

ESTTA Tracking number: **ESTTA1260655**

Filing date: **01/18/2023**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer information

Name	Seth Truskowski
Granted to date of previous extension	01/18/2023
Address	601 PINE STREET AMBRIDGE, PA 15003 UNITED STATES

Attorney information	STANLEY D. FERENCE III FERENCE & ASSOCIATES LLC 409 BROAD STREET PITTSBURGH, PA 15143 UNITED STATES Primary email: uspto@ferencelaw.com 412-741-8400
Docket no.	1007.005

Applicant information

Application no.	97107559	Publication date	09/20/2022
Opposition filing date	01/18/2023	Opposition period ends	01/18/2023
Applicant	Leonard, Brian 2800 BARTON'S BLUFF LANE APT 1401 AUSTIN, TX 78746 UNITED STATES		

Goods/services affected by opposition

Class 041. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Entertainment services in the nature of live musical performances
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Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks cited by opposer as basis for opposition


U.S. application no.	97135387	Application date	11/19/2021
Registration date	NONE	Foreign priority date	NONE

Word mark	BADLUV
Design mark	<h1>BADLUV</h1>
Description of mark	NONE
Goods/services	Class 025. First use: First Use: None First Use In Commerce: None Clothing, namely, T-shirts, sweatshirts, tank tops, hats

U.S. application no.	97135415	Application date	11/20/2021
Registration date	NONE	Foreign priority date	NONE

Word mark	BADLUV
Design mark	
Description of mark	NONE
Goods/services	Class 041. First use: First Use: None First Use In Commerce: None Entertainment in the nature of a live musical performer, musical band or musical group, entertainment in the nature of live performances by a musical artist, musical group or musical band, entertainment in the nature of live visual and audio performances by a musical artist, musical group and musical band; entertainment, namely, live music concerts; entertainment, namely, personal appearances by a musician, musical group or musical band; entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, commentary and articles about music, all online via a global computer network; entertainment services, namely, providing online non-downloadable pre-recorded music

U.S. application no.	97135408	Application date	11/19/2021
Registration date	NONE	Foreign priority date	NONE
Word mark	BADLUV		

Design mark	
Description of mark	NONE
Goods/services	Class 009. First use: First Use: None First Use In Commerce: None Musical sound recordings; musical video recordings; downloadable musical sound recordings; downloadable video recordings featuring music

Attachments	97135387#TMSN.png(bytes) 97135408#TMSN.png(bytes) Notice of Opposition of BADLUV 97107559.pdf(113473 bytes)
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Signature	/Stanley D. Ference III/
Name	STANLEY D. FERENCE III
Date	01/18/2023

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

SETH TRUSKOWSKI,	:	
	:	
Opposer,	:	Opposition No.
	:	
vs.	:	
	:	
BRIAN LEONARD,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Introduction

1. Applicant and Opposer filed their intent to use marks for BADLUV within weeks of one another, all relating to musical performing. The respective marks are identical and the respective goods/services are closely related and/or identical. Opposer believes that he used his mark on the goods/services before Applicant. Because Applicant’s mark published first and is currently preventing Opposer from registering his marks, and because the registration of Applicant’s mark will cause damage to Opposer at least in the form of likelihood of confusion, Opposer now files this opposition.

Common Factual Background for Counts in Opposition

2. Opposer, Seth Truskowski, is an individual with an address of 601 Pine Street Ambridge Pennsylvania 15003, believing he will be damaged by the registration of Application Serial No. 97107559 for the word BADLUV for “Entertainment services in the nature of live musical performances” in International Class 41, and hereby opposes the registration of the same (“the Opposed Application”).

3. Opposer is a musical performer providing live and recorded musical performances throughout the United States and various online platforms, including Apple Music, Spotify, and Soundcloud.

