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

Proceeding	91248764
Party	Plaintiff MobileSoft Technology, Inc.
Correspondence Address	MICHELLE KALLENBACH 2260 RIDGE DRIVE SUITE 13 MINNEAPOLIS, MN 55416 UNITED STATES Primary Email: mitzikallenbach@comcast.net 952-593-3858
Submission	Brief on Merits for Plaintiff
Filer's Name	Michelle Kallenbach
Filer's email	mitzikallenbach@comcast.net
Signature	/Michelle Kallenbach/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MOBILESOFT TECHNOLOGY, INC.,)	Opposition No.: 91248764
a Delaware Corporation,)	
Opposer,)	In the matter of:
)	
v.)	Application Serial No: 87836135
)	Mark: MY MY STAR
MY MY STAR, INC.,)	
)	Filed: March 15, 2018
Applicant.)	
)	Published: February 12, 2019
)	




OPPOSER MOBILESOFT TECHNOLOGY, INC.'S

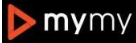
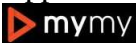

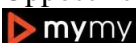
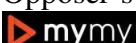

PRINCIPAL TRIAL BRIEF

Michelle M. Kallenbach, Esq.
2260 Ridge Drive, Suite 13
Minneapolis, MN 55416
Mobile: 612-401-7997
Fax: 952-406-8881
mitzikallenbach@comcast.net

*Attorney for Opposer,
MobileSoft Technology, Inc.*

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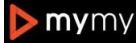
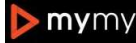
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II. INTRODUCTION


Opposer MobileSoft Technology, Inc. (“Opposer”) has brought this proceeding in opposition to Applicant My My Star, Inc.’s (“Applicant”) application to register its “MY MY STAR” standard character mark, which is confusingly similar to Opposer’s famous “MYMY” standard character and  design registered marks (“Opposer Marks”).

Opposer is an innovative, highly successful company which has associated its Marks with a range of goods and services, including but not limited to digital video production services, audio, video, digital music, video music production, music and video broadcasting via the Internet, entertainment services such as online videos in the fields of music and computer games, providing use of computer software in the delivery, distribution, and transmission of digital music and entertainment-related audio, video, text, and multimedia content for personal computers and mobile devices, and related goods and services.

Opposer enjoys and is privileged to have board member, Steven Sjobald’s expert guidance and direction from the inception and development of the goods/services, product and services management, to marketing, promotion, and use of its MYMY word and  design marks. As described in his Declarations, Sjoblad has 40+ years of unparalleled, extensive experience in corporate leadership, strategy and marketing [6 TTABVUE 5-6, Sjoblad Decl. at ¶ 3].

Opposer has spent more than \$1.837 million in advertising and promoting its goods/services under the MYMY word and  design marks. All advertisements and promotions prominently feature the MYMY word and  design marks. Opposer’s goods/services have garnered unsolicited media coverage, including from Benzinga (a dynamic and innovative financial media outlet that empowers investors with high-quality, unique content based on stock research by professionals). BlackEnterprise (black-owned, multi-media company,


premier resource for black entrepreneurs); and, A3C Conference and Festival (Atlanta’s premier music, tech and culture festival that showcases artists, producers and DJs from around the world and connects up-and-coming artists with influential hip-hop artists and innovators); and, Hype Magazine (national and international digital magazine).


Given the strength, distinctiveness and fame of Opposer’s Marks, Applicant’s mark is likely to dilute the distinctiveness of and cause a likelihood of confusion with Opposer’s “MYMY” and  registered marks. For these reasons, and those detailed, *infra*, Opposer respectfully requests that the Board sustain this Opposition and refuse registration of Applicant’s MY MY STAR mark.

III. DESCRIPTION OF RECORD

The record consists of:

1. 1 TTABVUE: Notice of Opposition
2. 4 TTABVUE: Answer
3. 6 TTABVUE: Testimony Declaration of Steven A. Sjoblad, together with Exhibit List and MST Exhibits 1-11 (MST0001-43)
4. 7 TTABVUE: Testimony Declaration of Joseph L. Brim a/k/a “JoJo Brim”, together with Exhibit List and MST Exhibits 12-19 (MST00044-96)
5. 8 TTABVUE: Opposer’s Notice of Reliance on Trademark Registrations under 37 C.F.R. § 2.122(d)(2), together with:


MST Exhibit 20 (Registration No. 6,053,635, Serial No. 87-309,628, , Classes 9, 38, 41, and current printout dated 5/12/20 of information from the TSDR system); and,



MST Exhibit 21 (Registration No. 5,444,433, Serial No. 87-309,635, , Classes 9, 38, 41, and current printout dated 5/12/20 of information from the TSDR system)
6. 9 TTABVUE: Opposer’s Notice of Reliance on Official Records under 37 C.F.R. § 2.122(e), together with:


MST Exhibit 22 (Application Serial No. 87,184,374, MYMY word, Classes 9, 38, 41, 42; and, current printout dated 5/12/20 of information from the TSDR system)

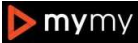

7. 13 TTABVUE: Rebuttal Testimony Declaration of Steven A. Sjoblad, together with Exhibit List and MST Exhibits 36, 37 (MST00097-100); and, MST Exhibit 38 [TSDR generated current status and title of MYMY standard word mark application, printed on 2020-08-26, together with USPTO June 2, 2020 issued Certificate of Registration-Principal Register for the MYMY standard word mark, assigning US Registration No. 6069693] (MST00101-107).
8. 14 TTABVUE: Len Wilson Cross-Examination Transcript

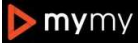
IV. STATEMENT OF THE ISSUES

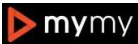

ISSUE 1: Is Applicant's MY MY STAR standard character mark so similar to Opposer's registered "MYMY" standard character mark and/or Opposer's registered  design mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties under Section 2(d) of the Trademark Act (Lanham Act), 15 U.S.C. § 1052(d)?

ISSUE 2: Is Applicant's MY MY STAR standard character mark so similar to Opposer's registered "MYMY" standard character mark and/or Opposer's registered  design mark that it is likely when applied to Applicant's goods/services as  design that consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties under Section 2(d) of the Trademark Act (Lanham Act), 15 U.S.C. § 1052(d)?

ISSUE 3: Is Applicant's MY MY STAR standard character mark so similar to Opposer's registered "MYMY" standard character and/or Opposer's registered  design mark that it is likely when applied to Applicant's goods/services, to cause dilution through blurring of the distinctive quality of Opposer's Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

ISSUE 4: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character and/or Opposer’s registered  design mark that it is likely when applied to Applicant’s goods/services as  design to cause dilution through blurring of the distinctive quality of Opposer’s Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

ISSUE 5: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character and/or Opposer’s registered  design mark that it is likely when applied to Applicant’s goods/services, to cause tarnishment of Opposer’s Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

ISSUE 6: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character and/or Opposer’s registered  design mark that it is likely when applied to Applicant’s goods/services as  design to cause tarnishment of Opposer’s Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

V. RECITATION OF THE FACTS





1. Opposer MobileSoft Technology, Inc. (“Opposer”) is a Delaware Corporation having its principal place of business at 120 South Six Street, Suite 900, Minneapolis, Minnesota 55402.¹

¹ 6 TTABVUE 6, 27-28: Sjoblad [May 17, 2020] Decl. at ¶ 4; Decl. Ex. 1 [MST00001-00002] (Delaware Sec. of State).

2. Sjoblad is a member on Opposer’s board of directors. Sjoblad is also a member of one of Opposer’s companies, known as My My Music, Inc. Sjoblad has an impressive background in corporate leadership, strategy and marketing expertise, spanning over forty years.²

3. Brim is the chief executive officer of My My Music. Brim has an extensive background and experience in the entertainment industry.³

4. On September 27, 2016, Opposer filed a trademark application, Principal Register, with the USPTO for the MYMY standard character mark, to which the USPTO assigned Serial No. 87184374 (“MYMY”). Opposer is the owner and applicant of the MYMY trademark application. On April 11, 2017, the USPTO published the MYMY trademark for opposition.⁴


5. On January 22, 2017, Opposer filed a trademark application with the USPTO for the stylized design mark  , to which the USPTO assigned Serial No. 87309628 (“”). Opposer is the owner and applicant of . On July 4, 2017, the USPTO published  for opposition.⁵


² 6 TTABVUE 4-8: Sjoblad [May 17, 2020] Decl. at ¶ 1 (Opposer board member), ¶ 3 (extensive background and experience); and ¶ 6 (board member of one of Opposer’s businesses, known as My My Music, Inc.).

³ 7 TTABVUE 4, 5: Brim [May 17, 2020] Decl. at ¶ 1 (CEO of one of Opposer’s businesses known as My My Music, Inc.; and, ¶¶ 3, 4 (background and experience).

