either event, it is quite common for celebrities to branch out into the sale of products such as nutritional supplements and/or energy drinks or to endorse products in these categories. For example, numerous rap

artists have had their own energy drinks, including Ice-T, Kanye West, Biz Markie, 50 Cent, Lil Jon, Nelly and Mac Dre. It is also common for nutritional supplement companies to feature celebrity endorsements. For instance, Kim, Khloè and Kourtney Kardashian endorsed QuickTrim products and Mark Wahlberg is the co-founder of the supplement line Performance Inspired. It is also quite common for providers of energy drinks to be involved in the music industry, whether by sponsoring festivals (for example, the Monster Energy Outbreak Tour kicks off on October 10, 2018, and the 2018 Lollapalooza music festival – of which THE WEEKND was one of the headliners – was streamed online via Red Bull TV), or by ownership of their own record companies (such as Red Bull Records).

34. Opposer already sells a wide variety of merchandise under his mark THE WEEKND (in addition to his primary musical-artist related goods), including t-shirts, sweatshirts, jackets, hats, posters, coffee mugs, ashtrays, lighters and other types of merchandise. Opposer has also entered into partnerships with brands in other fields, including Puma and Grey Goose. It is well within the realm of possibility that Opposer will enter the field of supplements and/or energy drinks at some point in the future whether under his own mark THE WEEKND or as a celebrity endorser of a third party product, and consumers are very accustomed to encountering celebrity endorsed products in this space.

35. Should Applicant obtain a registration for the virtually identical mark WEEKND in this space, consumers will mistakenly presume that Applicant's products are associated with, sponsored by, endorsed by, affiliated with or otherwise connected to Opposer. Accordingly, the parties' respective goods are sufficiently related such that consumer confusion is likely.

36. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's WEEKND mark sought to be registered.

COUNT II – Dilution

37. Opposer repeats and re-alleges each and every allegation set forth in paragraphs 1-36 as if fully set forth herein.

38. Opposer's mark THE WEEKND is distinctive and a "famous mark" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

39. Opposer's mark THE WEEKND became distinctive and famous prior to the March 16, 2018 filing date of Applicant's subject application or any other date on which Applicant may seek to rely for purposes of priority.

40. Registration by Applicant of the mark WEEKND for Applicant's proposed goods would be likely to impair the distinctiveness, and cause dilution by blurring, of Opposer's famous mark THE WEEKND in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed mark WEEKND is not entitled to registration.

41. Registration by Applicant of the mark WEEKND for Applicant's proposed goods would be likely to harm the reputation, and cause dilution by tarnishment, of Opposer's famous mark THE WEEKND in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed mark WEEKND is not entitled to registration.

WHEREFORE, Opposer believes that it will be damaged by the registration of Applicant's mark and prays that its opposition be sustained and that Application Serial No. 87/837,241 be denied registration.

This opposition is being filed electronically by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

XO TRADEMARKS LLC

By:



Peter E. Nussbaum

Ronald L. Israel

Abigail J. Remore

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(973) 530-2225

Attorneys for Opposer

Dated: August 21, 2018

EXHIBIT A



United States Patent and Trademark Office

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Record 1 out of 1

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THE WEEKND

Word Mark	THE WEEKND
Goods and Services	<p>IC 009. US 021 023 026 036 038. G & S: Sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300</p> <p>IC 025. US 022 039. G & S: Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300</p> <p>IC 041. US 100 101 107. G & S: Entertainment in the nature of live performances by a musical artist. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300</p>
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85884123
Filing Date	March 22, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 6, 2013
	4421959

Registration Number
International Registration Number 1296709; 1296393
Registration Date October 22, 2013
Owner (REGISTRANT) Tesfaye, Abel INDIVIDUAL CANADA 16000 Ventura Blvd., Ste. 600 Encino CALIFORNIA 91436
(LAST LISTED OWNER) XO TRADEMARKS LLC LIMITED LIABILITY COMPANY DELAWARE 16000 VENTURA BLVD., STE. 600 ENCINO CALIFORNIA 91436
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Peter E. Nussbaum
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Mark: THE WEEKND

THE WEEKND

US Serial Number: 85884123

Application Filing Date: Mar. 22, 2013

US Registration Number: 4421959

Registration Date: Oct. 22, 2013

Register: Principal

Mark Type: Trademark, Service Mark

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

Status Date: Oct. 22, 2013

Publication Date: Aug. 06, 2013

Mark Information

Mark Literal Elements: THE WEEKND

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

International Registration Number: 1296709, 1296393

International Application(s) /Registration(s) Based on this Property: A0057333/1296709, A0057751/1296393

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: Entertainment in the nature of live performances by a musical artist

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 2011

Use in Commerce: Mar. 2011

For: Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 2011

Use in Commerce: Mar. 2011

For: Sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio

tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet

International Class(es): 009 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 2011

Use in Commerce: Mar. 2011

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: XO TRADEMARKS LLC

Owner Address: 16000 VENTURA BLVD., STE. 600
ENCINO, CALIFORNIA 91436
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Peter E. Nussbaum