4. As of March 8, 2022, Opposer amassed over 1 Million streams on Spotify.

5. Opposer owns the following pending intent to use trademark applications for the mark BADLUV:

Ser. No.	Class	Goods/Services
97135415	41	Entertainment in the nature of a live musical performer, musical band or musical group, entertainment in the nature of live performances by a musical artist, musical group or musical band, entertainment in the nature of live visual and audio performances by a musical artist, musical group and musical band; entertainment, namely, live music concerts; entertainment, namely, personal appearances by a musician, musical group or musical band; entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, commentary and articles about music, all online via a global computer network; entertainment services, namely, providing online non-downloadable pre-recorded music.
97135408	9	Musical sound recordings; musical video recordings; downloadable musical sound recordings; downloadable video recordings featuring music.
97135387	25	Clothing, namely, T-shirts, sweatshirts, tank tops, hats.

, all of which relate to musical performances and recordings, and all of which are refused registration based upon a likelihood of confusion with the Opposed Application.

6. According to the United States Patent and Trademark Office, Trademark Status and Document Retrieval (“TSDR”) data base entry, Brian Leonard (“Applicant”) is

an individual, with an address of 2800 Barton's Bluff Lane, Apt 1401, Austin, Texas 78746.

7. On November 3, 2021, Applicant filed the Opposed Application.

Standing

8. “Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication.” 15 U.S.C. § 1603 (a).

9. To establish an entitlement to a statutory cause of action (“standing”) at the pleading stage, all that is required is that a plaintiff allege facts sufficient to show a "real interest" in the proceeding, and a "reasonable basis" for its belief that it would suffer some kind of damage if the mark is registered. T.B.M.P § 309.03(b).

10. Standing is established because Opposer has been advised by the USPTO Examining Attorney by way of various office actions and/or communications that he will be refused registration of his mark when the Applicant’s mark matures into a registration. *See id.* and cases at n. 15.

11. Upon information and belief, Opposer’s use of his marks on his goods and services is prior to Applicant’s use of the mark in the Opposed Application.

12. Opposer reasonably believes that there will be a likelihood of confusion of consumers if the Applicant is permitted to register the Opposed Application for use with the identical musically related services.

13. Such confusion will injure Opposer, and thus, opposer has established standing.

**COUNT ONE
(Priority and Likelihood of Confusion)**

14. Paragraphs 1- 13, inclusive, are incorporated herein by reference.

15. Opposer's Marks have been in continuous use in commerce in connection with Opposer's goods and services in the United States at least as early as before the use of marks in the Opposed Application.

16. None of Opposer's Marks have been abandoned.

17. Opposer's Marks are symbolic of the extensive goodwill and consumer recognition build up by Opposer through substantial amounts of time and effort in advertising and promotion.

18. The respective goods of Opposer and the Applicant are highly related, substantially similar, or identical and are promoted through the same channels of trade for provision to, sale to, and use by, the same class of purchasers.

19. Since the Opposer's Marks and the mark in the Opposed Application are identical and the goods are highly related, the registration of the mark in the Opposed Application is likely to cause confusion, or to cause mistake, or to deceive customers, or cause members of the public to believe that Applicant's services emanate and are sponsored or approved by Opposer. This confusion or mistake or deception is all damaging to Opposer.

20. Applicant's use of the mark in the Opposed Application might convey to the

relevant trade or public that Applicant's services are in some way legitimately connected with, licensed, or approved by Opposer, when that is certainly not the case. Said source of confusion, mistake, or deception would be a source of damage for Opposer.

21. The similarity of the marks in the Opposed Application to Opposer's Marks in appearance, sound, and overall commercial impression, and association of Applicant's and Opposer's Marks with musical performances, is likely to cause confusion and mistake or deceive consumers as to the source, sponsorship, or affiliation of the parties and respective goods, all in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

WHEREFORE, Opposer believes that it will be damaged by the registration of Application Serial No. 97107559 for the word BADLUV for "Entertainment services in the nature of live musical performances" in International Class 41, and requests that this Notice of Opposition be sustained and Applicant be refused registration.

Respectfully Submitted,

FERENCE & ASSOCIATES LLC

Dated: January 18, 2023

By: /Stanley D. Ference III/

Stanley D. Ference III
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Brian Samuel Malkin
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