

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

BEATS ELECTRONICS, LLC,

Opposer,

v.

BELKIN INTERNATIONAL, INC.,

Applicant.

Opposition No.

Cancellation No.

COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL

Beats Electronics, LLC (“Beats”), a limited liability company organized under the laws of Delaware with a place of business at 8600 Hayden Place, Culver City, CA 90232, believes that it will be damaged by the registration of the mark MIXIT in International Class 9, as shown in Application Serial No. 85/954,174 and the continued registration of the mark MIXIT & design in International Class 9, as shown in Registration No. 4,390,461, owned by Applicant/Registrant Belkin International, Inc. (“Applicant”) and therefore hereby opposes and petitions to cancel the same.

The grounds for Beats’ Opposition and Petition to Cancel are as follows:

1. Beats is a worldwide leader in providing a premium sound experience at every touch point of the consumer’s life. Beats’ mission is to provide a superior end-to-end music experience - with headphones, devices, and services - so fans feel the emotion and hear the music the way artists intended it to sound from the studio. Moreover, Beats’ products are among the most popular audio-related products in the United States, have been extensively promoted and advertised, and have been the subject of extensive unsolicited publicity resulting from their high-quality, innovative design and well-received marketing campaigns.

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Beats' Prior Rights

2. Since substantially prior to the acts of Applicant alleged herein, Beats has distributed and sold, and continues to distribute and sell, headphones and related audio goods under and in connection with its trademark MIXR.

3. Beats owns a federal trademark registration for the MIXR mark in International Class 9 for use in connection with headphones, Reg. No. 4,384,571, which has a priority date of September 1, 2011.

4. Beats has devoted substantial resources, time, and effort to developing, marketing, and distributing its products under the MIXR mark. Through these efforts, and before the filing of the Application, consumers have come to recognize the MIXR mark when used in connection with headphones and related audio goods as being uniquely associated with Beats.

Beats Will Be Harmed if the Application Registers and the Registration Is Not Cancelled

5. On information and belief, Applicant is a Delaware corporation with a principle place of business at 12045 East Waterfront Drive, Playa Vista, California 90094.

6. On April 23, 2012, Notwithstanding Beats' prior rights in and to the MIXR mark, Applicant filed an application to register the mark **MIXIT↑** in International Class 9 for use in connection with "electronic and electric cables and battery charges." On August 27, 2013, that application matured into Reg. No. 4,390,461, (the "Registration").

7. On June 7, 2013, notwithstanding Beats' prior rights in and to the MIXR mark, Applicant filed its application to register the mark MIXIT in International Class 9 for use in connection with "carrying cases for tablet computers; tablet computer covers specially designed to hold a computer or tablet; tablet computer stands specially designed for holding a computer or

tablet; headphones; wireless mobile audio receivers; wireless mobile audio receivers with speakers,” Application Serial No. 85/954,174 (the “Application”). The Application was filed under Lanham Act §1(b), based on Applicant’s alleged intent to use the mark in U.S. commerce.

8. The Application was published in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on March 4, 2014. This Opposition is timely pursuant to the U.S. Trademark Trial & Appeal Board’s July 1, 2014 order allowing Beats until August 31, 2014 to institute an opposition.

9. There is no issue of priority. The foregoing registration for the MIXR mark has been in actual use or has a constructive use date prior to the Application filing date, June 7, 2013, and the Registration filing date of April 23, 2012, and covers products that are identical or closely related to the goods identified in the Application and the Registration.

10. The goods set forth in the Application are the same as, similar, or complementary and related to the products marketed by Beats under its MIXR mark.

11. The goods set forth in the Registration are similar, or complementary and related to the products marketed by Beats under its MIXR mark.

12. Applicant’s advertising and use of the MIXIT mark as contemplated in the Application and shown in the Registration will inevitably reach the same consumers that Beats targets with the use of its MIXR mark.

13. Consumers, upon seeing the MIXIT mark used in connection with Applicant’s goods are likely to mistakenly believe that the mark, and the goods provided in connection with it, originated from or are connected with, sponsored by, associated with, or licensed or approved by Beats.

14. Applicant's Mark is confusingly similar to the previously used MIXR Mark, and therefore, the use of the MIXIT mark and registration of the Application or continued registration of the Registration in connection with the recited goods would likely cause confusion, mistake, or deception in violation of 15 U.S.C. § § 1052(d), 1114(1), 1125(a).

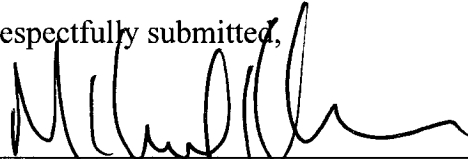
15. If the Application is allowed to register, the confusion with the MIXR mark would result in damage and injury to Beats and to the public.

16. Likewise, if the Registration is permitted to stay registered, the confusion with the MIXR mark will result in damage and injury to Beats and to the public.

WHEREFORE, Beats Electronics, LLC requests that the registration sought by Applicant be refused and that this Notice of Opposition be sustained.

Beats authorizes the T.T.A.B. to charge the fees for opposition in one class, petition to cancel in one class, and any additional fees related to this matter to the deposit account of Neal, Gerber & Eisenberg LLP, Deposit Account No. 502261.

Respectfully submitted,



One of the Attorneys for
BEATS ELECTRONICS, LLC
Michael G. Kelber (mkelber@ngelaw.com)
Katherine Dennis Nye (knye@ngelaw.com)
Andrea S. Fuelleman (afuelleman@ngelaw.com)
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

Dated: August 29, 2014

CERTIFICATE OF PAPER FILING

I, Katherine Dennis Nye, an attorney, hereby certify that the enclosed **COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL** is being deposited with the United States Postal Service via Express Mail Label No. EV 290830667 US on August 29, 2014 in an envelope addressed to:

Trademark Trial and Appeal Board
United States Patent and Trademark Office
Madison East
Concourse Level, Room C-55
600 Dulany Street
Alexandria, Virginia 22314


Katherine Dennis Nye

CERTIFICATE OF SERVICE

I, Katherine Dennis Nye, an attorney, state that I served a true and correct copy of Opposer's **COMBINED NOTICE OF OPPOSITION AND PETITION TO CANCEL** upon Applicant at Correspondence Address of record:

Katherine L. McDaniel, Esq.
Fulwider Patton LLP
6060 Center Drive, Floor 10
Los Angeles, California 90045-1598

via First Class U.S. Mail on this August 29, 2014.


Katherine Dennis Nye