Docket Number: 17695/1/14

Attorney Primary Email Address: pnussbaum@csglaw.com

Attorney Email Authorized: Yes

Correspondent

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Fax: 973-530-2225

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trademarks@csglaw.com
tmdocketing@csglaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 08, 2017	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 08, 2017	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Nov. 22, 2017	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 22, 2013	REGISTERED-PRINCIPAL REGISTER	
Aug. 06, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 06, 2013	PUBLISHED FOR OPPOSITION	
Jul. 17, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 30, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 30, 2013	ASSIGNED TO EXAMINER	
Mar. 26, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	78305

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 22, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: Tesfaye, Abel

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6186/0757](#)

Pages: 10

Date Recorded: Oct. 20, 2017

Supporting Documents: [assignment-tm-6186-0757.pdf](#)

Assignor

Name: [TESFAYE, ABEL](#)

Execution Date: Oct. 18, 2017

Legal Entity Type: INDIVIDUAL

Citizenship: CANADA

Assignee

Name: [XO TRADEMARKS LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: 16000 VENTURA BLVD., STE. 600
ENCINO, CALIFORNIA 91436

Correspondent

Correspondent Name: PETER NUSSBAUM

Correspondent Address: ONE BOLAND DRIVE
WEST ORANGE, NJ 07052

Domestic Representative - Not Found

EXHIBIT B



United States Patent and Trademark Office

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Word Mark

XO

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300

IC 025. US 022 039. G & S: Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear *, all mentioned goods excluding goods related to boating and seafaring *. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300

IC 041. US 100 101 107. G & S: Entertainment in the nature of live performances by a musical artist *, all mentioned services excluding services related to boating and seafaring *. FIRST USE: 20110300. FIRST USE IN COMMERCE: 20110300

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

02.11.01 - Hearts excluding hearts as carriers or depicted on playing cards

Serial Number 85885119

Filing Date March 25, 2013

Current Basis 1A

Original Filing Basis 1A

Published for Opposition August 6, 2013

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 4473980

International Registration Number 1181735; 1296276

Registration Date January 28, 2014

Owner (REGISTRANT) Tesfaye, Abel INDIVIDUAL CANADA 16000 Ventura Blvd., Ste. 600 Encino CALIFORNIA 91436

(LAST LISTED OWNER) XO TRADEMARKS LLC LIMITED LIABILITY COMPANY DELAWARE 16000 VENTURA BLVD., STE. 600 ENCINO CALIFORNIA 91436

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Peter E. Nussbaum

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a hand drawn upper case "XO" with a heart drawn in the top center of the image between the "X" and the "O". The stippling is a feature of the mark and does not indicate color.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Mark: XO



US Serial Number: 85885119

Application Filing Date: Mar. 25, 2013

US Registration Number: 4473980

Registration Date: Jan. 28, 2014

Register: Principal

Mark Type: Trademark, Service Mark

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

Status Date: Jan. 28, 2014

Publication Date: Aug. 06, 2013

Mark Information

Mark Literal Elements: XO

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a hand drawn upper case "XO" with a heart drawn in the top center of the image between the "X" and the "O".

Color(s) Claimed: Color is not claimed as a feature of the mark.

Lining and Stippling Statement: The stippling is a feature of the mark and does not indicate color.

Design Search Code(s): 02.11.01 - Hearts excluding hearts as carriers or depicted on playing cards

Related Properties Information

International Registration Number: 1181735, 1296276

International Application(s) /Registration(s) Based on this Property: A0038448/1181735, A0057334/1296276

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: Entertainment in the nature of live performances by a musical artist *, all mentioned services excluding services related to boating and seafaring *

International 041 - Primary Class

U.S Class(es): 100, 101, 107

Class(es):**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Mar. 2011**Use in Commerce:** Mar. 2011**For:** Clothing for men, women and children, namely, t-shirts, tank tops, sweat shirts, sweaters, jackets, hats, visors, head bands, scarves, shorts, socks and casual footwear *, all mentioned goods excluding goods related to boating and seafaring ***International Class(es):** 025 - Primary Class**U.S Class(es):** 022, 039**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Mar. 2011**Use in Commerce:** Mar. 2011**For:** Sound recordings, namely, prerecorded digitally formatted audio discs, phonograph records, analog audio tapes and digital audio tapes, all featuring music; video recordings, namely, prerecorded digital video discs, analog video tapes, digital video tapes and laser discs, all featuring music video and music documentary; downloadable sound and video recordings featuring music and musical performances; downloadable digital music provided from the Internet**International Class(es):** 009 - Primary Class**U.S Class(es):** 021, 023, 026, 036, 038**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Mar. 2011**Use in Commerce:** Mar. 2011

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: XO TRADEMARKS LLC**Owner Address:** 16000 VENTURA BLVD., STE. 600
ENCINO, CALIFORNIA 91436
UNITED STATES**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where Organized:** DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Peter E. Nussbaum**Docket Number:** 17695/1/2**Attorney Primary Email Address:** pnussbaum@csglaw.com**Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Peter E. Nussbaum
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NEW JERSEY 07052
UNITED STATES**Phone:** 973-530-2025**Fax:** 973-530-2225**Correspondent e-mail:** pnussbaum@csglaw.com
trademarks@csglaw.com
tmddocketing@csglaw.com**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found**

