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

|                        |  |
|------------------------|--|
| Proceeding             | 91269259   |
| Party                  | Defendant<br>Universal Audio, Inc.   |
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| Submission             | Answer   |
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| Signature              | /Jacqueline Patt/  |
| Date                   | 11/17/2021   |
| Attachments            | LUNA Answer to Notice of Opposition Affirmative Defenses.pdf(97059 bytes )   |

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

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| Concordia Investment Partners, LLC | ) |                         |
|                                    | ) |                         |
| Opposer,                           | ) |                         |
|                                    | ) |                         |
| vs.                                | ) | Opposition No. 91269259 |
|                                    | ) | Serial No. 88/672099    |
| Universal Audio, Inc.              | ) | Mark: LUNA              |
|                                    | ) |                         |
| Applicant.                         | ) |                         |
|                                    | ) |                         |

**ANSWER and AFFIRMATIVE DEFENSES**

Universal Audio, Inc. (“Applicant”), through its undersigned attorneys, hereby submits this Answer to the Notice of Opposition and Affirmative Defenses and states the following:

With respect to the allegations contained in the preamble, Applicant confirms the identification of goods in Class 9 in Application Serial No. 88672099 but denies the remaining allegations.

1. Applicant is without knowledge of information sufficient to admit or deny the allegations of ¶ 1 of the Notice of Opposition and therefore denies the same.

2. Applicant is without knowledge of information sufficient to admit or deny the allegations of ¶ 2 of the Notice of Opposition and therefore denies the same. Applicant specifically denies that Opposer has “extensively used and promoted” the LUNA Mark as defined.

3. Applicant is without knowledge of information sufficient to admit or deny the allegations of ¶ 3 of the Notice of Opposition and therefore denies the same.

Applicant specifically denies that Opposer has expanded its offerings under the LUNA Mark as defined.

4. Applicant is without knowledge of information sufficient to admit or deny the allegations of ¶ 4 of the Notice of Opposition and therefore denies the same. Applicant specifically denies that Opposer has used the LUNA Mark as defined in connection with amplifiers.

5. Denied as stated.

6. Applicant admits that the USPTO records identify Opposer as the owner of U.S. Registration No. 6193754 and that the goods listed in said registration are “musical instruments, namely, guitars and ukuleles” in Class 15. Applicant further admits that the Exhibit A attached to Opposer’s Notice of Opposition is a purported copy of the USPTO records for U.S. Registration No. 6193754. Applicant denies the remaining allegations.

7. Applicant admits that the USPTO records identify Opposer as the owner of U.S. Serial No. 88865785 and that goods listed in said application include, in part, “[a]mplifiers for guitars and ukuleles” in Class 9. Applicant further admits that the Exhibit B attached to Opposer’s Notice of Opposition is a purported copy of the USPTO records for U.S. Serial No. 88865785. Applicant denies the remaining allegations.

8. Denied as stated. Applicant admits that an Office Action dated June 26, 2020, lists one of the grounds of refusal of the LUNA Application as a potential likelihood of confusion with Applicant’s Application in addition to a likelihood of confusion with 7 (seven) prior filed registrations. Applicant denies that the likelihood of confusion with Applicant’s Application was the only ground listed for refusal of the

LUNA Application, and notes that, to date, the other grounds for refusal have not been satisfied nor overcome including a refusal based on 2 (two) prior filed registrations.

9. Admitted.

10. Applicant admits that it filed its Application Serial No. 88672099 for the mark LUNA on October 29, 2019 based on an intent to use the mark. The identification of goods in International Class 9 was subsequently amended to read as follows:

Audio production equipment, namely, downloadable computer software programs for use in audio and music production; downloadable computer software for use in digital audio production, processing, and editing; downloadable computer software for use in the integration of music, text, audio, graphics, still images and moving pictures and for use in interconnectivity between personal computers, networked audio hardware, and electronic musical instruments for use in audio and music production; all the aforesaid goods for professional use in music recording studios and only distributed bundled with audio signal processing hardware companies' audio production equipment and software for use only in connection with audio signal processing hardware companies' audio production equipment and software.

11. Applicant repeats its Response to each allegation set forth in each of the preceding paragraphs.

12. Denied as stated. Applicant denies that Opposer has used the LUNA Mark as defined and denies that Opposer's LUNA Mark as defined is well known. Applicant further denies that Opposer has priority given its failure to use the LUNA Mark as defined.

13. Applicant denies that Applicant's Mark as shown in Application Serial No. 88/672099 and Opposer's LUNA Mark are identical. Applicant further denies that goods identified in Applicant's Application Serial No. 88/672099 and the goods listed in Opposer's Registration No. 6193754 and Serial No. 88865785 are overlapping, similar or complementary. Applicant denies the remaining allegations.

### **AFFIRMATIVE DEFENSES**

1. There is no likelihood of confusion, mistake or deception.
2. Opposer is not using the LUNA Mark as defined.
3. The term LUNA contained in Opposer's composite design mark is common, weak and entitled to a narrow scope of protection.
4. The term LUNA contained in Opposer's composite design mark is not well-known.
5. Opposer will not be damaged by the registration of Applicant's Mark.

Applicant reserves the right to assert additional affirmative defenses if they become known.

**WHEREFORE**, Applicant prays as follows:

- (a) that the Notice of Opposition be dismissed with prejudice; and
- (b) a registration for the term LUNA be issued to Applicant.

Please conduct all correspondence in this matter with the undersigned at the below address.

Respectfully submitted,



Date: November 17, 2021

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Gaithersburg, MD 20883  
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned, attorney for Applicant, hereby certifies that she served, by email a copy of the foregoing Answer and Affirmative Defenses upon attorney of record for Opposer, Anna Naydonov, this 17th day of November 2021.

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