⁴ 6 TTABVUE 8-9, 29-34: Sjoblad [May 17, 2020] Decl. at ¶¶ 7, 8; and, Decl. MSI Exhibit 2 [MST00003-00008] (TSDR generated current status and title of “MYMY” word mark application, printed on 2020-05-12); and, 9 TTABVUE 2-9: Opposer’s Notice of Reliance on Official Records, MST Ex. 22.

⁵ 6 TTABVUE 9-10, 35-42: Sjoblad [May 17, 2020] Decl. ¶ 9; and, MST Exhibit 3 [MST00009-00014] (TSDR generated current status and title of  design mark application, printed on 2020-05-12).

6. On August 9, 2017, My My Star, Inc. (Applicant in the instant matter), filed TTAB Opposition No. 91236066 opposing the registration of Opposer's MYMY word and  design applications, entitled *My My Star, Inc. v. MobileSoft Technology, Inc.* On September 13, 2019, the TTAB dismissed the Opposition.⁶ No appeal was filed.

7. On December 3, 2019, the Opposition was terminated and the TTAB released the MYMY word and  design mark applications back to Trademarks.⁷

8. On January 14, 2020, the MYMY word mark was Noticed for Allowance. On March 19, 2020, Opposer submitted a Statement of Use for the MYMY mark to the USPTO. On April 28, 2020, the USPTO issued a Notice of Acceptance of Statement of Use. On June 2, 2020, the USPTO issued a Certificate of Registration-Principal Register for the MYMY standard word mark, assigning US Registration No. 6069693.⁸

9. Following are the MYMY trademark classes 9, 38, 41, and 42 descriptions:⁹

Class 9: Computer software for enabling transmission, storage, sharing, collection, editing, organizing and modifying audio, video, messages, images and other data for personal computers and mobile devices.

Class 38: Sound and video broadcasting of music and films via the Internet, telephony, or satellite broadcasting; providing on-line chat rooms and discussion

⁶ 6 TTABVUE 12, 49-56: Sjoblad [May 17, 2020] Decl. at ¶15; and, MST Exhibit 7 [MST 00023-00030], (TTAB September 13, 2019 Opinion).

⁷ 6 TTABVUE 12, 29-40: Sjoblad [May 17, 2020] Decl. at ¶ 15; and, MST Exhibits 2 and 3 [MST00003-00016].

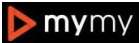
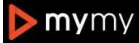

⁸ 13 TTABVUE 8-9, 15-21: Sjoblad [August 30, 2020] Decl. at ¶ 11, ll. 7-14; and, Decl. MSI Exhibit 38 [MST00101-00107] (TSDR generated current status and title of MYMY standard word mark application, printed on 2020-08-26, together with USPTO June 2, 2020 issued Certificate of Registration-Principal Register for the MYMY standard word mark, assigning US Registration No. 6069693).

⁹ 6 TTABVUE 8-9, 29-34: Sjoblad [May 17, 2020] Decl. at ¶¶ 7-8; and, Decl. Ex. 2 [MST00003-00008] (TSDR generated current status and title of MYMY word mark application, printed on 2020-05-12).

forums for transmission of messages and digital pictures among users in the field of general interest; telecommunications on the Internet, namely, audio and video transmission.




Class 41: Entertainment services, namely, providing online non-downloadable music, non-downloadable videos in the field of music and computer games; Entertainment services, namely, providing an online searchable database via a communication network featuring non-downloadable music, non-downloadable videos in the field of music and online computer games; Entertainment services, namely, music production; Entertainment services, namely, providing online computer games; Entertainment services, namely, providing rental services for musical recordings, videos, and computer games via a communication network for personal computers and mobile devices.

Class 42: Providing temporary use of on-line non-downloadable computer software for use in the delivery, distribution, and transmission of digital music and entertainment-related audio, video, text, and multimedia content for personal computers and mobile devices.

10. On January 14, 2020,  was Noticed for Allowance. On March 19, 2020, Opposer submitted a Statement of Use for  to the USPTO. On April 9, 2020, the USPTO issued a Notice of Acceptance of Statement of Use. On May 12, 2020, the USPTO issued a Certificate of Registration-Principal Register for the  design mark, assigning US Registration No. 6053635.¹⁰

11. Following are the  trademark classes 9, 38, and 41 descriptions¹¹:

Class 9: Non-downloadable computer software for use in the delivery, distribution, and transmission of digital music and entertainment-related audio, video, text, and multimedia content for personal computers and mobile devices; computer software for enabling transmission, storage, sharing, collection, editing, organizing and


¹⁰ 6 TTABVUE 9-10, 35-42: Sjoblad [May 17, 2020] Decl. ¶ 9; and, MST Exhibit 3 [MST00009-00014] (TSDR generated current status and title of  design mark application, printed on 2020-05-12; and, MST Exhibit 4 [MST00015-00016] ( USPTO Registration Certificate for  design, Registration No. 6053635); and, 8 TTABVUE 4-10: Opposer's Notice of Reliance on Trademark Registrations, MST Ex. 20.



¹¹ 6 TTABVUE 10-11, 35-42: Sjoblad [May 17, 2020] Decl. ¶ 10; and, MST Exhibits 3 and 4 [MST00009-00016].





modifying audio, video, messages, images and other data for personal computers and mobile devices.

Class 38: Sound and video broadcasting of music and films via the Internet, telephony, or satellite broadcasting; providing on-line chat rooms and discussion forums for transmission of messages and digital pictures among users in the field of general interest; telecommunications on the Internet, namely, audio and video transmission.

Class 41: Entertainment services, namely, providing online non-downloadable music, non-downloadable videos in the field of music and computer games; Entertainment services, namely, providing an online searchable database via a communication network featuring non-downloadable music, non-downloadable videos in the field of music and online computer games; Entertainment services, namely, music production; Entertainment services, namely, providing online computer games; Entertainment services, namely, providing rental services for musical recordings, videos, and computer games via a communication network for personal computers and mobile devices.

12. Opposer's principal shareholder owns two digital video production studios, which Opposer utilizes to produce its music, audio, video, and related services under its MYMY word and  design marks.¹²


13. On March 25, 2017, Opposer first used its MYMY word,  design, and  design marks in commerce.¹³

14. On March 25, 2017, Opposer commenced use of the MYMY word,  design and  design marks on its website, and since then has continuously used the MYMY word,  design and  design marks on its website in U.S. commerce in connection


¹² 6 TTABVUE 12: Sjoblad [May 17, 2020] Decl. at ¶12; and, 7 TTABVUE 10, 65-68: Brim [May 17, 2020] Decl. at ¶ 17; and, MST Exhibit 18 [MST00091-00094] (photos of River Rock Studios).

¹³ 6 TTABVUE 12: Sjoblad [May 17, 2020] Decl. at ¶13.

with the goods/services identified at paragraphs 9 and 11, *supra*, (collectively “Opposer’s Goods/Services”).¹⁴

15. Opposer advertises its Goods/Services through its website at <https://hiphop.mymymusic.com/> (“the Website”), which prominently displays its MYMY word and  design marks at the top of every page, including but not limited to the Website home page, featured artist page, voting page, trending page, newly promoted tracks and on each useful links and about company.¹⁵

16. Last year alone (May 14, 2019 – May 14, 2020), the Website generated more than 59,000 new users and more than 202,000 hits.¹⁶

17. Although most of Opposer’s customers are engaged through the Website and app, Opposer also uses social media to advertise and promote its Goods/Services under its MYMY word and  design marks, including Facebook, Instagram, and Twitter, receiving over 33,000 likes. Examples of Opposer’s YouTube use, entitled, “MYMY MUSIC WHOO ARMY FREESTYLE SESSION1” received over 6,000 views (as of August 17, 2019) and “Haley Smalls-Stupid-MyMy Music Xclusive” received over 78,000 views (as of the end of 2019).¹⁷

18. Over the years, Opposer’s Goods/Services have garnered unsolicited media coverage, including 8/30/2018 Press Release, “For Indie Rap Artists, MyMy Hip Hop Generating More Plays in Less Time Than Music’s Biggest Platforms”, wherein said article states that mymy,

¹⁴ 6 TTABVUE 12: Sjoblad [May 17, 2020] Decl. at ¶14.

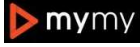


¹⁵ 7 TTABVUE 7, 33-39: Brim [May 17, 2020] Decl. at ¶ 10; and, MST Exhibit 15 [MST00059-00065] (collection of printouts from the Website on May 12, 2020).


¹⁶ 7 TTABVUE 7: Brim [May 17, 2020] Decl. at ¶ 11.

¹⁷ 7 TTABVUE 7-8, 40-49: Brim [May 17, 2020] Decl. at ¶ 12; and, MST Exhibit 16 [MST00066-00075] (collection of printouts from social media, printed on 5/11/2020).

“has stats that prove that its innovative streaming platform is changing the game for artists by generating more plays, in far less time, than SoundCloud or YouTube” and provides artists comments, for example, *“In only 21 days post judging, rapper Chillah Rose reports that his track “I’m The Man” was played 1,390 times on MyMy Hip Hop after receiving just 300 spins on SoundCloud in eight months”*; Benzinga 2/18/19 article *“MyMy Music Adds Veteran Music Industry Executive as Head of Hip Hop”*, the article states, *“In 2017, MyMy Music...to utilize “blind judging,” a patent-pending algorithm which enables listeners to critique the music...”*; Benzinga 9/2/19 article, *“MyMy Music Releases Analytics Tool for Hip Hop Music Industry”* wherein it states, *“MyMy Music...announced the release of Rapid Artist Qualification System...emerging talent for record label executives well ahead of the curve...allows MyMy to obtain consumer opinion and qualify talent in minutes...free of bias...”* and *“...we enlist seasoned industry influencers, such as DJ Whoo Kid, DJ Sense and DJ Holiday...”*; BlackEnterprise 3/12/19 article *“DJ Whoo Kid Collaborates with New Streaming Platform For Independent Hip-Hop Artists”*, wherein the article states, *“MyMy Music Hip Hop is the only streaming site which utilizes blind judging...”*; Using Data to Find & Break Artists”; The BlogTeam 10/7/19 article *“Q&A with Shawn Pouliotte & JoJo Brim of MyMy Music, wherein is quoted, “MyMy is changing the way people discover new music...Human curation is the new wave and helps to remove the frustration of traditional digital discovery.”*; The Hype Magazine 10/10/19 article *“MyMy Music CEO Shawn Pouliotte Discusses the Ungamable Platform and How it Employs Listeners to Decide With Music Makes the Cut”*; A3C Conference and Festival 10/11/19 article *“JOJO BRIM, More Than the*

Numbers”, wherein is quoted, “*JoJo’s two decades of Hip-Hop and R&B experience lifts the ceiling for grassroots independent artists using MyMy’s platform.*”¹⁸

19. As the result of Opposer’s enforcement activities, other than the Applicant’s mark challenged in this proceeding, Opposer’s use of the MYMY word and  design marks are substantially exclusive. No third parties are using the MYMY word or  design marks or any similar mark in connection with Opposer’s Goods/Services. The MYMY word and  design marks, as used in connection with Opposer’s Goods/Services, exclusively/uniquely identifies Opposer’s Goods/Services.¹⁹

20. On July 27, 2018, Applicant’s counsel sent an email to Opposer’s counsel informing her that on March 15, 2018, Applicant My My Star, Inc., (Applicant) filed U.S. Application Serial No. 87836135, for the MY MY STAR standard character mark (“Applicant’s Mark”), for Class 35 *Advertising services; Marketing services* and Class 41 *Digital video production services*, providing a specimen allegedly showing use of the MY MY STAR standard character mark, but which prominently displayed the  design in large font at the top of the specimen, with a dividing line separating it from the significantly smaller explanation that “My My Star is a digital production studio”.²⁰

¹⁸ 7 TTABVUE 8-9, 50-64: Brim [May 17, 2020] Decl. at ¶ 14; and, MST Exhibit 17 [MST00076-MST00090] (collection of articles mentioned at Decl. ¶ 14).


¹⁹ 6 TTABVUE 13: Sjoblad [May 17, 2020] Decl. at ¶ 16.



²⁰ 6 TTABVUE 13, 57-58: Sjoblad [May 17, 2020] Decl. at ¶ 17; and, MST Exhibit 8 [MST00031-00032] (screenshot dated 5/16/2020 showing “USPTO TSDR Case Viewer”, “Case ID” 87836135, “Document Description” 11. Specimen, “Mail/Create Date” Oct. 29, 2018).

21. Upon learning of Applicant's filing for the MY MY STAR word mark with the USPTO, the parties attempted to resolve their disputes. Unfortunately, the parties were unable to come to an agreement, which necessitated Opposer to file the instant proceeding.²¹

22. Upon review of the TESS search system, to date, Applicant has not filed a USPTO application for the **mymy**[★] design mark.²²

23. Applicant's founder, president, chief executive officer, chief financial officer and secretary, Len Wilson, testified at the taking of his oral cross-examination ("Wilson Tr.") that Applicant's application specimen, **mymy**[★] design, is Applicant's logo and that Applicant is trying to make the **mymy**[★] design its brand or trademark.²³

24. Opposer has no business relationship with Applicant and has never authorized Applicant or otherwise permitted Applicant to use or register the MY MY STAR word mark, the **mymy**[★] design mark or any other mark similar to Opposer's MYMY word or  design marks.²⁴

25. Since March 25, 2017, Opposer has spent more than \$1.837 million in advertising and promoting its Goods/Services under the MYMY word and  design marks. All advertisements and promotions prominently featured the MYMY word and  design marks.²⁵

²¹ 6 TTABVUE 13-14: Sjoblad [May 17, 2020] Decl. at ¶ 18.


²² 6 TTABVUE 14: Sjoblad [May 17, 2020] Decl. at ¶ 19.


²³ 14 TTABVUE 22-25: Wilson Tr. at p. 19, l. 7 – p. 22, l. 1.



²⁴ 6 TTABVUE 14: Sjoblad [May 17, 2020] Decl. at ¶ 20.

²⁵ 6 TTABVUE 14: Sjoblad [May 17, 2020] Decl. at ¶ 21.

26. Since March 25, 2017, Opposer's Goods/Services under its MYMY word and

 design marks have been and continue to be offered to consumers throughout the U.S.²⁶

27. Opposer advertises its Goods/Services through its website at <https://hiphop.mymymusic.com/> ("the Website"), which prominently displays its MYMY word and  design mark at the top of every page, including but not limited to the Website home page, featured artist page, voting page, trending page, newly promoted tracks and on each useful links and about company.²⁷

28. All of the foregoing advertising and publicity of Opposer's Goods/Services under its MYMY word and  design marks have resulted in extremely strong consumer recognition of the MYMY word and  design brand in the United States.²⁸


29. Opposer is an innovative company which has associated its marks with a range of goods and services, including but not limited to digital video production services, audio, video, digital music, video music production, music and video broadcasting via the Internet, and related goods and services.²⁹




²⁶ 6 TTABVUE 14: Sjoblad [May 17, 2020] Decl. at ¶ 22.

²⁷ 6 TTABVUE 14, 59-65: Sjoblad [May 17, 2020] Decl. at ¶ 23; and, MST Exhibit 9 [MST00033-00039] (collection of printouts from the Website on May 12, 2020).

²⁸ 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 24; 7 TTABVUE 9: Brim Decl. at ¶ 15.


²⁹ 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 25; and, 7 TTABVUE 9-10: Brim [May 17, 2020] Decl. at ¶ 16.

30. Opposer has established prior rights in MYMY and  design in connection with the Opposer's Goods/Services as set forth within its aforementioned Applications and Registrations prior to Applicant's application filing date.³⁰

31. Because of the overwhelming success and appeal of Opposer's MYMY word and  design marks in connection with Opposer's Goods/Services, Opposer's MYMY word and  design marks have enormous value and are extremely well known to the public and to the trade as identifying and distinguishing Opposer exclusively and uniquely as the source of the Goods/Services under its marks. In addition to its inherent distinctiveness, Opposer's MYMY word and  design marks have acquired distinctiveness in the minds of consumers.³¹

32. Applicant's MY MY STAR standard character mark is substantially similar to Opposer's MYMY standard character mark.³²

33. Applicant admitted in its Answer to Opposer's Opposition that Applicant's Mark [MY MY STAR] is substantially similar to Opposer's MYMY mark.³³

34. Applicant's MY MY STAR standard character mark is substantially similar to Opposer's  mark.³⁴

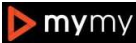
³⁰ 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 26.


³¹ 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 27; and, 7 TTABVUE 10: Brim [May 17, 2020] Decl. at ¶ 18.


³² 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 28; and, 7 TTABVUE 10: Brim [May 17, 2020] Decl. at ¶ 19.


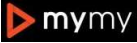
³³ 4 TTABVUE 3 at ¶ 9 (Applicant's Answer) to 1 TTABVUE 8 at ¶ 9 (Opposer's Opposition).


³⁴ 6 TTABVUE 15: Sjoblad [May 17, 2020] Decl. at ¶ 29; and, 7 TTABVUE 10: Brim [May 17, 2020] Decl. at ¶ 19.

35. Applicant admitted in its Answer to Opposer's Opposition that Applicant's Mark [MY MY STAR] is substantially similar to Opposer's  mark.³⁵

36. Applicant's specimen  filed with the USPTO allegedly showing use of the MY MY STAR mark is substantially similar to Opposer's MYMY mark.³⁶

37. Wilson testified at the taking of his oral cross-examination that Opposer's Mark is very similar to the My My star logo [].³⁷

38. Applicant's specimen  filed with the USPTO, allegedly showing use of the MY MY STAR mark, is substantially similar to Opposer's  design mark.³⁸

39. Applicant's proposed use, , and registration of the MY MY STAR word mark will create a likelihood of confusion, mistake and/or deception among consumers, all to the detriment of Opposer.³⁹

40. Applicant's MY MY STAR word mark is confusingly similar to Opposer's MYMY mark and is likely, when applied to the alleged services of the Applicant, namely, the digital video

³⁵ 4 TTABVUE 3 at ¶ 10 (Applicant's Answer to 1 TTABVUE 8 at ¶ 10 (Opposer's Opposition)).


³⁶ 6 TTABVUE 16: Sjoblad [May 17, 2020] Decl. at ¶ 30; and, 7 TTABVUE 10, 69-70: Brim [May 17, 2020] Decl. at ¶ 20; and, MST Exhibit 19 [MST00095-00096].


³⁷ 14 TTABVUE 27-28: Wilson Tr. at p. 24, l. 21- p. 25, l. 8.



³⁸ 6 TTABVUE 16: Sjoblad [May 17, 2020] Decl. at ¶ 31; and, 7 TTABVUE 10, 69-70: Brim [May 17, 2020] Decl. at ¶ 20; and, MST Exhibit 19 [MST00095-00096].

³⁹ 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 21.

production services, to cause confusion, mistake and/or deception among consumers, all to the detriment of Opposer.⁴⁰

41. Applicant's MY MY STAR word mark is confusingly similar to Opposer's  mark and is likely, when applied to the alleged services of the Applicant, namely, the digital video production services, to cause confusion, mistake and/or deception among consumers, all to the detriment of Opposer.⁴¹

42. Applicant's specimen  filed with the USPTO, allegedly showing use of the MY MY STAR mark, is confusingly similar to Opposer's MYMY word mark and is likely, when applied to the alleged services of the Applicant, namely, the digital video production services, to cause confusion, mistake and/or deception among consumers, all to the detriment of Opposer.⁴²

43. Applicant's specimen  filed with the USPTO, allegedly showing use of the MY MY STAR mark, is confusingly similar to Opposer's  design mark and is likely, when applied to the alleged services of the Applicant, namely, the digital video production services, to cause confusion, mistake and/or deception among consumers, all to the detriment of Opposer.⁴³


⁴⁰ 6 TTABVUE 16: Sjoblad [May 17, 2020] Decl. at ¶ 32; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 22.

⁴¹ 6 TTABVUE 16: Sjoblad [May 17, 2020] Decl. at ¶ 33; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 22.


⁴² 6 TTABVUE 16: Sjoblad [May 17, 2020] Decl. at ¶ 34; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 23.

⁴³ 6 TTABVUE 16-17: Sjoblad [May 17, 2020] Decl. at ¶ 35; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 21; and, Brim [May 17, 2020] Decl. at ¶ 23.

44. Applicant admitted in its Answer that it is using and intends to continue to use or intends to use the **mymy[★]** design mark on its goods and services. Applicant denies that its **mymy[★]** design mark is confusingly similar to Opposer's Marks.⁴⁴

45. Yet, Wilson testified at his oral cross-examination that Opposer's  design mark could be confused with Applicant's MY MY STAR mark and its **mymy[★]** design.⁴⁵

46. Applicant's MY MY STAR word mark is virtually identical to Opposer's MYMY word mark.⁴⁶

47. Applicant's MY MY STAR word mark is virtually identical to Opposer's  design mark.⁴⁷

48. The specimen filed by Applicant, to show the manner in which its MY MY STAR applied for mark is seen by the public, shows the **mymy[★]** design, which is virtually identical to Opposer's MYMY word mark.⁴⁸


⁴⁴ 4 TTABVUE 4: Answer at ¶¶ 39, 40.

⁴⁵ 14 TTABVUE 107: Wilson Tr. p. 104, ll. 16–24.

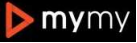
⁴⁶ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 36; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 24.

⁴⁷ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 37; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 24.

⁴⁸ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 38; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 25.

49. The specimen filed by Applicant, to show the manner in which its MY MY STAR applied for mark is seen by the public, shows the **mymy**[★] design, which is virtually identical to Opposer's  mark.⁴⁹

50. Applicant's MY MY STAR word mark so resembles Opposer's MYMY mark as used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.⁵⁰

51. Applicant's MY MY STAR word mark so resembles Opposer's  mark as used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.⁵¹

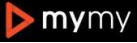
52. Applicant's specimen **mymy**[★] filed with the USPTO, allegedly showing use of the MY MY STAR mark, so resembles Opposer's MYMY mark as used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.⁵²

⁴⁹ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 39; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 25.

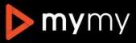
⁵⁰ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 40; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 26.

⁵¹ 6 TTABVUE 17: Sjoblad [May 17, 2020] Decl. at ¶ 41; and, 7 TTABVUE 11: Brim [May 17, 2020] Decl. at ¶ 26.


⁵² 6 TTABVUE 17-18: Sjoblad [May 17, 2020] Decl. at ¶ 42; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 27.

53. Applicant's specimen **mymy**[★] filed with the USPTO, allegedly showing use of the MY MY STAR mark, so resembles Opposer's  mark as used in the United States and not abandoned, is likely to cause confusion, or to cause mistake or to deceive.⁵³

54. Applicant's MY MY STAR word mark is visually highly similar to Opposer's MYMY mark.⁵⁴

55. Applicant's MY MY STAR word mark is visually highly similar to Opposer's  mark.⁵⁵

56. Applicant's **mymy**[★] as prominently shown on its specimen submitted to the USPTO, is visually highly similar to Opposer's MYMY mark.⁵⁶

57. Applicant's **mymy**[★] as prominently shown on its specimen submitted to the USPTO is visually highly similar to Opposer's  design mark.⁵⁷

58. Applicant's MY MY STAR word mark when spoken, sounds similar to indistinguishable from Opposer's MYMY mark.⁵⁸

⁵³ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 43; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 27.

⁵⁴ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 44; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 28.


⁵⁵ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 45; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 28.

⁵⁶ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 46; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 29.


⁵⁷ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 47; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 29.

⁵⁸ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 48; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 30.


59. Wilson testified at his oral cross-examination that Opposer's MYMY word mark and Applicant's MY MY STAR word mark look and sound the same.⁵⁹

60. Applicant's MY MY STAR word mark when spoken, sounds similar to indistinguishable from Opposer's  mark.⁶⁰

61. Applicant's mymy[★] design, as prominently shown on its specimen submitted to the USPTO, when spoken sounds similar to indistinguishable from Opposer's MYMY mark.⁶¹

62. Applicant's mymy[★] design as prominently shown on its specimen submitted to the USPTO, when spoken, sounds similar to indistinguishable from Opposer's  design mark.⁶²

63. Applicant's MY MY STAR word mark, as used, makes a highly similar commercial impression to Opposer's MYMY mark.⁶³

64. Applicant's MY MY STAR word mark, as used, makes a highly similar commercial impression to Opposer's  mark.⁶⁴

⁵⁹ 14 TTABVUE 107: Wilson Tr. at p. 104, ll. 3-8.

⁶⁰ 6 TTABVUE 18: Sjoblad [May 17, 2020] Decl. at ¶ 49; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 30.

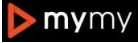
⁶¹ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 50; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 31.

⁶² 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 51; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 31.

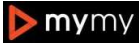
⁶³ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 52; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 32.

⁶⁴ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 53; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 32.

65. Applicant's **mymy**[★] design as prominently shown on its specimen submitted to the USPTO, as used, makes a highly similar commercial impression to Opposer's MYMY word mark.⁶⁵

66. Applicant's **mymy**[★] design as prominently shown on its specimen submitted to the USPTO, as used, makes a highly similar commercial impression to Opposer's  design mark.⁶⁶

67. Applicant's services, as recited in its Application, namely, the digital video production services, are identical to and closely related to Opposer's MYMY Goods/Services.⁶⁷

68. Applicant's services, as recited in its Application, namely, the digital video production services, are identical to and closely related to Opposer's  Goods/Services.⁶⁸

69. Applicant's MY MY STAR word mark and Opposer's MYMY mark are being sold through the same or similar channels of distribution, online via the Internet.⁶⁹


⁶⁵ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 54; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 33.

⁶⁶ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 55; and, 7 TTABVUE 12: Brim [May 17, 2020] Decl. at ¶ 33.



⁶⁷ 6 TTABVUE 19: Sjoblad [May 17, 2020] Decl. at ¶ 56; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 34.


⁶⁸ 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 57; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 34.


⁶⁹ 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 58; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 35.

70. Applicant's MY MY STAR word mark and Opposer's  are being sold through the same or similar channels of distribution, online via the Internet.⁷⁰

71. Applicant's MY MY STAR word mark is highly likely to diminish and dilute the value and distinctive character of Opposer's MYMY mark, to the great detriment of Opposer's famous MYMY mark, thus damaging Opposer.⁷¹

72. Applicant's MY MY STAR word mark is highly likely to diminish and dilute the value and distinctive character of Opposer's  mark, to the great detriment of Opposer's famous  design mark, thus damaging Opposer.⁷²

73. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to diminish and dilute the value and distinctive character of Opposer's MYMY mark, to the great detriment of Opposer's famous MYMY mark, thus damaging Opposer.⁷³



74. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to diminish and dilute the value and distinctive character

⁷⁰ 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 59; and 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 35.


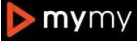
⁷¹ 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 60; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 36.


⁷² 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 61; and, 7 TTABVUE 13: Brim [May 17, 2020] Dec. at ¶ 36.



⁷³ 6 TTABVUE 20: Sjoblad [May 17, 2020] Decl. at ¶ 62; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 37.

of Opposer's  design mark, to the great detriment of Opposer's famous  design mark, thus damaging Opposer.⁷⁴

75. Applicant's MY MY STAR word mark is highly likely to cause dilution by blurring Opposer's MYMY mark, to the great detriment of Opposer's famous MYMY mark, thus damaging Opposer.⁷⁵

76. Applicant's MY MY STAR word mark is highly likely to cause dilution by blurring Opposer's  mark, to the great detriment of Opposer's famous  mark, thus damaging Opposer.⁷⁶

77. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to cause dilution by blurring Opposer's MYMY word mark, to the great detriment of Opposer's famous MY MY word mark, thus damaging Opposer.⁷⁷


78. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to cause dilution by blurring Opposer's  design

⁷⁴ 6 TTABVUE 20-21: Sjoblad [May 17, 2020] Decl. at ¶ 63; and, 7 TTABVUE 13: Brim [May 17, 2020] Dec. at ¶ 37.

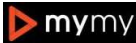
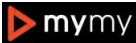
⁷⁵ 6 TTABVUE 21: Sjoblad [May 17, 2020] Decl. at ¶ 64; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 38.


⁷⁶ 6 TTABVUE 21: Sjoblad [May 17, 2020] Decl. at ¶ 65; and, 7 TTABVUE 13: Brim [May 17, 2020] Decl. at ¶ 38; and, 7 TTABBUE 13: Brim [May 17, 2020] Decl. at ¶ 38.



⁷⁷ 6 TTABVUE 21: Sjoblad [May 17, 2020] Decl. at ¶ 66; and, 7 TTABVUE 13-14: Brim [May 17, 2020] Decl. at ¶ 39.

mark, to the great detriment of Opposer's famous  design mark, thus damaging Opposer.⁷⁸

79. Applicant's MY MY STAR word mark is highly likely to cause dilution by tarnishment of Opposer's MYMY mark, to the great detriment of Opposer's famous MYMY mark, thus damaging Opposer.⁷⁹

80. Applicant's MY MY STAR word mark is highly likely to cause dilution by tarnishment of Opposer's  mark, to the great detriment of Opposer's famous  mark, thus damaging Opposer.⁸⁰

81. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to cause dilution by tarnishment of Opposer's MYMY word mark, to the great detriment of Opposer's famous MYMY word mark, thus damaging Opposer.⁸¹

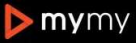
82. Applicant's use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to cause dilution by tarnishment of Opposer's 

⁷⁸ 6 TTABVUE 21: Sjoblad [May 17, 2020] Decl. at ¶ 67; and, 7 TTABVUE 13-14: Brim [May 17, 2020] Decl. at ¶¶ 39, 40.

⁷⁹ 6 TTABVUE 21: Sjoblad [May 17, 2020] Decl. at ¶ 68; and, 7 TTABVUE 14: Brim [May 17, 2020] Decl. at ¶ 41.

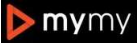
⁸⁰ 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 69; and, 7 TTABVUE 14: Brim [May 17, 2020] Decl. at ¶ 41.

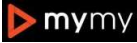
⁸¹ 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 70; and, 7 TTABVUE 14: Brim [May 17, 2020] Decl. at ¶ 42.


design mark, to the great detriment of Opposer's famous  design mark, thus damaging Opposer.⁸²

83. Consumers are likely to be confused between Applicant's MY MY STAR word mark and Opposer's MYMY mark as used on or in connection with similar goods and services.⁸³

84. Applicant admitted in its Answer that consumers are likely to be confused between Applicant's Mark [MY MY STAR] and Opposer's MYMY mark as used on or in connection with similar goods and services.⁸⁴

85. Consumers are likely to be confused between Applicant's MY MY STAR word mark and Opposer's  design mark as used on or in connection with similar goods and services.⁸⁵

86. Applicant admitted in its Answer that consumers are likely to be confused between Applicant's Mark [MY MY STAR] and Opposer's  mark as used on or in connection with similar services.⁸⁶

87. Consumers are likely to be confused between Applicant's use of its  specimen that is submitted to the USPTO and Opposer's MYMY word mark as used on or in connection with similar goods and services.⁸⁷

⁸² 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 71; and, 7 TTABVUE 14: Brim [May 17, 2020] Decl. at ¶ 42.


⁸³ 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 72.

⁸⁴ 4 TTABVUE 3 at ¶ 11 (Applicant's Answer) to 1 TTABVUE 8 at ¶ 11 (Opposer's Opposition).

⁸⁵ 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 73.

⁸⁶ 4 TTABVUE 3 at ¶ 12 (Applicant's Answer) to 1 TTABVUE 8 at ¶ 12 (Opposer's Opposition).

⁸⁷ 6 TTABVUE 22: Sjoblad [May 17, 2020] Decl. at ¶ 74.

88. Consumers are likely to be confused between Applicant's use of its **mymy**[★] specimen that is submitted to the USPTO and Opposer's  design mark as used on or in connection with similar goods and services.⁸⁸

89. Consumers are likely to be confused and to mistakenly believe that Applicant's services offered under Applicant's MY MY STAR word mark, namely, the digital video production services, either emanate from or are licensed by, sponsored by, or associated with Opposer.⁸⁹

90. Consumers are likely to be confused and to mistakenly believe that Applicant's services offered under Applicant's specimen **mymy**[★] design, namely, the digital video production services, either emanate from or are licensed by, sponsored by, or associated with Opposer.⁹⁰

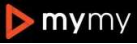
91. Consumers are likely to be confused and to mistake Applicant's services under MY MY STAR, namely, the digital video production services, for Opposer's goods and services under Opposer's MYMY mark.⁹¹


⁸⁸ 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 75.


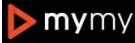
⁸⁹ 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 76; and, 7 TTABVUE 15: Brim [May 17, 2020] Decl. at ¶ 45.



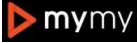

⁹⁰ 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 77; and, 7 TTABVUE 15: Brim [May 17, 2020] Decl. at ¶ 46.

⁹¹ 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 78; and, 7 TTABVUE 14, 15: Brim [May 17, 2020] Decl. at ¶ 43, 47.

92. Consumers are likely to be confused and to mistake Applicant's services under Applicant's MY MY STAR word mark, namely, the digital video production services, for Opposer's goods and services under Opposer's  mark.⁹²

93. Consumers are likely to be confused and to mistake Applicant's services under Applicant's MY MY STAR specimen showing use, , namely, the digital video production services, for Opposer's goods and services under Opposer's MYMY mark.⁹³

94. Consumers are likely to be confused and to mistake Applicant's services under Applicant's MY MY STAR specimen showing use, , namely, the digital video production services, for Opposer's goods and services under Opposer's  design mark.⁹⁴



95. If Applicant is permitted to obtain a registration for its MY MY STAR word mark, Applicant's use of its MY MY STAR mark and  as shown in its specimen, will confuse consumers as to the source and/or affiliation of its products. Its use of the MY MY STAR mark and  specimen will devalue Opposer's MYMY word and  design brands and cause significant harm to Opposer by diluting the distinctiveness of Opposer's famous MYMY word and  design marks.⁹⁵

⁹² 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 79; and, 7 TTABVUE 14, 15: Brim [May 17, 2020] Decl. at ¶¶ 43, 47.

⁹³ 6 TTABVUE 23: Sjoblad [May 17, 2020] Decl. at ¶ 80; and, 7 TTABVUE 14, 15: Brim [May 17, 2020] Decl. at ¶¶ 44, 48.

⁹⁴ 6 TTABVUE 24: Sjoblad [May 17, 2020] Decl. at ¶ 81; and, 7 TTABVUE 14, 15: Brim [May 17, 2020] Decl. at ¶¶ 44, 48.

⁹⁵ 6 TTABVUE 24: Sjoblad [May 17, 2020] Decl. at ¶ 82; and, 7 TTABVUE 15-16: Brim [May 17, 2020] Decl. at ¶ 49.

