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ESTTA Tracking number: **ESTTA1162160**

Filing date: **09/27/2021**

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

Proceeding	91270721
Party	Plaintiff Entrepreneurial Ventures Capital Co., L.L.C.
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Date	09/27/2021
Attachments	Amended Opposition.pdf(539089 bytes)

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

In re Application of **APPLE, INC.** **Serial Nos.: 90270683** **Mark: ONE** **ENTREPRENEURIAL VENTURES CAPITAL CO., L.L.C.** Opposer, v. **APPLE, INC.,** Applicant.	:	**Opposition No. 91270721** **AMENDED NOTICE OF OPPOSITION PER TBMP § 503.03**

AMENDED NOTICE OF OPPOSITION

Opposer, Entrepreneurial Ventures Capital Co., LLC ("**Registrant Opposer**"), is a Pennsylvania limited liability company with an office at 2585 Washington Road, Suite 134, Pittsburgh, PA 15241.

Opposer believes that it will be damaged by the application of APPLE, INC., ("**Applicant**") to register "**ONE**" (the "**Pending Mark**") because, *inter alia,* the Pending Mark is confusingly similar to Registrant Opposer's "**ONE**" mark (the "**Registered Mark**"), and likely to cause confusion, mistake, and is likely to deceive and/or cause untrue association or sponsorship.

Averments Common to All Counts

1. Registrant Opposer is exclusive owner of the Registered Mark, "ONE". The Registered Mark is registered on the Principal Register with the United States of America, Registration

Number 3,865,993, in International Class 16, with priority of June 15, 2006, which has been deemed "incontestable."

2. Registrant Opposer has used the Registered Mark, as well as in interstate commerce, since August 3, 2010, *inter alia,* in conjunction with bibles.

3. Registrant Opposer's use of the Registered Mark has occurred and is occurring throughout the United States and elsewhere for many years. Registrant Opposer has established substantial goodwill in the Registered Mark and in connection with its goods and/or services with priority of June 15, 2006, and has developed its reputation accordingly.

4. Registrant Opposer has common law rights in the Registered Mark that are senior and prior to any claimed rights of Applicant. Registrant Opposer's mark is famous and widely known throughout the United States by the general consuming public and within the niche in which it transacts commercial activities.

5. Registrant Opposer has made a significant investment into the brand and Registered Mark over a course of many years.

6. Applicant seeks to register the Pending Mark for services that intersect with bibles, as more fully set forth in its application for registration at issue herein.

7. Applicant's claim is a "horizontal" service overlapping many industries and Application's claim made in the application for registration does not exclude goods and services that relate to Registrant Opposer's goods and services.

8. Applicant is seeking a registration in International Class: 35: "*Retail store and online retail store services featuring bundled subscription packages to online digital content and media services comprised of a music subscription service, a video-on-demand subscription service, a computer game subscription service, an electronic publication subscription service, a fitness streaming subscription service, and a personal file data storage subscription service; subscription services, namely, providing subscriptions to text, data, image, audio, video, and multimedia content, provided via the Internet and other electronic and communications networks; subscription services, namely, providing subscriptions to text, data, image, audio, video, and multimedia content, provided via the Internet and other electronic and communications networks, namely, providing bundled entertainment subscription packages comprised of an online music subscription service,*

a video-on-demand subscription service, a computer game subscription service, an electronic publication subscription service, and a fitness streaming subscription service; providing subscriptions to downloadable pre-recorded text, data, image, audio, video, and multimedia content for a fee or pre-paid subscription, via the Internet and other electronic and communications networks; providing an Internet portal allowing users to preview and download electronic books, publications, and other documents as part of a fee or pre-paid subscription" and in International Class: 42: "*Electronic data storage for a fee or pre-paid subscription; providing online non-downloadable software for use in connection with accessing, delivering, purchasing, and sharing bundled subscription packages to online digital content and media services comprised of a music subscription service, a video-on-demand subscription service, a computer game subscription service, an electronic publication subscription service, a fitness streaming subscription service, and a personal file data storage subscription service via a fee or pre-paid subscription*" notwithstanding that Applicant has not and refuses to limit the claim for registration to exclude any content regarding bibles, religion and/or spirituality, irrespective of the acceptability of such a limitation to Opposer or the USPTO.

9. The claim by Applicant in the application for registration does not vitiate the claim of injury by Opposer; to wit, whether or not Applicant's claim contains the words "bibles" or similar concepts, it does not follow as a matter of law that the claimed service has excluded the market in which Opposer trades using the Registered Mark.

10. The Pending Mark is confusingly similar to the Registered Mark that are substantially similar and likely, when the Pending Mark is used on or in connection with the goods or services of the Applicant, to cause confusion, mistake, or to deceive.

11. The Pending Mark is articulated and resonates like the Registered Mark, and, in further derogation of the brand, is or is likely to be falsely perceived as an affiliate or sponsored by Registrant Opposer.

