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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 mitzikallenbach@comcast.net 952-593-3858
Submission	Testimony For Plaintiff
Filer's Name	Michelle Kallenbach
Filer's email	mitzikallenbach@comcast.net
Signature	/Michelle Kallenbach/
Date	05/17/2020
Attachments	Sjoblad Decl_Ex List_Exs 1-11 MST00001-43.pdf(5194883 bytes)

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
)	

PLEASE TAKE NOTICE THAT, pursuant to 37 C.F.R. §§ 2.123(a)(1) and 2.012(a), Opposer MobileSoft Technology, Inc., by its undersigned counsel, hereby files with the United States Trademark Trial and Appeals Board the Testimony Declaration of Steven A. Sjoblad, together with Exhibit List and Exhibits identified therein.

s/ Michelle M. Kallenbach
Michelle M. Kallenbach, Esq.
2260 Ridge Drive, Suite 13
Minneapolis, MN 55416
Tel: 952-593-3858
Mobile: 612-401-7997
Fax: 952-406-8881
mitzikallenbach@comcast.net
Attorney for MobileSoft Technology, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer MobileSoft Technology, Inc.'s Notice of Filing Testimony Declaration of Steven A. Sjoblad, with Exhibit List and Exhibits, has been served on counsel for Applicant My My Star, Inc., Omni Legal Group, Omid E. Khalifeh, by forwarding said copy on May 17, 2020 via email at info@omnilegalgroup.com and omid@omnilegalgroup.com.

Dated: May 17, 2020

/s/ Michelle M. Kallenbach

Michelle M. Kallenbach

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1



Unless otherwise noted, the exhibits to which I refer and which are attached to this declaration are true and correct copies of the original documents and other materials from Opposer's business records kept in the ordinary course of business.

3. By background and experience, I have more than forty years of corporate leadership, strategy and marketing expertise. I spent twenty years building Fallon Worldwide, one of the world's preeminent creative advertising agencies, where I guided global strategy and marketing programs for numerous corporations including FedEx, Purina, Northwest Airlines, VF Corporation, Porsche Cars NA, Jim Beam Brands and more. I have hands-on experience in virtually every consumer and b-to-b category. I am an original member of the firm and served as its president. Thereafter, I joined FICO, an analytics and software concern serving the financial, insurance and retail industries where I learned the power of big data analytics and ran Global Consumer Services is a division of the company that repurposes Fair Isaac products for the consumer marketplace, most notably through www.myFICO.com, a consumer empowerment web site and through multiple distribution partners. I also ran the Fair Isaac Marketing Services business, transforming it into a "precision marketing unit." I also was a member of the Fair Isaac Executive Committee and held the position of Chief Marketing Officer. For twenty five years, I have been the proprietor of a strategy consulting business. My consulting clients include The Carter Company (children's fashion), Fair, Isaac & Company (big data and analytics), Charter Cable, Wilson Learning Worldwide (corporate learning), Riordan, Lewis & Haden (private equity), Companion Systems (banking industry supplier), Tattoo Media (Web consultant), Inc., PNV, Inc. (trucking industry infrastructure), Intertox

(neurotoxicology), Promedius (medical software), Health Management Associates (hospital holding company), Whish Beauty (natural body care products), Tectonic (interactive consulting firm) and more. I am the non-executive Chairman of Captira Analytical, a cloud-based software, data and analytics firm serving the criminal justice vertical market based in Albany, NY. I served in an advisory capacity to the company's parent Intersections, Inc. and developed a consumer-directed online privacy/security/fraud offering to meet the growing concern over personal data. For 18 years, I was a Board member of Schwan's Food Company, a multi-billion-dollar international frozen food concern and held several committee chairmanships. I am currently a board member of ADX Holdings, MobileSoft Technology, Inc. and MyMy Music, technology solutions companies serving customers globally. Additionally, I sit on numerous boards through my involvement with a New York private equity firm, Steel Pier Capital. My non-profit involvement has included the Minneapolis Heart Institute, Minnesota Medical Foundation, Vocal Essence and others. Historically, I have served on numerous other public and private boards.

4. Opposer MobileSoft Technology, Inc. is a Delaware Corporation having its principal place of business at 120 South Sixth Street, Suite 900, Minneapolis, Minnesota 55402. **Ex. 1**, State of Delaware, MobileSoft Technology, Inc. Entity Details, Good Standing Status.

5. On Opposer's board, my responsibilities include, but are not limited to, those involving discussion and decision-making of issues relating to the creation of, product and services development, product and services management, marketing, promoting, and use

of Opposer's trademarks and the goods and services under those trademarks, including MYMY word,  design, and  design marks.

6. One of Opposer's businesses, MyMy Music, to which I am also a board member, provides the following products and services:

- a. 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.
- b. 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 modifying audio, video, messages, images and other data for personal computers and mobile devices
- c. 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.
- d. 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.

e. 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.

7. 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. 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 application, entitled, *My My Star, Inc. v. MobileSoft Technology, Inc.* On September 13, 2019, the TTAB dismissed the Opposition. On December 3, 2019, the Opposition was terminated and the TTAB released the MYMY word mark application back to Trademarks. 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. **Ex. 2**, TSDR generated current status and title of MYMY word mark application, printed on 2020-05-12.





8. Following are the MYMY trademark classes 9, 38, 41, and 42 descriptions as depicted at **Ex. 2**:




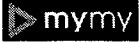




Class 9: Computer software for enabling transmission, storage, sharing, collection, editing, organizing and modifying audio, video, messages, images and other data for personal computers and mobile devices.


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

9. 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. On August 9, 2017, My My Star, Inc.




(Applicant in the instant matter) filed TTAB Opposition No. 91236066 opposing the registration of Opposer's  design (and MYMY word) application, entitled, *My My Star Inc. v. MobileSoft Technology, Inc.* On September 13, 2019, the TTAB dismissed the Opposition. On December 3, 2019, the Opposition was terminated and the TTAB released the  design mark application back to Trademarks. 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. **Ex. 3**, TSDR generated current status and title of  design mark application, printed on 2020-05-12; and **Ex. 4**,  USPTO Registration Certificate for  design, Registration No. 6053635.

10. Following are the  trademark classes 9, 38, and 41 descriptions as depicted at **Exs. 3 and 4**:

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 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.*


11. Opposer is the owner of U.S. Registration No. 5444433 on the Principal Register in the United State Patent and Trademark Office, filed on January 22, 2017 and registered on April 10, 2018, (“”) in classes 9, 38, and 41, described as follows [Ex. 5,  USPTO Registration Certificate, Registration No. 5444433; and, Ex. 6, TSDR generated current status and title of  printed on 2020-05-12]:



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 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, nondownloadable videos in the field of music and computer games; Entertainment services, namely, providing an online searchable database via a communication network featuring nondownloadable 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 studio, which Opposer utilizes to produce its music, audio, video, and related services under its MYMY word and  design marks.

13. On March 25, 2017, Opposer first used its MYMY word,  design, and  design marks in commerce [Exs. 2, 3, 4, 5, 6], wherein the date of first use of each mark on each good/service is indicated as March 25, 2017.

14. On March 25, 2017, Opposer commenced use of the MYMY word,  design and  design marks on its website, and since then has been continuously using the MYMY word,  design and  design marks on its website in U.S. commerce in connection with the goods/services identified at paragraphs 7-11, *supra*, (collectively "Opposer's Goods/Services") and at Exs. 2, 3, 4, 5, 6.