96. Analysis of Applicant's webpage (mymystar.com), Facebook page and Applicant's specimen submitted to the USPTO raises the following observations and concerns, which the public will have as well. At the top of Applicant's webpage, Facebook page and specimen, in large size, Applicant proudly displays the **mymy[★]** design. On Applicant's Facebook page, the **mymy[★]** design is enclosed in a circle. On Applicant's webpage and specimen, the **mymy[★]** design is set apart from the remainder of the page by a line. Under the line, in substantially smaller size, reads, "My My Star is a digital production studio. We make the best stickers & display ads on the planet. See our work below." Upon review of the work it referenced, Applicant's alleged services as presented on its webpage and specimen are graphic advertising through banners or other advertising formats made of text, images, flash, video, and audio. When Opposer's potential consumers, such as those in the music and entertainment industry, the creators of music, artists, music lovers, music producers, and investors, view Applicant's webpage and Facebook page, they will be, and likely have already been, confused as to the source and nature of Applicant's services as emanating from Opposer. Applicant's use of the **mymy[★]** design and MY MY STAR word will, and likely already has, tarnish[ed] Applicant's MYMY word and  design marks, resulting in dilution of its marks, the loss of consumers, and degrading Opposer's reputation, all to Opposer's detriment. The mere association in the minds of Opposer's consumers that MYMY word and  design marks are associated with Applicant's mark and specimen **mymy[★]**, will, and likely has, caused Opposer grave harm. Harmed not only from the loss of consumers




who love music, artists (both established and new, upcoming artists), creators of music, producers of music, but from financial investors as well.⁹⁶

VI. LAW AND ARGUMENT

A. OPPOSER HAS STANDING AND PRIORITY IN THIS PROCEEDING.

1. Opposer's Standing is Undisputed.

Opposer's standing is established by its

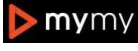
- (1) Registration of the MYMY standard word mark, proof of which has been properly made of record⁹⁷; and,
- (2) Registration of the  design mark, proof of which has been properly made of record⁹⁸; and,
- (3) Well-pleaded allegations that Applicant's Mark ("MY MY STAR" word mark) and its intended use of  design are likely to cause confusion with, and dilute the distinctive quality of the Opposer's Marks ("MYMY" word mark and  design mark)⁹⁹; and,

⁹⁶ 6 TTABVUE 24-25, 57-58, 66-67, 68-69: Sjoblad [May 17, 2020] Decl. at ¶ 83; and, Decl. Ex. 8 [MST00031-00032] (Applicant's specimen submitted to the USPTO); and, Decl. Ex. 10 [MST00040-00041] (Applicant's webpage printed on 5/16/20); and, Decl. Ex. 11 [MST00042-00043] (Applicant's Facebook community page printed on 5/16/20).


⁹⁷ *Supra*, at p. 5, ¶ 4 n.4; p. 6, ¶ 8 n.8; pp. 6-7, ¶ 9 n.9.

⁹⁸ *Supra*, at p. 5, ¶ 5 n.5; p. 7, ¶ 10 n.10; pp. 7-8, ¶ 11 n.11.

⁹⁹ 1 TTABVUE 8-16: Opposition ¶¶ 9-66; and, 6 TTABVUE 14-25, 57-69: Sjoblad [May 17, 2020] Decl. at ¶¶ 21-35, 40-43, 60-71, and 82-83; and, MST Exs. 8-11 (MST00031-00043); and, 7 TTABVUE 7-16, 33-68: Brim [May 17, 2020] Decl. at ¶¶ 10-49; and, MST Exs. 15-18 (MST00059-00094).


(4) Use of its “MYMY” word and  design marks¹⁰⁰.

See, Trademark Rule 2.0122(d)(1); *see also*, *Cunningham v. Laser Gold Corp.*, 222 F.3d 943, 945, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Edwards Lifesciences Corp. v. Vigilanz Corp.*, 94 USPQ2d 1399, 1408 (TTAB 2010). Opposer’s standing in this proceeding is established by its pleaded registrations, which the record shows to be valid and subsisting, and owned by Opposer. *Cunningham*, 55 USPQ2d at 1844; *Otter Prods. LLC v. BaseOneLabs LLC*, 105 USPQ2d 1252, 1254 (TTAB 2012) [Precedential].


Opposer has demonstrated its use of the MYMY word mark and  design mark. Opposer has shown that it is not a mere intermeddler. Opposer’s use and/or registration of its marks establish that opposer has standing. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).


Based on the foregoing, there is no genuine issue as to Opposer’s standing in this Opposition proceeding.

2. Priority

There is no genuine dispute of material fact regarding Opposer’s priority in this case as to its use of the “MYMY” mark and the  design mark with respect to its Goods/Services described in the respective registrations. Opposer has submitted TSDR printouts of Opposer’s pleaded Registration No. 6,069,693 (Serial No. 87-184,374) for the standard character mark


¹⁰⁰ 6 TTABVUE 12-15, 59-65: Sjoblad [May 17, 2020] Decl. at ¶¶ 13, 14, 16, 21-27; and, MST Ex. 11 (MST00033-00039); and, 7 TTABVUE 7-10, 33-64: Brim [May 17, 2020] Decl. at ¶¶ 7-10; and, MST Exs. 15-17 (MST00059-00090).

“MYMY”¹⁰¹ and for Registration No. 6,053,635 (Serial No. 87-309,628) for the  design mark.¹⁰² Those registrations are valid and subsisting and owned by Opposer. Given that Opposer’s pleaded registrations are of record, priority is not at issue with respect to Opposer’s Goods/Services covered by those registrations vis-à-vis the involved applications. *See, L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1436 n.7 (TTAB 2012) [Precedential] (there can be no priority dispute when an opposer properly introduces its registrations into the record and there is no counterclaim).

In view of Opposer’s ownership of a valid and subsisting registration for its MYMY word mark and  design mark, priority is not at issue with respect to the goods/services identified in Opposer’s pleaded registrations. *See, King Candy, Inc. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

The record establishes Opposer’s use of its marks on Opposer’s Goods/Services prior to Applicant’s filing date.


B. LIKELIHOOD OF CONFUSION

Opposer Issue 1: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character mark and/or Opposer’s registered  design mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties under Section 2(d) of the Trademark Act (Lanham Act), 15 U.S.C. § 1052(d)?

Opposer Issue 2: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character mark and/or Opposer’s registered

¹⁰¹ *Supra*, at p. 6, ¶ 8 n.8; and, pp. 6-7, ¶ 9 n.9.



¹⁰² *Supra*, at p. 7, ¶ 10 n.10; and, pp. 7-8, ¶ 11 n.11.

 design mark that it is likely when applied to Applicant's goods/services as *mymy*[★] design that consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties under Section 2(d) of the Trademark Act (Lanham Act), 15 U.S.C. § 1052(d)?



Trademark Act § 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. 15 USC § 1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“the *du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

1. Similarity Of The Marks

The first key *du Pont* consideration in any likelihood of confusion analysis regards the similarity of the marks. Opposer's Marks ("MYMY" standard character and  design marks) and Applicant's Mark (MY MY STAR standard character mark, and its intention to continue the use  design as presented in its application as a specimen showing use of the MY MY STAR word mark) are highly similar.


Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (*quoting Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) [Precedential] (*citing In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) [Precedential]).

Opposer's Marks, ("MYMY" and ) as compared to Applicant's "MY MY STAR" and its  design specimen are pronounced the same; such similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv) [Precedential].

The term, MYMY is the dominant element in each mark. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (*citing In re Dixie Rests.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34

(Fed. Cir. 1997)). Also see *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. See *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751. Here, the dominant feature is the wording MYMY.

The analysis for similarity of the marks focuses on comparing the Opposer's Marks to Applicant's Marks as to appearance, sound, connotation and commercial impression. See, *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), quoting *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties. *Coach Servs. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Johann Maria Farina Gegenüber Dem Julichs-Platz v. Chesebrough-Pond, Inc.*, 470 F.2d 1385, 176 USPQ 199, 200 (CCPA 1972); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014) [Precedential]; *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant's mark, MY MY STAR, and its specimen showing use design,  are essentially identical as to appearance and sound when compared to Opposer's marks, MYMY and



¹⁰³ *Supra*, at pp. 14-15, ¶ 32 n.32 – ¶ 39 n.39, pp. 17-18, ¶ 46 n.46 – ¶ 49 n.49, pp. 19-20, ¶ 54 n.54 – ¶ 62 n.62.

The above analysis of the similarity of Opposer's Marks and Applicant's Mark, and its intent to continue to use the **mymy**[★] design, supports a finding of likelihood of confusion.¹⁰⁴

2. Similarity Of The Goods/Services



The second key *du Pont* consideration in any likelihood of confusion analysis regards the similarity/dissimilarity between the goods, channels of trade and classes of purchasers based on the goods as they are identified in the applications and registration, respectively. *Octocom Sys. Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). In considering this *du Pont* factor, the reader should note that where virtually identical marks are involved, as is the case here, the degree of similarity between the goods that is required to support a finding of likelihood of confusion declines. *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1688-89 (Fed. Cir. 1993), *citing Philip Morris Inc. v. K2 Corp.*, 555 F.2d 815, 194 USPQ 81 (CCPA 1977) (even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source); It is only necessary that there be a viable relationship between the goods to support a finding of likelihood of confusion. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012) [Precedential]. Of particular importance here is that the issue is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of these goods. *Id.*; *see also Hydra Mac, Inc. v. Mack Trucks, Inc.*, 507 F.2d 1399, 184 USPQ 351 (CCPA 1975) (the confusion found to be likely is not as to the products but as to their source) (citation omitted).

The fact that the goods [and services] of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods [and

¹⁰⁴ *Supra*, at pp. 15-17, ¶ 39 n.39 – ¶ 45 n.45, pp. 18-19, ¶ 50 n.50 – ¶ 53 n.53.

services], but likelihood of confusion as to the source or sponsorship of those goods [and services]. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); TMEP §1207.01.

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007) [Precedential]); TMEP §1207.01(a)(i).

Here, the dominant elements in both marks are identical in sound, appearance and commercial connotation. Consumers are likely to focus on these terms which are virtually identical in spelling – “MYMY” and  versus “MY MY STAR” and  its specimen showing use – when forming a commercial impression.¹⁰⁵ The Opposer’s Goods/Services and Applicant’s services, namely, *Advertising services; Marketing services* and *Digital video production services*, overlap because Applicant’s *Digital video production services* is broadly worded and could relate to Opposer’s Goods/Services. Consumers would have every reason to believe the goods and services emanate from the same source.¹⁰⁶

¹⁰⁵ *Supra*, at pp. 20-21, ¶ 60 n.60 – ¶ 66 n.66.

¹⁰⁶ *Supra*, at pp. 15-16, ¶ 40 n.40 – ¶ 43 n.43; pp. 18-19, ¶ 50 n.50 – ¶ 53 n.53; pp. 21-22, ¶ 67 n.67 – ¶ 70 n.70; and, pp. 25-29, ¶ 83 n.83 – ¶ 96 n.96.

Generally, the greater degree of similarity between the applied-for mark and the registered mark, the lesser the degree of similarity between the goods and/or services of the parties is required to support a finding of likelihood of confusion. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) [Precedential] (citing *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001)); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009) [Precedential].

It is well established that the goods of the parties need not be similar or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 352, 356 (TTAB 1983).


The above analysis of the similarity of Opposer's and Applicant's goods/services support a finding of likelihood of confusion.

3. Fame


Fame of the prior mark plays a dominant role in likelihood of confusion cases featuring a famous mark. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894 (Fed. Cir. 2000); and *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992). Because of the extreme deference accorded to a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting fame to clearly prove it. *Lacoste Alligator S.A. v. Maxoly Inc.*, 91 USPQ2d 1594, 1597 (TTAB 2009) [Precedential]; and *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007) [Precedential].




In determining the strength of a mark, the Board is required to consider both its inherent strength based on the nature of the market, and its market strength. *Tea Bd. Of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1898-99 (TTAB 2006) [Precedential] (sustaining opposition in

large part because of fame of opposer's mark). "A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration that the mark is inherently distinctive for the goods." *Id.* at 1899.

Opposer's Marks, "MYMY" word and  design are registered on the Principal Register, in accordance with Sections 7 and 33 of the Lanham Act and enjoy a presumption of distinctiveness. *Lois Sportswear v. Levi Strauss & Company*, 799 F.2d 867, 871 (1986).

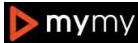
One of the ways in which the strength of a mark is evaluated is by the extent to which it has acquired distinctiveness, "*i.e.* fame, or the extent to which prominent use of the mark in commerce has resulted in a high degree of consumer recognition." *Virgin Enters, Ltd. v. Nawab*, 335 F.3d 141, 147 (2d Cir. 2003).

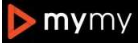
Since March 25, 2017, Opposer has continuously used the MYMY word and  design marks on its website in U.S. commerce in connection with Opposer's Goods/Services.¹⁰⁷

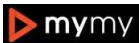
Sjoblad testified that as the result of Opposer's enforcement activities, other than the Applicant's mark challenged in this proceeding, Opposer's use of the MYMY word and  design marks are substantially exclusive, he is aware of no third parties using the MYMY word or  design marks or any similar mark in connection with Opposer's Goods/Services. The MYMY word and  design marks, as used in connection with Opposer's Goods/Services, exclusively/uniquely identify Opposer's Goods/Services.¹⁰⁸


¹⁰⁷ *Supra*, at pp. 6-8, ¶ 8 n.8 - ¶ 11 n.11; pp. 8-9, ¶ 14 n.14; and, p. 13, ¶ 26 n.26.


¹⁰⁸ *Supra* at p. 11, ¶ 19 n.19; and, pp. 14, ¶ 31 n.31.

Sjoblad testified that Opposer has invested more than \$1.837 million in advertising and promoting its Goods/Services under the MYMY word and  design marks.¹⁰⁹

All advertisements and promotions prominently featured the MYMY word and  design marks.¹¹⁰

Brim testified that the principal shareholder owns two digital video production studios, which Opposer utilizes to produce its music, audio, video, and related services under its MYMY word and  design marks.¹¹¹

Opposer's Goods/Services under its MYMY word and  design marks have been and continue to be offered to consumers throughout the U.S.¹¹²

Sjoblad and Brim testified that Opposer advertises its Goods/Services through its website at <https://hiphop.mymymusic.com/> (“the Website”), which prominently displays its MYMY word and  design mark at the top of every page, including but not limited to the Website home page, featured artist page, voting page, trending page, newly promoted tracks and on each useful links and about company.¹¹³

Brim testified that last year alone (May 14, 2019 – May 14, 2020), the Website generated more than 59,000 new users and more than 202,000 hits.¹¹⁴

¹⁰⁹ *Supra*, at p. 12, ¶ 25 n.25.

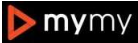
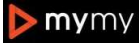
¹¹⁰ *Supra*, at p. 9, ¶ 15 n.15; p. 13, ¶ 27 n.27; and, p. 13, ¶ 28 n.28.

¹¹¹ *Supra*, at p. 8, ¶ 12 n.12.



¹¹² *Supra*, at pp. 8-9, ¶ 14 n.14; and, p. 13, ¶ 26 n.26.

¹¹³ *Supra*, at p. 8-9, ¶ 14 n.14 - ¶ 15 n.15; and, p. 13, ¶ 27 n.27.

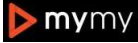
¹¹⁴ *Supra*, at p. 9, ¶ 16 n.16.

While most of Opposer's customers are engaged through the Website and app, Opposer also uses social media to advertise its Goods/Services under its MYMY word and  design marks, including pages on Facebook, Twitter, and YouTube. Opposer's Facebook, Twitter, and YouTube pages promoting Opposer's MYMY word and  design marks' Goods/Services.¹¹⁵

Brim testified that over the years, Opposer's Goods/Services have garnered numerous unsolicited national and international media coverage.¹¹⁶

Sjoblad and Brim testified that because of all of the foregoing advertising and publicity of Opposer's Goods/Services under its MYMY word and  design marks have resulted in extremely strong consumer recognition of the MYMY word and  design brand in the United States.¹¹⁷

Sjoblad and Brim testified that Opposer is an innovative company which has associated its marks with a range of goods and services, including but not limited to digital video production services, audio, video, digital music, video music production, music and video broadcasting via the Internet, and related goods and services.¹¹⁸

Opposer has established prior rights in MYMY and  in connection with at least the Opposer's Goods/Services as set forth within its applications and registrations prior to

¹¹⁵ *Supra*, at p. 9, ¶ 17 n.17.

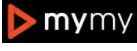


¹¹⁶ *Supra*, at pp. 9-11, ¶ 18 n.18.

¹¹⁷ *Supra*, at p. 13, ¶ 28 n.28.

¹¹⁸ *Supra*, at pp. 9-11, ¶ 18 n.18; and, p. 13, ¶ 29 n.29.

Applicant's application March 15, 2018 filing date. Opposer may rely on the filing date of Applicant's application as Applicant's constructive use date. *Chanel, Inc. v. Makarczyk*, 110 USPQ2d 2013, 2023 (TTAB 2014) [Precedential].

The constructive use provisions set forth in Section 7(c) of the Trademark Act provide that "[c]ontingent on the registration of a mark on the principal register provided by this Act, the filing of the application to register shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect ... against any other person except for a person ... who, prior to such filing (1) has used the mark..." 15 U.S.C. §1057(c).

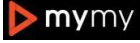
Sjoblad and Brim both testified that because of the overwhelming success and appeal of Opposer's MYMY word and  design marks in connection with Opposer's Goods/Services, Opposer's MYMY word and  design marks have acquired enormous value and become well known to the public and to the trade as identifying and distinguishing Opposer exclusively and uniquely as the source of the Goods/Services under its marks. In addition to its inherent distinctiveness, Opposer's MYMY word and  design marks have acquired distinctiveness in the minds of consumers.¹¹⁹

The foregoing evidence demonstrates the fame of Opposer's Marks, support a finding of likelihood of confusion.

4. There Is No Interface Between Applicant And Opposer

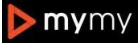
Opposer has no nexus to or business relationship with Applicant and has never authorized Applicant or otherwise permitted Applicant to use or register the MY MY STAR word mark, the

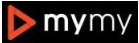
¹¹⁹ *Supra*, at p. 11, ¶ 19 n.19; and, pp. 14, ¶ 31 n.31.

mymy[★] design mark or any other mark similar to Opposer's MYMY word or  design marks.¹²⁰

The foregoing facts, law and arguments support a finding of likelihood of confusion.

C. DILUTION BY BLURRING

Opposer Issue 3: Is Applicant's MY MY STAR standard character mark so similar to Opposer's registered "MYMY" standard character and/or Opposer's registered  design mark that it is likely when applied to Applicant's goods/services, to cause dilution through blurring of the distinctive quality of Opposer's Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?


Opposer Issue 4: Is Applicant's MY MY STAR standard character mark so similar to Opposer's registered "MYMY" standard character and/or Opposer's registered  design mark that it is likely when applied to Applicant's goods/services as mymy[★] design to cause dilution through blurring of the distinctive quality of Opposer's Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?


The Lanham Act defines dilution by blurring as an "association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark." 15 U.S.C. § 1125(c)(2)(B). "Dilution by blurring occurs when a substantial percentage of consumers, upon seeing the junior party's use of a mark on its goods are immediately reminded of the famous mark and associate the junior party's use with owner of the famous mark, even if they do not believe that the goods come from the famous mark's owner." *UMG Recordings Inc. v. Mattel Inc.*, 100 USPQ2d (BNA) 1868, 1888 (TTAB 2011) [Precedential]. The Board may

¹²⁰ 6 TTABVUE 14: Sjoblad [May 17, 2020] Decl. at ¶ 20.

consider all relevant factors in determining whether a mark is likely to cause dilution by blurring, including (1) the degree of similarity between the marks; (2) the degree of inherent or acquired distinctiveness of the famous mark; (3) the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark; (4) the degree of recognition of the famous mark; (5) whether the user of the mark is intended to create an association with the famous mark; and (6) any actual association between the marks. 15 U.S.C. §1125(c)(2)(B)(i)-(vi).

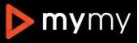

With respect to the first factor, the Lanham Act requires only a “degree of similarity” between the marks. *UMG Recordings*, 100 U.S.P.Q.2d at 1888. The Board must consider “whether the two involved marks are sufficiently similar to trigger consumers to conjure up a famous mark when confronted with the second mark.” *UMG Recordings*, 100 U.S.P.Q.2d at 1888. Here, given that Applicant’s Mark and its **mymy**[★] design specimen showing use, are virtually the same or similar to Opposer’s Marks and are associated with the same or similar goods/services, it is inevitable that Applicant’s Mark and specimen will bring to the minds of consumers Opposer’s Marks, so the marks qualify as highly similar for dilution purposes.¹²¹

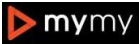
Opposer’s Marks, “MYMY” word and  design are registered on the Principal Register, in accordance with Sections 7 and 33 of the Lanham Act and enjoy a presumption of distinctiveness. *Lois Sportswear v. Levi Strauss & Company*, 799 F.2d 867, 871 (1986).

As laid out repeatedly in the preceding sections, Opposer’s MYMY and  design marks are inherently or acquired distinctiveness of the famous mark.¹²²

¹²¹ See, pp. 32-37, *supra*, discussion captioned, *Similarity of the Marks* and *Similarity of the Goods and Services*.

¹²² See, pp. 37-41, *supra*, discussion captioned, “Fame”; and, pp. 14, ¶ 31 n.31; pp. 22-23, ¶ 71 n.71 - ¶ 74 n.74; pp. 27-29, ¶ 95 n.95 - ¶ 96 n.96.


Opposer has reinforced the strength of its MYMY and  design marks by using it continuously and pervasively and consistently enforcing it against confusingly similar marks that have potential to diminish its trademark rights, such that its rights in the MYMY and  design marks are substantially exclusive. These efforts have resulted in substantial commercial success and tremendous consumer goodwill, including a brand recognition.¹²³


Although the record contains no evidence of actual association or an intent by Applicant to create an association with Opposer or its MYMY or  design marks, these factors are outweighed by the more relevant factors in this case. *UMG Recordings*, 100 USPQ2d at 1890-91 (finding the latter two factors outweighed by the other dilution factors). Blurring may occur “regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.” *Omega SA (Omega AG) (Omega Ltd.) v. Alpha Phi Omega*, 118 USPQ2d 1289, 1298 (TTAB 2016) [Precedential] (quoting 15 U.S.C. § 1125(c)).

[T]he owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.” *TiVo Brands*, 129 USPQ2d 129 USPQ2d 1097, 1103 (TTAB 2018) [Precedential] (quoting 15 U.S.C. § 1125(c)(1)). The “threshold question in a federal dilution claim is whether the plaintiff’s mark is ‘famous,’ *New York Yankees P’ship v. IET Prods. and Servs., Inc.*, 114 USPQ2d 1497, 1502 (TTAB 2015) [Precedential].

¹²³ *Supra*, at p. 11, ¶ 19 n.19; and, p. 14, ¶ 31 n.31.


The concern is that “the gradual whittling away of distinctiveness will cause the trademark holder to suffer ‘death by a thousand cuts.’” *Nat’l Pork Bd. v. Supreme Lobster and Seafood Co.*, 96 USPQ2d 1479, 1497 (TTAB 2010) [Precedential].

Sjoblad and Brim both testified that Applicant’s MY MY STAR word mark, and its **mymy**[★] specimen showing use, are highly likely to cause dilution by blurring of Opposer’s famous MYMY and  registered marks, to the great detriment of Opposer and damaging Opposer.¹²⁴

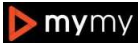

Dilution by blurring will occur if Applicant is allowed to register its MY MY STAR mark and continued use of its mark as **mymy**[★] (specimen found in Applicant’s application) because a substantial percentage of consumers, on seeing the mark video, entertainment, music industry-related goods and services, will be reminded of Opposer’s MYMY and  marks. *See UMG Recordings*, 100 U.S.P.Q.2d at 1888.

Applicant’s dilution by blurring reduces the distinctiveness of and undermine the selling power of its Opposer’s Marks. Applicant cannot shield itself by claiming use of its Mark and its specimen showing use of its Mark under the fair use doctrine, in the course of news reporting, or for a non-commercial purpose.


D. TARNISHMENT


Opposer Issue 5: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character and/or Opposer’s registered  design mark that it is likely when applied to Applicant’s goods/services, to cause tarnishment of Opposer’s Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

¹²⁴ *Supra*, at pp. 23-24, ¶¶ 75 n.75 - 78 n.78; and, p. 28-29, ¶ 96 n.96.

Opposer Issue 6: Is Applicant’s MY MY STAR standard character mark so similar to Opposer’s registered “MYMY” standard character and/or Opposer’s registered  design mark that it is likely when applied to Applicant’s goods/services as  design to cause tarnishment of Opposer’s Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)?

A trademark is tarnished when there is an association between a famous mark and another mark, and the association harms the reputation of the famous mark. *See*, Section 43(c) of the Lanham Act, 15 USC § 1125(c).

Here, Applicant is attempting to or is using its MY MY STAR, and its  specimen showing use, in an attempt to gain market share for its own product or to harm the reputation of Opposer’s Marks.

Additionally, Sjoblad and Brim both testified that Applicant’s use of the MY MY STAR word mark as shown in its specimen  to the USPTO, is highly likely to cause dilution by tarnishment of Opposer’s MYMY word mark, to the great detriment of Opposer’s famous MYMY word mark, resulting in loss of consumers and degrading and damaging Opposer’s reputation.¹²⁵

Applicant’s tarnishment by interfering with the positive images associated with Opposer’s Marks undermine the selling power of the mark. Applicant cannot shield itself by claiming use of its Mark and its specimen showing use of its Mark under the fair use doctrine, in the course of news reporting, or for a non-commercial purpose.

¹²⁵ *Supra*, at pp. 24-25, ¶ 79 n.79 - ¶ 82 n.82; and, pp. 28-29, ¶ 96 n.96.

VII. CONCLUSION

Based on the foregoing facts and argument, Opposer respectfully requests the Board sustain the opposition and refuse to register the subject application on the basis of likelihood of confusion and likelihood of dilution by blurring and/or tarnishment.

Respectfully submitted by:

Dated: October 29, 2020

/s/ Michelle M. Kallenbach
Michelle M. Kallenbach, Esq.
2260 Ridge Drive, Suite 13
Minneapolis, MN 55416
Mobile: 612-401-7997
Fax: 952-406-8881
mitzikallenbach@comcast.net
Attorney for MobileSoft Technology, Inc.

VIII. CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer MobileSoft Technology, Inc.'s Principal Trial Brief has been served on counsel for Applicant My My Star, Inc., Omni Legal Group, Omid E. Khalifeh, by forwarding said copy on October 29, 2020 via email at info@omnilegalgroup.com and omid@omnilegalgroup.com.

Dated: October 29, 2020

/s/ Michelle M. Kallenbach
Michelle M. Kallenbach