12. The dominant word portion of the Pending Mark is "ONE," which sounds similar to the Registered Mark, with the one-syllable cadence and the "ONE" sound exactly the same. The dominant portion of Applicant's mark is the same as the Registered Mark, it looks the same, it is articulated aurally the same, and it means the same thing.

13. The Pending Mark so resembles the Registered Mark, previously used and registered in the United States by the Registered Opposer and not abandoned, as to be likely, when used on or in connection with the items identified in Applicant's application to cause confusion, mistake, to deceive and/or cause the marketplace to believe that Registrant Opposer has sponsored or is affiliated with Applicant or its products or services.

14. Applicant has used or intends to use the Pending Mark so as to misrepresent the source of its goods or services, and to confuse said goods or services with those of Registrant Opposer.

15. For the foregoing reasons, and as set forth below, Registrant Opposer believes it will be and will be damaged by the registration of the Pending Mark.

Count I
Trademark Act § 2(d), 15 U.S.C. § 1052(d)
Confusion or Mistake

16. Registrant Opposer hereby incorporates by this reference the previous averments as if set forth again herein in full.

17. The Pending Mark so resembles the Registered Mark in the United States and not abandoned, as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, or to cause mistake, or to deceive.

18. Applicant has used or intends to use the Pending Mark so as to misrepresent the source of its goods or services, and to confuse said goods or services with those of Registrant Opposer.

19. For the foregoing reasons, Registrant Opposer believes it will be and will be damaged by the registration of the Pending Mark.

WHEREFORE, Registrant Opposer requests that Applicant's application be refused registration; that no registration be issued to Applicant for the Pending Mark; and that this opposition be sustained in favor of Registrant Opposer.

Count II
Trademark Act § 2(a), 15 U.S.C. § 1052(a)
False Connection

20. Registrant Opposer hereby incorporates by this reference the previous averments as if set forth again herein in full.

21. The Pending Mark falsely suggests a connection between Applicant's name or identity and Registrant Opposer's name or identity, and Applicant has used or intends to use the Pending Mark so as falsely to suggest a connection between Applicant and Registrant Opposer, although no such connection exists; and, to wit:

a. Applicant's use or intended use of its intended mark in commerce, being the Pending Mark, is exactly the same or a close approximation of the Registered Mark, which has priority and is senior as used in federal commerce between or among the states in these United States;

b. Registrant Opposer is not connected with the goods or services sold or to be sold by Applicant or sold or to be sold by Applicant under the Pending Mark; and,

c. Registrant Opposer is of sufficient fame or reputation that when Applicant's Pending Mark is used in connection with the relevant goods or services, a connection with Registered Opposer would be presumed.

22. Registrant Opposer is using the Registered Mark in interstate commerce between or among the states in these United States, in a multitude of states, with sales, advertising and distribution, and through third-parties with interstate advertising, sales and distribution, and Applicant's use or intended use of the Pending Mark suggests a connection between Applicant and Registrant Opposer when no such connection exists, Applicant falsely suggesting a connection between Registrant Opposer and Applicant.

23. For the foregoing reasons, Registrant Opposer believes it will be and will be damaged by the registration of the Pending Mark.

WHEREFORE, Registrant Opposer requests that Applicant's application, be refused registration; that no registration be issued to Applicant for the Pending Mark; and that this opposition be sustained in favor of Registrant Opposer.

Count III
Trademark Act § 43(c)
Tarnishment and Blurring

24. Registrant Opposer hereby incorporates by this reference the previous averments as if set forth again herein in full.

25. Registrant Opposer has valid proprietary rights in the Registered Mark that is prior to those of Applicant, as aforesaid.

26. The use of the Pending Mark by Applicant blurs the reputations of Opposer and Applicant and tarnishes the reputation of Opposer, diluting the value, reputation and goodwill of Registrant in conjunction with the Registered Mark and use of the Registered Mark, the Registered Mark being famous.

27. The marks at issue are the same in dominant portions or otherwise sufficiently similar that Applicant's mark impairs the distinctiveness of the Registered Mark, and the marks are likely to cross into the same consumers, as aforesaid.

28. Applicant intended to create an association with the Registered Mark that harms the reputation of the Registered Mark.

29. Applicant's Pending Mark so resembles the Registered Mark as to be likely to cause confusion, blurring and tarnishment in a manner not permitted according to law.

30. For the foregoing reasons, Registrant Opposer believes it will be and will be damaged by the registration of the Pending Mark.

WHEREFORE, Registrant Opposer requests that Applicant's application be refused registration; that no registration be issued to Applicant for the Pending Mark; and that this opposition be sustained in favor of Registrant Opposer.

September 27, 2021

Respectfully submitted,

/s/Gregg R. Zegarelli/
Gregg R. Zegarelli, Esq.
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CERTIFICATE OF SERVICE

The following person or persons have been served by electronic mail on the date below:

trademarkdocket@apple.com; laperle@apple.com; amy.shelton@apple.com; karenmarie@apple.com

September 27, 2021

/s/Gregg R. Zegarelli/
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