15. As referred to at paragraphs 7 and 9, *supra*, 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. Ex. 7, TTAB September 13, 2019 Opinion. No appeal was filed. On December 3, 2019, the Opposition was terminated and the TTAB released the MYMY word and  design mark applications back to Trademarks. Exs. 2, 3, which reflect the dates of that Opposition proceeding as referenced in this paragraph.


16. 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, I am aware of no third parties using the MYMY word or  design marks or any similar mark in connection with Opposer's Goods/Services. Thus, the MYMY word and  design marks, as used in connection with Opposer's Goods/Services, exclusively/uniquely identifies Opposer's Goods/Services.



17. Sometime after March 15, 2018 and confirmed in an email from Applicant's counsel on July 27, 2018, Opposer learned 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". **Ex. 8**, screenshot dated 5/16/2020 showing "USPTO TSDR Case Viewer", "Case ID" 87836135, "Document Description" 11. Specimen, "Mail/Create Date" Oct. 29, 2018.


18. 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


not able to come to an agreement, which necessitated Opposer to file the instant proceeding.



19. Upon review of the TESS search system, to date, Applicant has not filed a USPTO application for the **mymy^{*}** design mark.

20. 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.



21. 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.




22. 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.

23. 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. **Ex. 9** collection of printouts from the Website on May 12, 2020.


24. 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.

25. 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.


26. Opposer has established prior rights in MYMY, , and  in connection with at least the Opposer's Goods/Services as set forth within its aforementioned Application and Registrations prior to Applicant's application filing date.

27. 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 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. Thus, in addition to its inherent distinctiveness, Opposer's MYMY word and  design marks have acquired distinctiveness in the minds of consumers.


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

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


30. Applicant's specimen **mymy[★]** filed with the USPTO allegedly showing use of the MY MY STAR mark is substantially similar to Opposer's MYMY mark.

31. Applicant's specimen **mymy[★]** filed with the USPTO allegedly showing use of the MY MY STAR mark is substantially similar to Opposer's  design mark.

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


33. 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.

34. Applicant's specimen **mymy[★]**, 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.


35. Applicant's specimen **mymy[★]**, filed with the USPTO allegedly showing use of the MY MY STAR 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.


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

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

38. 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.


39. 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.

40. 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.


41. 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.

42. 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.

43. 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, as to be likely to cause confusion, or to cause mistake or to deceive.


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

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


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

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

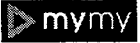
48. Applicant's MY MY STAR word mark when spoken, sounds similar to indistinguishable from Opposer's MYMY mark.

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


50. 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.

51. 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.


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

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


54. 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.

55. 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.



56. 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.


57. 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.


58. 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.



59. 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.

60. 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.



61. 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.


62. 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.




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



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


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




66. 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 of Opposer's MYMY word mark, to the great detriment of Opposer's famous MY MY word mark, thus damaging Opposer.

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


68. 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.


69. 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.


70. 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.

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

72. 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.

73. 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.


74. 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.

75. 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.


76. 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.



77. 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.

78. 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.

79. 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.

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

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

82. If Applicant is permitted to obtain a registration for its MY MY STAR word mark, not only do I expect its use of the mark and use of **mymy^{*}** as shown in its specimen, to confuse consumers as to the source and/or affiliation of its products, but also, its use of the MY MY STAR mark and **mymy^{*}** 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.

83. I have reviewed Applicant's webpage (mymystar.com) [Ex. 10, printed on 5/16/2020], facebook page [Ex. 11, printed on 5/16/2020], and Applicant's specimen submitted to the USPTO [Ex. 8] and have 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." I also reviewed some of the work it referenced. Based on my experience and knowledge, the

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 Applicant's MYMY word and **MYMY** 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 **MYMY** 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.

Further your affiant saith not.

As pursuant to 37 C.F.R. § 2.20, the signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Dated: May 17, 2020

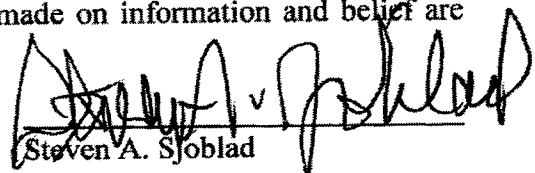






Steven A. Sjoblad

EXHIBIT LIST
(Declaration of Steven A. Sjoblad)

- Ex. 1** State of Delaware, Entity Details regarding
MobileSoft Technology, Inc.MST00001
- Ex. 2** TSDR generated current status and title of MYMY word mark
application, printed on 2020-05-12.....MST00003
- Ex. 3** TSDR generated current status and title of  design
mark application, printed on 2020-05-12.....MST00009
- Ex. 4**  USPTO Registration Certificate for  design,
Registration No. 6053635.....MST00015
- Ex. 5**  USPTO Registration Certificate, Registration No. 5444433.....MST00017
- Ex. 6** TSDR generated current status and title of  printed
on 2020-05-12..... MST00019
- Ex. 7** TTAB September 13, 2019 Opinion, *My My Star, Inc. v. MobileSoft
Technology, Inc.*.....MST00023
- Ex. 8** Screenshot dated 5/16/2020 showing “USPTO TSDR Case Viewer”,
“Case ID” 87836135, “Document Description” 11. Specimen,
“Mail/Create Date” Oct. 29, 2018.....MST00031
- Ex. 9** Collection of printouts from the Website on May 12, 2020.....MST00033
- Ex. 10** Applicant’s webpage, printed on 5/16/2020, 1 page.....MST00040
- Ex. 11** Applicant’s facebook community page printed on 5/16/2020.....MST00042

MST EXHIBIT 1

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

State Of Delaware

Entity Details

5/12/2020 9:48:02AM

File Number: 5920316

Incorporation Date / Formation Date: 12/23/2015

Entity Name: MOBILESOFT TECHNOLOGY, INC.

Entity Kind: Corporation

Entity Type: General

Residency: Domestic

State: DELAWARE

Status: Good Standing

Status Date: 3/27/2019

Registered Agent Information

Name: CORPORATION SERVICE COMPANY

Address: 251 LITTLE FALLS DRIVE

City: WILMINGTON

Country:

State: DE

Postal Code: 19808

Phone: 302-636-5401

MST EXHIBIT 2

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

Generated on: This page was generated by TSDR on 2020-05-12 09:24:06 EDT

Mark: MYMY

MYMY

US Serial Number: 87184374

Application Filing Date: Sep. 27, 2016

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status
Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: Review prior to registration completed.

Status Date: Apr. 28, 2020

Publication Date: Apr. 11, 2017

Notice of Jan. 14, 2020

Allowance Date:

Mark Information

Mark Literal Elements: MYMY

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: 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

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

For: 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

International Class(es): 041 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

For: 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

MST00004

International 038 - Primary Class
Class(es):

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

For: 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

International 009 - Primary Class
Class(es):

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: MobileSoft Technology, Inc.

Owner Address: 120 South Sixth Street, Suite 900
Minneapolis, MINNESOTA UNITED STATES 55402

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle Kallenbach

Attorney Primary Email Address: mitzikallenbach@comcast.net

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Michelle Kallenbach
2260 RIDGE DRIVE
SUITE #13
MINNEAPOLIS, MINNESOTA UNITED STATES 55416

Phone: 612-401-7997

Fax: 952-406-8881

Correspondent e-mail: mitzikallenbach@comcast.net

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 29, 2020	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Apr. 28, 2020	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 07, 2020	STATEMENT OF USE PROCESSING COMPLETE	66230
Mar. 19, 2020	USE AMENDMENT FILED	66230
Apr. 06, 2020	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Mar. 19, 2020	TEAS STATEMENT OF USE RECEIVED	
Jan. 14, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 03, 2019	TTAB RELEASE CASE TO TRADEMARKS	236066

MST00005

Dec. 03, 2019	OPPOSITION TERMINATED NO. 999999	236066
Sep. 13, 2019	OPPOSITION DISMISSED NO. 999999	236066
Mar. 01, 2019	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Mar. 01, 2019	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Aug. 09, 2017	OPPOSITION INSTITUTED NO. 999999	236066
Apr. 11, 2017	EXTENSION OF TIME TO OPPOSE RECEIVED	
Apr. 11, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 11, 2017	PUBLISHED FOR OPPOSITION	
Mar. 22, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 27, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 24, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Feb. 24, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Feb. 24, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 24, 2017	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Feb. 24, 2017	PRIORITY ACTION E-MAILED	6326
Feb. 24, 2017	PRIORITY ACTION WRITTEN	83694
Feb. 21, 2017	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Feb. 07, 2017	WITHDRAWN FROM PUB - OG REVIEW QUERY	99910
Jan. 18, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 17, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 16, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 16, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 11, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jan. 11, 2017	NON-FINAL ACTION E-MAILED	6325
Jan. 11, 2017	NON-FINAL ACTION WRITTEN	83694
Jan. 04, 2017	ASSIGNED TO EXAMINER	83694
Oct. 05, 2016	NOTICE OF PSEUDO MARK E-MAILED	
Oct. 04, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 30, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CALLAGHAN, BRIAN P

Law Office: LAW OFFICE 108

Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 28, 2020

Proceedings

Summary

Number of 3
Proceedings:

Type of Proceeding: Opposition

Proceeding Number: 91248764

Filing Date: Jun 12, 2019

Status: Pending

Status Date: Jun 12, 2019

Interlocutory Attorney: JENNIFER KRISP

Defendant

Name: My My Star Inc.

Correspondent Address: OMID E KHALIFEH
OMNI LEGAL GROUP
10866 WILSHIRE BLVD SUITE 400
LOS ANGELES CA UNITED STATES , 90024

Correspondent e-mail: info@omnilegalgroup.com

MST00006

Associated marks

Mark	Application Status	Serial Number	Registration Number
MY MY STAR	Opposition Pending Plaintiff(s)	<u>87836135</u>	

Name: MobileSoft Technology, Inc.

Correspondent MICHELLE KALLENBACH
Address: 2260 RIDGE DRIVE SUITE 13
MINNEAPOLIS MN UNITED STATES , 55416Correspondent e-mail: mitzikallenbach@comcast.net**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MYMY	SU - Registration Review Complete	<u>87184374</u>	
MYMY	Registered	<u>87309628</u>	<u>6053635</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 12, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 12, 2019	Jul 22, 2019
3	INSTITUTED	Jun 12, 2019	
4	ANSWER	Jul 22, 2019	
5	TRIAL DATES REMAIN AS SET	Jul 26, 2019	

Type of Proceeding: OppositionProceeding Number: 91236066

Filing Date: Aug 09, 2017

Status: Terminated

Status Date: Dec 03, 2019

Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: MobileSoft Technology, Inc.

Correspondent MICHELLE KALLENBACH
Address: 2260 RIDGE DRIVE, SUITE #13
MINNEAPOLIS MN UNITED STATES , 55416Correspondent e-mail: mitzikallenbach@comcast.net**Associated marks**

Mark	Application Status	Serial Number	Registration Number
MYMY	SU - Registration Review Complete	<u>87184374</u>	
MYMY	Registered	<u>87309628</u>	<u>6053635</u>

Plaintiff(s)

Name: My My Star, Inc.

Correspondent OMID E KHALIFEH
Address: OMNI LEGAL GROUP PLC
10866 WILSHIRE BLVD STE 400
LOS ANGELES CA UNITED STATES , 90024Correspondent e-mail: info@omnilegalgroup.com , James@omnilegalgroup.com , Omid@omnilegalgroup.com , Ariana@omnilegalgroup.com**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 09, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 09, 2017	Sep 18, 2017
3	PENDING, INSTITUTED	Aug 09, 2017	
4	ANSWER	Sep 18, 2017	
5	D MOT TO COMPEL DISCOVERY	Mar 02, 2018	

MST00007

6	P OPP/RESP TO MOTION	Mar 22, 2018
7	SUSP PEND DISP OF OUTSTNDNG MOT	Apr 04, 2018
8	PROCEEDINGS RESUMED	Jul 16, 2018
9	P MAIN BRIEF: TM RULE 2.128	May 09, 2019
10	D MAIN BRIEF: TM RULE 2.128	Jun 13, 2019
11	P REBUTTAL BRIEF: TM RULE 2.128	Jun 27, 2019
12	SUBMITTED FOR FINAL DECISION	Jul 11, 2019
13	FINAL DECISION: OPP DISMISSED	Sep 13, 2019
14	TERMINATED	Dec 03, 2019

Type of Proceeding: Extension of Time

Proceeding Number: 87184374

Filing Date: Apr 11, 2017

Status: Terminated

Status Date: Aug 10, 2017

Interlocutory Attorney:

Defendant

Name: MobileSoft Technology, Inc.

Correspondent Address: MICHELLE KALLENBACH
2260 RIDGE DRIVE, #13
MINNEAPOLIS MN , 55416

Correspondent e-mail: mitzikallenbach@comcast.net

Associated marks

Mark

Application Status

Serial Number

Registration Number

MYMY

SU - Registration Review Complete

87184374

Potential Opposer(s)

Name: My My Star, Inc.

Correspondent Address: Omid E. Khalifeh
Omni Legal Group, PLC
10866 Wilshire Blvd. Suite 400
Los Angeles CA UNITED STATES , 90024

Correspondent e-mail: info@omnilegalgroup.com

Associated marks

Mark

Application Status

Serial Number

Registration Number

Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Apr 11, 2017	
2	EXTENSION OF TIME GRANTED	Apr 11, 2017	

MST EXHIBIT 3

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

Generated on: This page was generated by TSDR on 2020-05-12 09:14:17 EDT

Mark: MYMY



US Serial Number: 87309628

Application Filing Date: Jan. 22, 2017

US Registration Number: 6053635

Registration Date: May 12, 2020

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

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

Status Date: May 12, 2020

Publication Date: Jul. 04, 2017

Notice of Jan. 14, 2020

Allowance Date:

Mark Information

Mark Literal Elements: MYMY

Standard Character Claim: No

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

Description of Mark: The mark consists of a red-orange triangle having each vertex overlapping the other to the right are white lower-case stylized letters "MYMY". The color black represents background and is not part of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) red-orange and white is/are claimed as a feature of the mark.

Design Search Code(s): 26.05.21 - Triangles that are completely or partially shaded

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Entertainment 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

International Class(es): 041 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

For: 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

MST00010

International 038 - Primary Class
Class(es):

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

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

International 009 - Primary Class
Class(es):

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: MobileSoft Technology, Inc.