Prosecution History

Date	Description	Proceeding Number
Dec. 08, 2017	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 08, 2017	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Nov. 22, 2017	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 24, 2017	AMENDMENT UNDER SECTION 7 - ISSUED	67723
Apr. 24, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67723
Dec. 09, 2016	TEAS SECTION 7 REQUEST RECEIVED	
Jan. 28, 2014	REGISTERED-PRINCIPAL REGISTER	
Dec. 20, 2013	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Sep. 05, 2013	EXTENSION OF TIME TO OPPOSE RECEIVED	
Aug. 06, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 06, 2013	PUBLISHED FOR OPPOSITION	
Jul. 17, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 30, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 30, 2013	ASSIGNED TO EXAMINER	78305
Mar. 29, 2013	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Mar. 28, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 28, 2013	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Change in Registration: Yes

Amendment to a Registration/Renewal Certificate: In the statement, Column 1, line 13-15 in Class 25, all mentioned goods excluding goods related to boating and seafaring is inserted. In the statement, Column 1, line 17-18 In Class 41, all mentioned services excluding services related to boating and seafaring is inserted.

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 114

Date in Location: Apr. 24, 2017

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: Tesfaye, Abel

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6186/0757](#)

Pages: 10

Date Recorded: Oct. 20, 2017

Supporting Documents: [assignment-tm-6186-0757.pdf](#)

Assignor

Name: [TESFAYE, ABEL](#)

Execution Date: Oct. 18, 2017

Legal Entity Type: INDIVIDUAL

Citizenship: CANADA

Assignee

Name: [XO TRADEMARKS LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: 16000 VENTURA BLVD., STE. 600
ENCINO, CALIFORNIA 91436

Correspondent

Correspondent Name: PETER NUSSBAUM

Correspondent: ONE BOLAND DRIVE

Address: WEST ORANGE, NJ 07052

Domestic Representative - Not Found

Proceedings

Summary

Number of
Proceedings: 2

Type of Proceeding: Opposition

Proceeding
Number: [91228284](#)

Filing Date: Jun 06, 2016

Status: Terminated

Status Date: Sep 13, 2016

Interlocutory
Attorney: CHRISTEN M ENGLISH

Defendant

Name: Sheree Sanborn

Correspondent
Address: SHEREE SANBORN
17 WEST ELM STREET
DARIEN CT , 06820-4118
UNITED STATES

Correspondent e-
mail: Shereeee@optonline.net

Associated marks

Mark	Application Status	Serial Number	Registration Number
XO	Abandoned - After Inter-Partes Decision	86549885	

Plaintiff(s)

Name: Abel Tesfaye

Correspondent
Address: PETER NUSSBAUM
CHIESA SHAHINIAN & GIAN TOMASI
ONE BOLAND DRIVE
WEST ORANGE NJ , 07052
UNITED STATES

Correspondent e-
mail: pnussbaum@csglaw.com , jlee@csglaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
XO	Registered	85885119	4473980

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 06, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 06, 2016	Jul 16, 2016
3	PENDING, INSTITUTED	Jun 06, 2016	
4	NOTICE OF DEFAULT	Jul 26, 2016	
5	BD DECISION: SUSTAINED	Sep 13, 2016	
6	TERMINATED	Sep 13, 2016	

Type of Proceeding: Extension of Time

Proceeding
Number: [85885119](#)

Filing Date: Sep 05, 2013

Status: Terminated

Status Date: Dec 20, 2013

Interlocutory
Attorney:

Defendant

Name: Tesfaye, Abel

Correspondent
Address: JASON J LIBERMAN
THE CORPORATE PRACTICE
16000 VENTURA BLVD STE 600
ENCINO CA , 91436-2753

UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
XO	Registered	85885119	4473980

Potential Opposer(s)

Name: Greater Philadelphia Tourism Marketing Corporation

Correspondent Richard Peirce, Esquire

Address: Eckert Seamans Cherin & Mellott, LLC
50 South 16th StreetTwo Liberty Place, 21st Floor
Philadelphia PA , 19103
UNITED STATES

Correspondent e-mail: ipmail@eckertseamans.com , rpeirce@eckertseamans.com , lnocella@eckertseamans.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Sep 05, 2013	
2	EXTENSION OF TIME GRANTED	Sep 05, 2013	

EXHIBIT C

XO SERIES

LOCO®
XO ROSES



LMTD
EDITION

1 of 1,000

ACTIVES



MICRO-PEPTIDE INFUSED
PRE-WORKOUT POWDER.
PUMP / FOCUS / ENERGY
ANALOGS.

FEATURE



WITH ADDED
L-CITRULLINE & NIVADREN™
INDUCING MUSCLE PUMP
& TUNNEL VISION FOCUS!

FLAVOR



COTTON CANDY
CHERRY FUSION!

BATCH



1,000 UNITS CREATED
& NUMBERED BY HAND.
GET THEM WHILE
THEY ARE AVAILABLE!

POWERED BY:

