

BULKY EXHIBITS

Proceeding No.	91243297
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Filing Date	11/03/2020
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1 CD ROM- Public Version of Declaration of June Sauvaget
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91243297



BULKY EXHIBIT

Proceeding No.

91243297 (Parent), 91248487

Filing Date:

October 29, 2020

TITLE: (CD/DVD) EXHIBITS 37-39, 41-44, 47

PUBLIC VERSION of Declaration of June Sauvaget

91243297



11/03/2020

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Proceeding No.: 91243297
Filing Party: Plaintiff
Spotify AB

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Date: 10/29/2020

Attachments: Sauvaget--PUBLIC--Executed.pdf
Sauvaget--PUBLIC--Exhibit 01-15.pdf
Sauvaget--PUBLIC--Exhibit 16-28.pdf

Sauvaget--PUBLIC--Exhibit 29.pdf
Sauvaget--PUBLIC--Exhibit 30-44.pdf
Sauvaget--PUBLIC--Exhibit 45-47.pdf
Sauvaget--PUBLIC--Exhibit 48-51.pdf
Sauvaget--PUBLIC--Exhibit 52-69.pdf
Sauvaget--PUBLIC--Exhibit 70-79.pdf
Sauvaget--PUBLIC--Exhibit 80.pdf
Sauvaget--PUBLIC--Exhibit 81.pdf
Sauvaget--PUBLIC--Exhibit 82--part 1.pdf
Sauvaget--PUBLIC--Exhibit 82--part 2.pdf
Sauvaget--PUBLIC--Exhibit 83-84.pdf

WILSON SONSINI

Oct. 28, 2020

**TTAB Opposition Nos.
91243297 (Parent), 91248487
*Spotify AB v. U.S. Software, Inc.***

**Opposer Spotify AB
EXHIBITS 37-39, 41-44, 47**

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

SPOTIFY AB,)	
)	Opposition Nos.: 91243297 (Parent)
)	91248487
Opposer,)	
)	
v.)	PUBLIC VERSION
)	
U.S. SOFTWARE, INC.)	
)	
Applicant.)	

DECLARATION OF JUNE SAUVAGET

I, June Sauvaget, declare as follows:

1. I was employed by Spotify AB ("Spotify"), the Opposer in this trademark opposition proceeding, from June 2016 until September 2020. I served as the company's Global Head of Consumer and Product Marketing from November 2017 until September 2020. I have personal knowledge of the facts within this declaration or am familiar with them based on a review of business records made and kept by Spotify. I can testify competently to the matters associated herein. I make this declaration in support of Spotify's claims in this proceeding.

2. In preparing this declaration, I reviewed true and correct copies of records that were made and maintained by Spotify employees or agents in the course of regularly conducted activity of Spotify's business, including Spotify's marketing, advertising, and branding activities.

Spotify's Business

3. Spotify is one of the best-known companies in the world that develops and distributes software and services for streaming music, podcasts, and other audio-video content.

Spotify's software and services enable its users to listen to, or watch, the content they choose via computers, mobile phones, smart speakers, and other electronic devices.

4. Spotify offers a SPOTIFY-branded mobile software application ("app") available for download for Windows, iOS, macOS, Android and other computer operating systems. Spotify also offers "Spotify Connect," which allows users to listen to, or watch, music, and other content through a wide range of entertainment systems, including speakers, receivers, TVs, cars, and smartwatches using the Spotify app. Currently, Spotify Connect works with over 2,000 devices from over 200 brands. Spotify also offers a web player allowing users to access Spotify content via the Internet. A true and correct copy of Spotify's 2016 "The History of the Brand" Presentation is attached hereto as Exhibit 1. True and correct copies of example Spotify webpages showing ways to download and access the Spotify service is attached hereto as Exhibits 2-4.

5. Spotify's premium service ("Premium Service") provides fee-paying subscribers with unlimited online and offline streaming access to its catalog of music, podcasts, and other content. The Premium Service offers a commercial-free music experience. Our ad-supported service ("Ad-Supported Service," and together with our Premium Service, our "Service") has no subscription fees and provides Ad-Supported Users with more limited access to Spotify's catalog of content.

Growth of Spotify's Business

6. Spotify introduced the SPOTIFY brand in 2006, including by registering the <spotify.com> domain name on April 23, 2006, and posting information about its business on a website located at that domain. A screenshot of Spotify's website, as it appeared on November 27, 2006, is attached to the Affidavit of Christopher Butler, Exhibit A.

7. Spotify completed the launch of its business in Sweden in 2008 and then launched its business in the United States in 2011.

8. Since that time, Spotify's business has grown dramatically.

9. Various data highlight the growth of Spotify's business in the U.S. over the years. [REDACTED]

[REDACTED]

10. The Spotify mobile app has consistently been one of the top apps downloaded in the Apple App Store or Google Play Store. For example, from 2016-2019, Spotify was one of the top 11 free apps downloaded in the Apple App Store. Sample Apple charts are attached hereto as Exhibits 6-7. Sample news coverage of popular iPhone apps is attached hereto as Exhibit 8.

11. Spotify promotes its products and services under the SPOTIFY mark to a wide variety of consumers, including across age groups (from younger users to older listeners) and across all geographic regions in the U.S (from West, Northwest, Midwest, South, and others).

¹ MAU is defined as a user who plays at least one stream in a 30-day window.

[REDACTED]

[REDACTED]

[REDACTED]

12. Today, Spotify's platform has over 299 million MAUs and over 138 million Premium Service subscribers worldwide. A true and correct copy of Spotify's Q2 2020 Shareholder Letter is attached hereto as Exhibit 10.

13. [REDACTED]

[REDACTED]

[REDACTED] See Exhibit 5.

Applicant's Founders Are Spotify Users

14. Among Spotify's many users are Applicant's founders. The founders, Gusein Suleimanov and Ivan Suslov, who came up with the name POTIFY, have been and are Spotify users. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Spotify's Display of the SPOTIFY Brand

15. Spotify has prominently displayed the SPOTIFY brand, as set forth in detail below.

16. Spotify's U.S. headquarters are based in New York, New York. Spotify also has regional presence throughout the U.S., including in Boston, Los Angeles, San Francisco,

Atlanta, Chicago, Dallas, Detroit, Miami, Minneapolis, Nashville, and Washington DC. The SPOTIFY brand is featured prominently in the lobbies and other areas of its offices.

17. Spotify prominently displays the SPOTIFY brand as part of a wide variety of marketing and advertising programs.

18. Spotify's logo is often presented with the Spotify name; a typical presentation of the logo with the Spotify name appears as follows:



19. Each of Spotify's products and services has been promoted with reference to the SPOTIFY brand.

20. Spotify has prominently displayed the SPOTIFY brand on its website at <spotify.com>.

21. Spotify has also registered over 500 Internet domain names with the name "spotify." Many of these domain names "resolve" or re-direct to the website at <spotify.com>.

22. Spotify has prominently displayed the SPOTIFY brand on the mobile apps that it offers for download. The name of Spotify's main mobile app appears in the online app stores as "Spotify." Thus, each user who downloads a SPOTIFY mobile app is exposed to the SPOTIFY brand.

23. Spotify has prominently displayed the SPOTIFY brand with the company's accounts on various social media platforms, including YouTube, Facebook, Twitter, Instagram, LinkedIn, Pinterest, Tumblr, and Google+. Sample screenshots of Spotify social media pages are attached hereto as Exhibits 13-20. As of May 13, 2020, the following Spotify's social media accounts had a significant following, totaling approximately:

Instagram	5.3M followers
Facebook	22.3M likes
YouTube	1M subscribers
Twitter	3.5M followers
LinkedIn	1M followers

24. Spotify has prominently displayed the SPOTIFY brand in print advertising, including in highly read publications such as *Rolling Stone*, *Vanity Fair*, *The New York Times*, *New York Magazine*, *Billboard*, and *The Washington Post*. Sample copies of Spotify's printed advertising from 2020 in *The Washington Post*, *The New York Times*, *Billboard*, and *New York Magazine* are attached hereto as Exhibit 21.

25. Spotify has prominently displayed the SPOTIFY brand near or in heavily-trafficked public places, such as on billboards or large-print advertisements displayed throughout subways, buses, and streets. Well-known locations where such advertisements have appeared includes, for example, Times Square. True and correct copies of photographs of Spotify's large-print advertisements can be found in the documents attached hereto as Exhibits 22-26.

26. Spotify has promoted the SPOTIFY brand in advertising on television networks and channels, such as ABC, NBC, CBS, Fox, TNT/TBS, FX, AMC, and ESPN. A true and correct copy of Spotify's "Brand Campaign 2016" Report is attached hereto as Exhibit 27. Spotify has also promoted the SPOTIFY brand by advertising on national radio networks, such as Westwood One, Urban One, Compass Media Networks, Reach Media, Skyview Networks, and AdLarge Media, and American Urban Radio Networks (AURN).

27. Spotify has displayed the SPOTIFY brand in hosting, sponsoring or attending prominent live events, such as Cannes Lions, South by Southwest (SXSW), Consumer Electronics Show (CES), Country Music Association's CMA Fest, Coachella, Best New Artist Party for the Grammy Awards, and Spotify's RapCaviar Pantheon events. A true and correct copy of Spotify's "Spotify @ SXSW 2015 Recap" Report is attached hereto as Exhibit 28.

28. Spotify has displayed the SPOTIFY brand in promotional materials for movies and television shows, such as *Stranger Things*, *Queer Eye*, and *The Ellen DeGeneres Show*. True and correct copies of sample promotional materials used on the Spotify service are attached hereto as Exhibit 29.

29. Spotify further encourages the display of the SPOTIFY brand by requiring business partners, developers and licensees to follow Spotify's branding guidelines. A true and correct copy of Spotify's "Spotify Partnerships" Guidelines is attached hereto as Exhibit 30. A true and correct copy of Spotify's "Branding Guidelines" is attached hereto as Exhibit 31. As discussed below, these partners and other licensees, in turn, display the SPOTIFY mark as part of their business activities.

Spotify's Marketing and Advertising Expenditures

30. Spotify has invested hundreds of millions of euros in marketing and advertising of products and services under the SPOTIFY brand.²

31. Below is a summary of Spotify's advertising and marketing expenditure totals since 2011, as reflected in true and correct copies of Spotify's financial records attached hereto as Exhibits 32-35:

² Because Spotify is a Swedish company, the company's revenues and expenses are tracked in euros.

Fiscal Year (Ending Dec. 31)	Total Advertising and Sales Spend (Euros)	Total Advertising and Sales Spend (USD) ³
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		

Spotify's Advertising Campaigns

32. Spotify promotes the SPOTIFY brand through targeted advertising campaigns, which have resulted in significant brand promotion and engagement. The examples below of various targeted Spotify advertising campaigns are illustrative but hardly exhaustive.

33. One of Spotify's most successful advertising campaigns is Wrapped, an end-of-the-year summary of users' listening trends on the Spotify platform. As part of the campaign, Spotify displays advertisements, both online and in-person, describing yearly music trends to drive brand relevance and interest. In addition, Spotify generates personalized listening data

³ According to the United States Internal Revenue Service ("IRS"), the yearly average exchange rates for 2011 through 2019 from USD to Euro are as follows: 2011 = 0.748, 2012 = 0.809, 2013 = 0.783, 2014 = 0.784, 2015 = 0.937, 2016 = 0.940, 2017 = 0.923, 2018 = 0.848, and 2019 = 0.893. See IRS "Yearly Average Currency Exchange Rates" available at <https://www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates>.

for users from the past year, such as top streamed songs or time spent streaming music. Spotify also encourages users to share the results of their music habits on social media outlets. Spotify has received extensive coverage for these Wrapped campaigns.

- a. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] A

true and correct copy of Spotify's "2016 Wrapped" Report is attached hereto as Exhibit 36.

- b. In 2017, the Wrapped/Year in Music Campaign received over 3200 pieces of press coverage and generated 2.4 billion streams. A true and correct copy of Spotify's 2017 Wrapped Video is attached hereto as Exhibit 37.
- c. In 2018, the Wrapped/Year in Music Campaign had over 35 million users visit the Spotify website to review their listening history for 2018. Over 400,000 artists logged in to review their year and review their artist stats. On launch day, the Wrapped campaign (using the hashtag #wrapped2018) was the number one trending topic on Twitter, and over 5 million users shared their Wrapped data. Unique artist visits grew from 427,000 in 2018 to 1.3 million in 2019. Monthly active artists peaked at 707,000 in early January. True and correct copies of Spotify's 2018 Wrapped Videos are attached hereto as Exhibits 38-39.

- d. [REDACTED]
[REDACTED]
[REDACTED] Again, the Wrapped campaign (for 2019, using the hashtag

#SpotifyWrapped) became the number one trending topic on Twitter for two days following launch. A true and correct copy of Spotify's "Wrapped 2019 Post Project Report" is attached hereto as Exhibit 40. A true and correct copy of Spotify's 2019 Wrapped Video is attached hereto as Exhibit 41.

34. After President Barack Obama joked that he was hoping for a position at Spotify after leaving the White House, Spotify created a job post in January 2017 titled "President of Playlists" with credentials that could only be met by President Obama. The job position was covered by over 175 television segments and over 300 press outlets, became the number one trending moment on Twitter, and claimed the number one spot on Reddit. In under a week, Spotify received 14 million visits to its website and over 900 job applications. A true and correct copy of Spotify's 2017 President Obama Case Study Video is attached hereto as Exhibit 42.

35. Spotify has generated advertising campaigns specific to well-known musical artists. For example, in early 2017, Spotify had posted blank, purple billboard campaigns across New York City and London as hints that it would be releasing Prince's music on its platform. The billboards were changed to feature Prince once the announcement was made, and the campaign was picked up in numerous television and online sources. The campaign received 247 pieces of press coverage. Within a week, Prince's music was streamed for more than 2 million hours and added to 7 million playlists. A true and correct copy of Spotify's 2017 Prince Case Study Video is attached hereto as Exhibit 43.

36. As another example, Spotify was the lead sponsor for a David Bowie exhibition and advertised in David Bowie's local New York subway station with unique pieces about his life and music together with the SPOTIFY brand. Spotify also printed limited edition metro

cards featuring Mr. Bowie's different personas. The successful campaign was featured in a wide variety of news outlets and publications, such as MSNBC, *Time Out*, Complex, *Fast Company*, *Newsweek*, *USA Today*, Fox News, CBS, and *The Washington Post*. A true and correct copy of Spotify's 2018 David Bowie Case Study Video is attached hereto as Exhibit 44.

37. Spotify has also hosted live events using the SPOTIFY brand. For example, in 2017, Spotify launched a U.S. hip-hop concert series called RapCaviar Live featuring the icons and emerging artists in rap. Sample media coverage of Spotify's RapCaviar Live events are attached hereto as Exhibits 45-46.

38. In 2018, Spotify devoted a special section on its platform to highlight the music, conversations, and achievements of Black people in music and culture, with some of the top artists, including Pharrell, contributing to the conversation. Spotify's Sound Up Bootcamp attracted over 18,000 applications from women of color for the chance to develop their own original podcast.

39. In January 2020, Spotify launched Pet Playlists, which allows users to create curated playlists for their pets. The media campaign led to over 2 million pet playlists being created, 4 million press impressions, 4,000 global news outlets. *People* magazine wrote, "Ozzy Osbourne's Dog Loves His," and *The New York Times* wrote, "Who loves it more: The pets? Or their owners?" A true and correct copy of Spotify's Pet Playlist Video is attached hereto as Exhibit 47.

Partnerships

40. Spotify partners with and licenses the use of its SPOTIFY brand to a wide variety of companies as a promotional tool. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] True and correct copies of news coverage of Spotify's partnership announcements are attached hereto as Exhibits 48-63. True and correct copies of Spotify's partnership agreements are attached hereto as Exhibits 64-69.

41. Many celebrities use the SPOTIFY platform to connect with their fans. For example, musicians who have made public playlists using Spotify software include Taylor Swift, Jimmy Fallon, Demi Lovato, Lorde, The Weeknd, Daft Punk, Lady Gaga, Kendrick Lamar, and The Black Keys. Ellen DeGeneres and Spotify have partnered to create the Ellen Spotify hub, where fans can listen to curated playlists. A true and correct copy of Spotify's Press Release "Exploring Spotify's Creative Content Partnership with Ellen DeGeneres" is attached hereto as Exhibit 70. A sample of Spotify's promotion of #EllenOnSpotify on Twitter is attached hereto as Exhibit 71.

42. Recently, several celebrities have signed exclusive podcast partnership deals with Spotify, including First Lady Michelle Obama, Joe Rogan, Kim Kardashian West, and Lele Pons.

SPOTIFY-Branded Clothing and Merchandise

43. Spotify has distributed clothing and other merchandise with the SPOTIFY brand since as early as 2012. *See* First Notice of Reliance, Exhibit A-2. For example, during an event in 2013, Spotify distributed sweatshirts, handbags, and headphones branded with the SPOTIFY mark to a variety of people outside the company. True and correct copies of photographs of clothing and merchandise from a Spotify 2013 event are attached hereto as Exhibit 72. That same year, Spotify hosted a music education "hackathon," where aspiring musicians and artists

attended workshops, talks, and live performances and where Spotify distributed SPOTIFY-branded handbags. A true and correct copy of a photograph from Spotify's 2013 Music Education Hackathon event is attached hereto as Exhibit 73. Spotify has continued to distribute clothing and merchandise with the SPOTIFY brand.

Marketplace Recognition of the SPOTIFY Mark

44. Spotify's significant investment in its SPOTIFY brand has generated great recognition and goodwill among the consuming public.

45. Consumer research data confirms this recognition and goodwill. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] True and correct copies of Spotify's brand tracking records and reports are attached hereto as Exhibits 74-77.

46. Spotify's prominence in the marketplace is widely recognized. Its SPOTIFY-branded offerings and advertising campaigns have been lauded and reported on by media outlets throughout the world, such as *Rolling Stone*, *Fortune*, *The Chicago Tribune*, *The New York Times*, *The New York Post*, *The Guardian*, *The Australian Financial Review*, *USA Today*, *Reuters*, *The Business Times (Singapore)*, *South China Morning Post*, *The New Yorker*, *WIRED*, *The Atlantic*, *TIME*, *The Economist*, *The Los Angeles Times*, *The Wall Street Journal*,

CNET, Forbes, and Entertainment Weekly. Sample press coverage can be found in Spotify's reports attached hereto as Exhibits 78-79.

47. The brand consultancy Interbrand has ranked the SPOTIFY brand in its rankings of the "Best Global Brands" in 2019. Likewise, Prophet creates an annual "Brand Relevance Index" and has ranked Spotify as the #2 brand most relevant to consumers, behind Apple as #1. NPR also reported that Spotify is the world's most valuable music company. Cannes Lions also named Spotify as its "First Media Brand of the Year." *Business Insider* has stated that Spotify is the best overall music streaming service to subscribe to. A true and correct copy of the Business Insider article is attached hereto as Exhibit 80. Sample press coverage of Spotify's awards and recognition are attached as Exhibits 81-84.

Spotify's Trademark Enforcement Efforts

48. Spotify has registered SPOTIFY-related trademarks with the United States Patent and Trademark Office. *See* First Notice of Reliance. These trademark filings cover a wide variety of products and services across Classes 9, 25, 35, 38, and 41, and expressly call out "computer software for enabling transmission, storage, sharing, collection, editing, organizing and modifying audio, messages, images and other data for use in social networking" and "[c]lothing, namely, shirts, sweatshirts, jackets; footwear; headgear, namely hats." *Id.*, Exhibits A-1, A-2.

49. Spotify regularly enforces its trademark rights in the SPOTIFY mark by sending demand letters to infringers, filing arbitration complaints against infringing domain names, and opposing or canceling applications and registrations of infringing trademarks. *See* Fifth Notice of Reliance; *see also* First Notice of Reliance, Exhibits A-5-25.

Harm to Spotify

50. If Applicant's POTIFY mark is allowed to register, then, for a number of reasons, the SPOTIFY trademark will be harmed.

51. The parties' trademarks are extremely similar: they are the same letter-string except Applicant's mark drops the leading "S." I am not aware of any other brands or trademarks that are so close to the SPOTIFY mark. The closeness of the two words is particularly noticeable when POTIFY is preceded by a word that ends in "S," such as "This is Potify." Thus, registration of POTIFY as a trademark will diminish the distinctiveness of Spotify's previously registered mark.

52. Because POTIFY leads with the word "POT," which is a colloquial name for marijuana, consumers will associate the POTIFY mark with the promotion of marijuana use. Because of the proximity of POTIFY to SPOTIFY, consumers are also likely to associate the POTIFY mark for marijuana-related goods and services with the nearly identical SPOTIFY mark. The federal government considers marijuana to be a controlled substance and has made the use, sale, and possession of marijuana illegal, despite state laws to the contrary. Thus, any resulting association of marijuana-related goods and services with the SPOTIFY mark is likely to tarnish the SPOTIFY mark.

53. Because of POTIFY's proximity to SPOTIFY, the registration of POTIFY by Applicant is also likely to cause confusion. Some people are likely to believe that POTIFY is a Spotify-affiliated or Spotify-sponsored brand or that there is some other connection between the two companies when, in fact, there is no such connection.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 22, 2020, at Santa Monica, California.

/ June Sauvaget /
JUNE SAUVAGET

CERTIFICATE OF SERVICE BY EMAIL

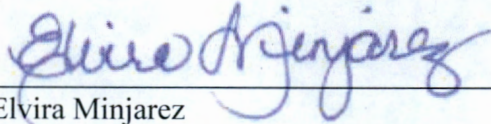
I, Elvira Minjarez, declare:

I am employed in Santa Clara County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

On this date, I served **DECLARATION OF JUNE SAUVAGET [PUBLIC VERSION]** by forwarding the document(s) by electronic transmission on this date to the Internet email address listed below:

R. Joseph Trojan
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Kevin Davis
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on October 29, 2020.



Elvira Minjarez