Owner Address: 120 South Sixth Street, Suite 900
Minneapolis, MINNESOTA UNITED STATES 55402

Legal Entity Type: CORPORATION

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle Kallenbach

Attorney Primary Email Address: mitzikallenbach@comcast.net

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Michelle Kallenbach
2260 RIDGE DRIVE
SUITE #13
MINNEAPOLIS, MINNESOTA UNITED STATES 55416

Phone: 612-401-7997

Fax: 952-406-8881

Correspondent e-mail: mitzikallenbach@comcast.net

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 12, 2020	REGISTERED-PRINCIPAL REGISTER	
Apr. 10, 2020	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Apr. 09, 2020	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 07, 2020	STATEMENT OF USE PROCESSING COMPLETE	66230
Mar. 19, 2020	USE AMENDMENT FILED	66230
Apr. 06, 2020	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230

MST00011

Mar. 19, 2020	TEAS STATEMENT OF USE RECEIVED	
Jan. 14, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 03, 2019	TTAB RELEASE CASE TO TRADEMARKS	236066
Dec. 03, 2019	OPPOSITION TERMINATED NO. 999999	236066
Sep. 13, 2019	OPPOSITION DISMISSED NO. 999999	236066
Mar. 01, 2019	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Mar. 01, 2019	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Aug. 09, 2017	OPPOSITION INSTITUTED NO. 999999	236066
Jul. 05, 2017	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jul. 04, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 04, 2017	PUBLISHED FOR OPPOSITION	
Jun. 14, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 31, 2017	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
May 23, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 22, 2017	EXAMINER'S AMENDMENT ENTERED	88888
May 22, 2017	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
May 22, 2017	EXAMINERS AMENDMENT E-MAILED	6328
May 22, 2017	EXAMINERS AMENDMENT -WRITTEN	93051
May 17, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
May 17, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
May 16, 2017	ASSIGNED TO LIE	68171
Apr. 25, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 24, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 24, 2017	NON-FINAL ACTION E-MAILED	6325
Apr. 24, 2017	NON-FINAL ACTION WRITTEN	93051
Apr. 18, 2017	ASSIGNED TO EXAMINER	93051
Jan. 28, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 27, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 25, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 09, 2020

Proceedings

Summary

Number of 3
Proceedings:

Type of Proceeding: Opposition

Proceeding 91248764
Number:

Filing Date: Jun 12, 2019

Status: Pending

Status Date: Jun 12, 2019

Interlocutory JENNIFER KRISP
Attorney:

Defendant

Name: My My Star Inc.

Correspondent OMID E KHALIFEH
Address: OMNI LEGAL GROUP
10866 WILSHIRE BLVD SUITE 400
LOS ANGELES CA UNITED STATES , 90024

Correspondent e- info@omnilegalgroup.com
mail:

Associated marks

Serial

Registration

MST00012

Mark	Application Status	Number	Number
MY MY STAR	Opposition Pending	87836135	
	Plaintiff(s)		

Name: MobileSoft Technology, Inc.

Correspondent MICHELLE KALLENBACH
Address: 2260 RIDGE DRIVE SUITE 13
 MINNEAPOLIS MN UNITED STATES , 55416

Correspondent e-mail: mitzikallenbach@comcast.net

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYMY	SU - Registration Review Complete	87184374	
MYMY	Registered	87309628	6053635

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 12, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 12, 2019	Jul 22, 2019
3	INSTITUTED	Jun 12, 2019	
4	ANSWER	Jul 22, 2019	
5	TRIAL DATES REMAIN AS SET	Jul 26, 2019	

Type of Proceeding: Opposition

Proceeding Number: 91236066

Filing Date: Aug 09, 2017

Status: Terminated

Status Date: Dec 03, 2019

Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: MobileSoft Technology, Inc.

Correspondent MICHELLE KALLENBACH
Address: 2260 RIDGE DRIVE, SUITE #13
 MINNEAPOLIS MN UNITED STATES , 55416

Correspondent e-mail: mitzikallenbach@comcast.net

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYMY	SU - Registration Review Complete	87184374	
MYMY	Registered	87309628	6053635

Plaintiff(s)

Name: My My Star, Inc.

Correspondent OMID E KHALIFEH
Address: OMNI LEGAL GROUP PLC
 10866 WILSHIRE BLVD STE 400
 LOS ANGELES CA UNITED STATES , 90024

Correspondent e-mail: info@omnilegalgroup.com , James@omnilegalgroup.com , Omid@omnilegalgroup.com , Ariana@omnilegalgroup.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 09, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 09, 2017	Sep 18, 2017
3	PENDING, INSTITUTED	Aug 09, 2017	
4	ANSWER	Sep 18, 2017	
5	D MOT TO COMPEL DISCOVERY	Mar 02, 2018	
6	P OPP/RESP TO MOTION	Mar 22, 2018	
7	SUSP PEND DISP OF OUTSTNDNG MOT	Apr 04, 2018	

MST00013

8	PROCEEDINGS RESUMED	Jul 16, 2018
9	P MAIN BRIEF: TM RULE 2.128	May 09, 2019
10	D MAIN BRIEF: TM RULE 2.128	Jun 13, 2019
11	P REBUTTAL BRIEF: TM RULE 2.128	Jun 27, 2019
12	SUBMITTED FOR FINAL DECISION	Jul 11, 2019
13	FINAL DECISION: OPP DISMISSED	Sep 13, 2019
14	TERMINATED	Dec 03, 2019

Type of Proceeding: Extension of Time

Proceeding 87309628
Number:

Filing Date: Jul 05, 2017

Status: Terminated

Status Date: Nov 01, 2017

Interlocutory
Attorney:

Defendant

Name: MobileSoft Technology, Inc.

Correspondent MICHELLE KALLENBACH
Address: 2260 RIDGE DRIVE, #13
MINNEAPOLIS MN , 55416

Correspondent e-mail: mitzikallenbach@comcast.net

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYMY	Registered	<u>87309628</u>	<u>6053635</u>

Potential Opposer(s)

Name: My My Star, Inc.

Correspondent Omid E. Khalifeh
Address: Omni Legal Group, PLC
10866 Wilshire Blvd, Suite 400
Los Angeles CA UNITED STATES , 90024

Correspondent e-mail: info@omnilegalgroup.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Jul 05, 2017	
2	EXTENSION OF TIME GRANTED	Jul 05, 2017	

MST EXHIBIT 4

Offered by Opposer MobileSoft Technology, Inc.

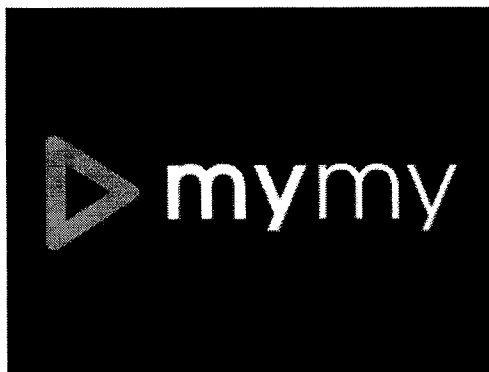
In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

United States of America

United States Patent and Trademark Office



Reg. No. 6,053,635

Registered May 12, 2020

Int. Cl.: 9, 38, 41

Service Mark

Trademark

Principal Register

MobileSoft Technology, Inc. (DELAWARE CORPORATION)
120 South Sixth Street, Suite 900
Minneapolis, MINNESOTA 55402

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

The color(s) red-orange and white is/are claimed as a feature of the mark.

The mark consists of a red-orange triangle having each vertex overlapping the other to the right are white lower-case stylized letters "MYMY". The color black represents background and is not part of the mark.

SER. NO. 87-309,628, FILED 01-22-2017



Andrew I. Lerner

Director of the United States
Patent and Trademark Office



MST00016

MST EXHIBIT 5

Offered by Opposer MobileSoft Technology, Inc.

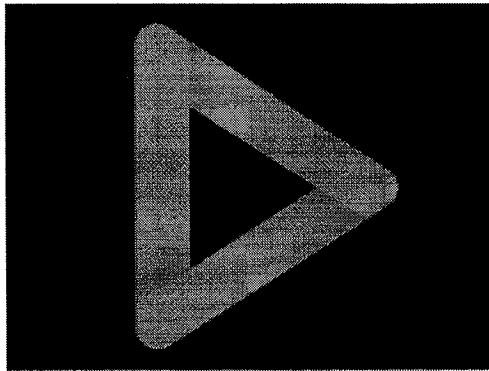
In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

United States of America

United States Patent and Trademark Office



Reg. No. 5,444,433

Registered Apr. 10, 2018

Int. Cl.: 9, 38, 41

Service Mark

Trademark

Principal Register

MobileSoft Technology, Inc. (DELAWARE CORPORATION)
100 Washington Ave S, Suite 690
Minneapolis, MINNESOTA 55401

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

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

FIRST USE 3-25-2017; IN COMMERCE 3-25-2017

The color(s) red-orange is/are claimed as a feature of the mark.

The mark consists of a red-orange triangle having each vertex overlapping the other. The color black represents background and is not part of the mark.

SER. NO. 87-309,635, FILED 01-22-2017



Andrei Iancu

Director of the United States
Patent and Trademark Office

MST00018

MST EXHIBIT 6

Offered by Opposer MobileSoft Technology, Inc.

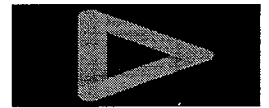
In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

Generated on: This page was generated by TSDR on 2020-05-12 09:53:49 EDT

Mark:



US Serial Number: 87309635

Application Filing Date: Jan. 22, 2017

US Registration Number: 5444433

Registration Date: Apr. 10, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

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

Status Date: Apr. 10, 2018

Publication Date: Jul. 04, 2017

Notice of Aug. 29, 2017

Allowance Date:

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a red-orange triangle having each vertex overlapping the other. The color black represents background and is not part of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) red-orange is/are claimed as a feature of the mark.

Design Search Code(s): 26.05.21 - Triangles that are completely or partially shaded

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *,*,* identify additional (new) wording in the goods/services.

For: Entertainment 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

International Class(es): 041 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

For: 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

MST00020

International 038 - Primary Class
Class(es):

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

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

International 009 - Primary Class
Class(es):

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 25, 2017

Use in Commerce: Mar. 25, 2017

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: MobileSoft Technology, Inc.

Owner Address: 120 South Sixth Street, Suite 900
Minneapolis, MINNESOTA UNITED STATES 55402

Legal Entity Type: CORPORATION

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle Kallenbach

Attorney Primary Email Address: mitzikallenbach@comcast.net

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: MICHELLE KALLENBACH
2260 RIDGE DRIVE, #13
MINNEAPOLIS, MINNESOTA UNITED STATES 55416

Phone: 952-593-3858

Fax: 952-406-8881

Correspondent e-mail: mitzikallenbach@comcast.net

Correspondent e-mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 01, 2019	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Mar. 01, 2019	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 10, 2018	REGISTERED-PRINCIPAL REGISTER	
Mar. 06, 2018	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 05, 2018	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 26, 2018	EXAMINER'S AMENDMENT ENTERED	88888
Feb. 26, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	

MST00021

Feb. 26, 2018	EXAMINERS AMENDMENT E-MAILED	
Feb. 26, 2018	SU-EXAMINER'S AMENDMENT WRITTEN	93051
Feb. 07, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Feb. 07, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Feb. 03, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 18, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Jan. 18, 2018	NON-FINAL ACTION E-MAILED	
Jan. 18, 2018	SU - NON-FINAL ACTION - WRITTEN	93051
Dec. 11, 2017	STATEMENT OF USE PROCESSING COMPLETE	66230
Nov. 20, 2017	USE AMENDMENT FILED	66230
Dec. 06, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Nov. 20, 2017	TEAS STATEMENT OF USE RECEIVED	
Aug. 29, 2017	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 04, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 04, 2017	PUBLISHED FOR OPPOSITION	
Jun. 14, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 31, 2017	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
May 23, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 22, 2017	EXAMINER'S AMENDMENT ENTERED	88888
May 22, 2017	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
May 22, 2017	EXAMINERS AMENDMENT E-MAILED	6328
May 22, 2017	EXAMINERS AMENDMENT -WRITTEN	93051
May 17, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
May 17, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
May 16, 2017	ASSIGNED TO LIE	68171
Apr. 25, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 24, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 24, 2017	NON-FINAL ACTION E-MAILED	6325
Apr. 24, 2017	NON-FINAL ACTION WRITTEN	93051
Apr. 18, 2017	ASSIGNED TO EXAMINER	93051
Jan. 28, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 27, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 25, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None
File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 05, 2018

MST00022

MST EXHIBIT 7

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

This Opinion is Not a
Precedent of the TTAB

Mailed: September 13, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

My My Star, Inc.

v.

MobileSoft Technology, Inc.

Opposition No. 91236066
(Applications Serial Nos. 87184374 and 87309628)

Omid E. Khalifeh, Ariana Santoro and Lara A. Peterson of Omni Legal Group PLC
for My My Star, Inc.


Michelle M. Kallenbach, Esq.
for MobileSoft Technology, Inc.

Before Thurmon, Deputy Chief Administrative Trademark Judge,
Mermelstein and Wellington, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

MobileSoft Technology, Inc. ("Applicant"), has filed applications seeking registration on the Principal Register of the mark **MYMY** in standard characters for various goods and services, including computer software, sound and video broadcasting, entertainment, and providing downloadable software, in International



Classes 9, 38, 41 and 42;¹ and the mark  for essentially the same goods and services in Classes 9, 38 and 41.²

My My Star, Inc. (“Opposer”) opposes registration of the applied-for marks in all classes on the grounds of dilution and likelihood of confusion.³ Specifically, Opposer alleges, inter alia, that “[b]eginning at least fifteen (15) years before the filing dates of the Applications opposed herein, Opposer has continuously used and promoted its MY MY STAR mark” (Not. of Opposition ¶ 6); that “Opposer relies on its superior common law trademark rights, which predate the filing dates of the intent to use Applications by many years” (Id., ¶ 8); that “Applicant’s Marks, as used on the services identified in the Application, would dilute, or be likely to dilute, the distinctiveness of Opposer’s Mark” (Id., ¶ 13); and that “Applicant’s Marks so resemble Opposer’s MY MY STAR mark, in which Opposer owns superior common law trademark rights, as to be likely, when used on or in connection with the goods and services identified in the Applications, as to cause confusion, or to cause mistake, or to deceive consumers and potential consumers within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).” (Id., ¶ 14).

¹ Application Serial No. 87184374 was filed on September 27, 2016 under Section 1(b) of the Trademark Act (“the Act”), 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intention to use the mark in commerce on or in connection with the identified goods and services.

² Application Serial No. 87309628 was filed on January 22, 2017, and is also based on Applicant’s claim of a bona fide intention to use the mark in commerce on or in connection with the identified goods and services under Section 1(b) of the Act.

³ 1 TTABVUE (Notice of Opposition).

Applicant's Answer denies the salient allegations of the Notice of Opposition. Specifically, Applicant either directly denies the allegations or, with regard to Opposer's allegations concerning its putative common law rights in a trademark, Applicant states that it is "without knowledge or information sufficient to form a belief as to the truth of the allegations ... and thus, denies the same."⁴

The parties have briefed this opposition proceeding.

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), Applicant's application files.

In its main trial brief, Opposer states that record not only includes the pleadings and involved application files, but also "consists of ... the United States Patent and Trademark Office (USPTO) Trademark Search & Document Retrieval (TSDR) and Trademark Electronic Search System (TESS)."⁵ With its reply trial brief, Opposer submitted the declaration of Len Wilson, Opposer's Chief Executive Officer.⁶

Opposer's assertion that the TSDR and TESS electronic databases are of record is incorrect. *See* Trademark Rule 2.122; *see also* Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 704.07 (June 2019), regarding manner of introducing official records, including those obtained from USPTO databases. During its assigned trial periods, Opposer did not submit any records from TESS or TSDR, let alone the

⁴ See Answer (4 TTABVUE), ¶¶ 6-9.

⁵ 9 TTABVUE 9.

⁶ 11 TTABVUE 23-24.

entire databases. To the extent that Opposer is contending that the Board can take judicial notice of any files, whether they be applications, registrations or papers filed in conjunction therewith, this is also incorrect. *See In re House Beer, LLC*, 114 USPQ2d 1073, 1075 (TTAB 2015) (Board does not take judicial notice of files of applications or registrations residing in the USPTO); *Edom Labs Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012).

As to Opposer's submission of the Wilson declaration with its reply brief, this is clearly improper and the declaration is not considered of record. Testimony by declaration must be taken and submitted during the assigned testimony period. Trademark Rule 2.121; *see also*, TBMP § 703 ("Taking and Introducing Testimony"). A brief may not be used as a vehicle for the introduction of evidence. TBMP § 704.05(b) ("Exhibits and other evidentiary materials attached to a party's brief on the case can be given no consideration unless they were properly made of record during the time for taking testimony.")

Finally, Opposer attached two exhibits to the Notice of Opposition⁷ and makes reference to these materials in its trial brief. The first exhibit ("Exhibit A") consists of ten numbered paragraphs describing Opposer's pleaded common law trademark and various applications that Opposer purportedly owns. The applications are identified by their serial numbers, but copies of the applications are not attached. The second exhibit ("Exhibit B") is a list of various companies under the caption "Opposer's Notable Clients." Except as provided in Rule 2.122(d)(1) (involving copies

⁷ 1 TTABVUE 13-19.

of pleaded registrations), exhibits attached to notices of opposition are not evidence on behalf of the party submitting them; if that party wants to rely on them it must identify and properly introduce the materials during its assigned testimony period. Trademark Rule 2.122(c). *See also* TBMP §§ 317 and 704.05 (“Exhibits to Pleadings”). Accordingly, the exhibits attached to Notice of Opposition are not considered of record.

In sum, and as Applicant correctly pointed out in its trial brief,⁸ the record is devoid of any properly submitted evidence from the parties and consists solely of the pleadings and the involved application files.

II. Opposer’s Failure to Prove Standing

Standing is a threshold issue that a plaintiff must prove in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). “The facts regarding standing ... are part of [a plaintiff’s] case and must be affirmatively proved. Accordingly, [plaintiff] is not entitled to standing solely because of the allegations in its petition.” *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). Our primary reviewing court has enunciated a liberal threshold for determining standing: a plaintiff must demonstrate that it has a “real interest” in a proceeding beyond that of a mere intermeddler, and “a reasonable basis for his belief of damage.” *Empresa Cubana*, 111 USPQ2d at 1062 (quotation omitted). A “real interest” is a “direct and personal

⁸ 10 TTABVUE 8.

stake” in the outcome of the proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999).

As plaintiff in this proceeding, Opposer must prove both its standing and its claims by a preponderance of the evidence. *See Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) (“The burden of proof rests with the opposer ... to produce sufficient evidence to support the ultimate conclusion of [priority of use] and likelihood of confusion.”); *Sanyo Watch Co. v. Sanyo Elec. Co.*, 691 F.2d 1019, 215 USPQ 833, 834 (Fed. Cir. 1982) (“As the opposer in this proceeding, appellant bears the burden of proof which encompasses not only the ultimate burden of persuasion, but also the burden of going forward with sufficient proof of the material allegations of the Notice of Opposition, which, if not countered, negates appellee’s right to a registration.”).

As discussed *supra*, Opposer failed to properly introduce any evidence or testimony. We further find that the pleadings, with a particular emphasis on Applicant’s Answer and any admissions made therein, does not overcome Opposer’s failure to provide any evidence regarding its standing, let alone the merits of grounds for opposition or even that Opposer has common law rights in a trademark. TBMP § 704.06(a) (“statements in pleadings may have evidentiary value as admissions against interest by the party that made them”). To be clear, we have carefully reviewed the pleadings and there are no allegations to which Applicant has admitted that can be construed as conferring standing upon Opposer.

Because Opposer has not demonstrated with evidence that it has a “real interest,” i.e., a “direct and personal stake” in the outcome of the proceeding or that Opposer is more than a “mere intermeddler,” it has failed to prove its standing to oppose registration of Applicant’s marks. *Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 50 USPQ2d at 1026. *See generally* TBMP § 309.03(b). Accordingly, we dismiss Opposer's claims on this basis.⁹ *See Lumiere Prods., Inc. v. Int’l Tel. & Tel. Corp.*, 227 USPQ 892, 893 (TTAB 1985).

Decision: The opposition is dismissed.

⁹ We need not and do not discuss or otherwise reach the merits of the asserted claims of dilution and likelihood of confusion.

MST EXHIBIT 8

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

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Case Id	Document Description	Mail/Create Date
87836135	11. Specimen	Oct. 29, 2018



My My Star is a digital production studio. We make the best stickers & display ads on the planet. See our work below!

BigHeads
Client: BigHeads
Project: The Best iMessage Sticker App of All Time
Done With: Magic Dust
Year: 2018

Type here to search

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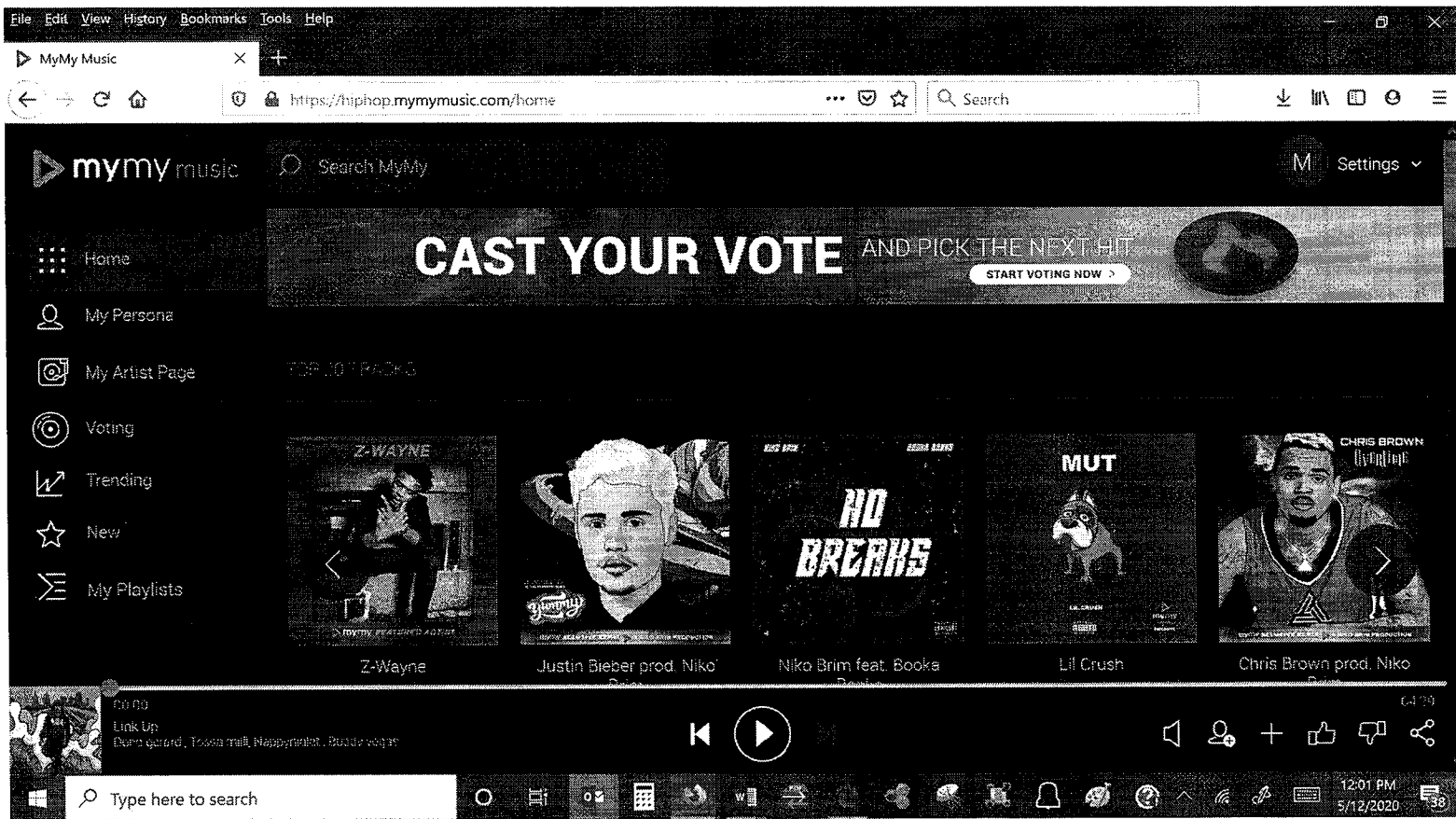
MST EXHIBIT 9

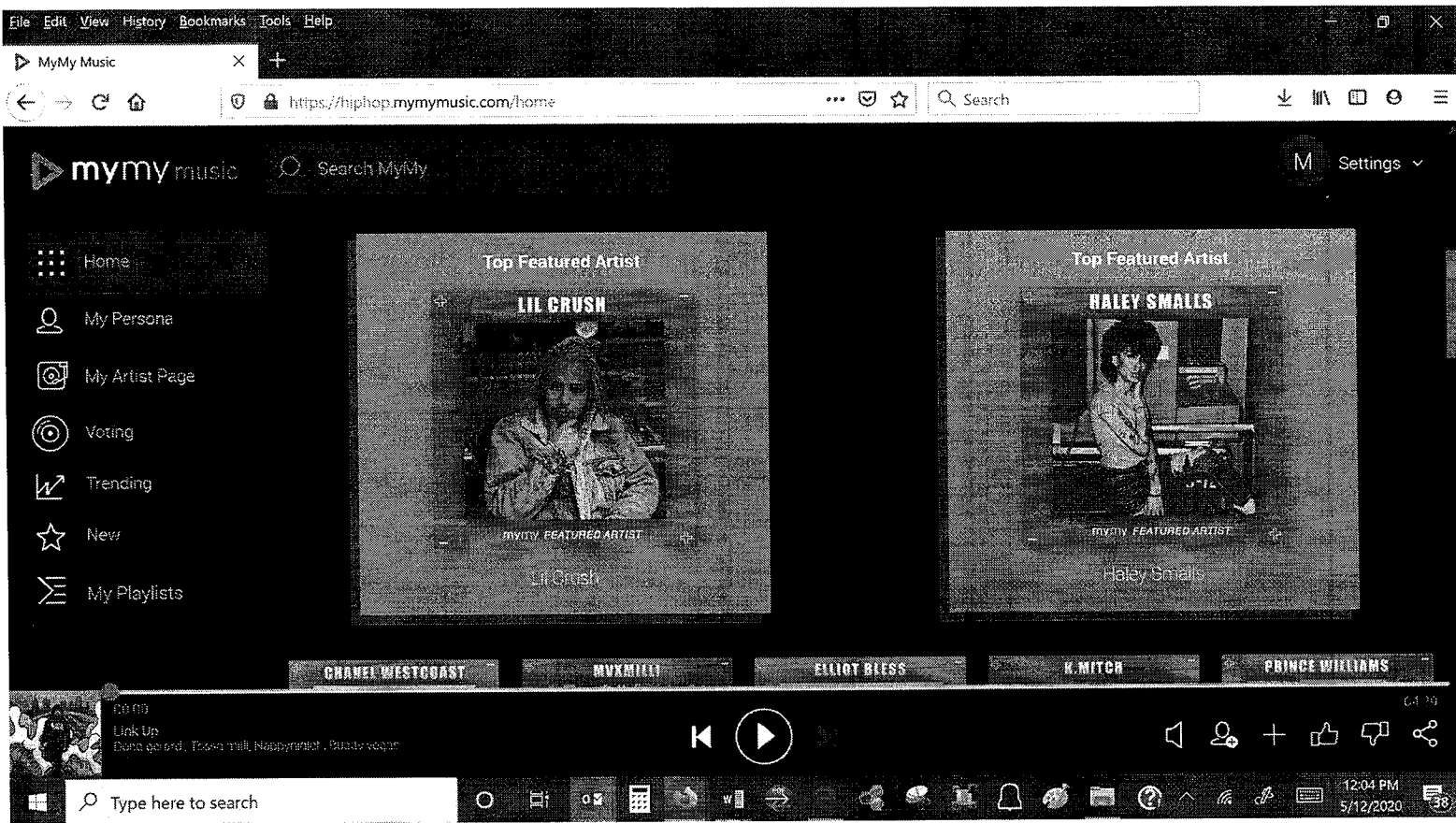
Offered by Opposer MobileSoft Technology, Inc.

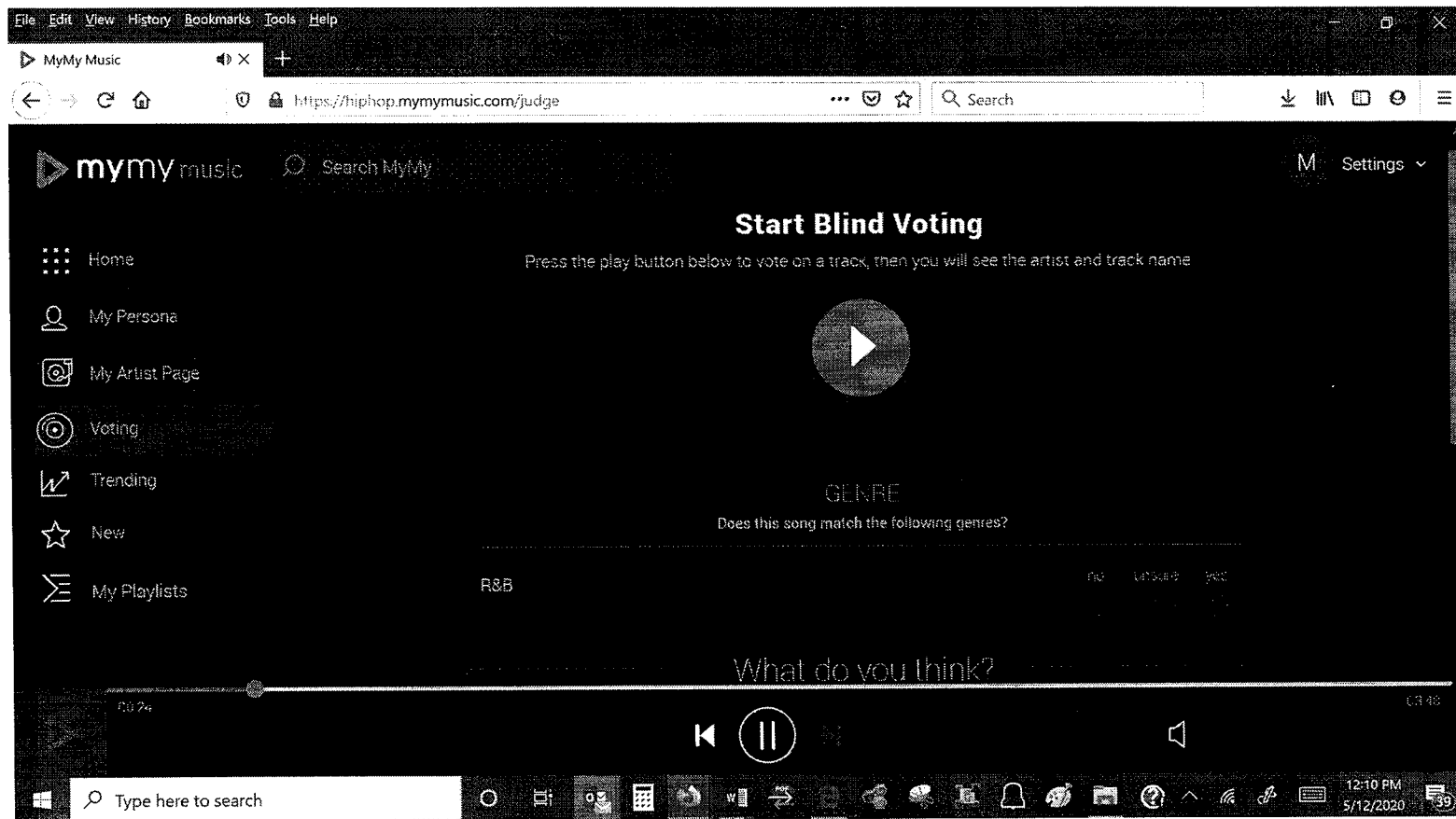
In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761







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MyMy Music






















https://hiphop.mymymusic.com/newlypromoted

Search

mymy music Search MyMy

Home My Persona My Artist Page Voting Trending New My Playlists

Newly Promoted Tracks

		Time Kevin Anderson 2020	 150 HOT	 8 LIKES	 1 SHARES	 190 PLAYS	
		Dead Wrong- In My Room Notorious B.I.G. feat Frank Sinatra 2020	 150 HOT	 4 LIKES	 1 SHARES	 134 PLAYS	
		Gelato Cole Gubuzen 2020	 104 HOT	 13 LIKES	 3 SHARES	 270 PLAYS	

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MyMy Music

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Search

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My Persona

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Trending

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My Playlists

Useful Links

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FAQ

Privacy Policy

Terms of Use

Company

About

Contact Us

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5/12/2020

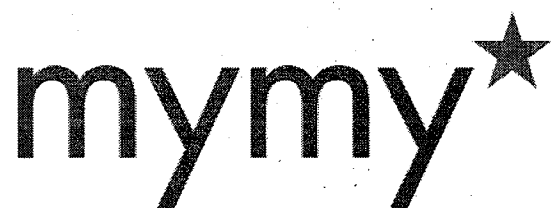
MST EXHIBIT 10

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761



My My Star is a digital production studio. We make the best stickers & display ads on the planet. See our work below!

Chevron: Dancing

Client: Y&R / Chevron

Project: 150K Standard Banners

Done With: HTML5 & Magic Dust

Year: 2018

Chevron: Smash

Client: Y&R / Chevron

Project: 150K Standard Banners

Done With: HTML5 & Magic Dust

Year: 2019

John Deere: Drive

Client: John Deere

Project: 150K Standard Banners

Done With: HTML5 & Magic Dust

MST EXHIBIT 11

Offered by Opposer MobileSoft Technology, Inc.

In the matter of:

MobileSoft Technology, Inc. v My My Star, Inc.

Opposition No. 91248761

Email or Phone

Password

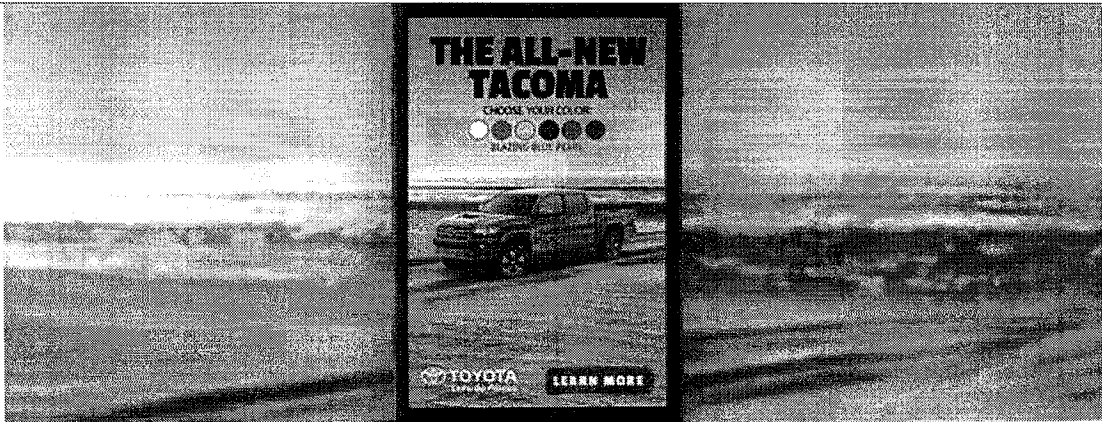
Log In

Forgot account?



My My Star
@mymystarinc

- Home
- About
- Photos
- Videos
- Posts
- Community



Like

Share

Suggest Edits

Send Message

5

Total Likes

5

Total Follows

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