

ESTTA Tracking number: **ESTTA1026332**

Filing date: **01/02/2020**

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

Proceeding	92065794
Party	Defendant MT Industries, Inc.
Correspondence Address	RICHARD L ALBERT LAW OFFICES OF RICHARD L ALBERT 4605 LANKERSHIM BLVD, SUITE 203 NORTH HOLLYWOOD, CA 91602 UNITED STATES rick@albertlawoffices.com 818-752-2776
Submission	Defendant's Notice of Reliance
Filer's Name	Richard L. Albert
Filer's email	rick@albertlawoffices.com
Signature	/Richard L. Albert/
Date	01/02/2020
Attachments	Notice of RelianceRegistrationandAppl.pdf(2320932 bytes)

Exhibit “35” Petitioner’s expired registration of the word mark “The Marshall Tucker Band” No. 1023429 and status page from the USPTO database.

The above cancelled registration is relevant because it is referenced by Petitioner in the cancellation proceeding, and helps establish Registrant’s affirmative defenses and general defenses that its trademark applications were properly prepared and registrations properly issued.

Petitioner’s Abandoned Applications for Trademark Registration

Exhibit “36” Petitioner’s application to register the word mark “The Marshall Tucker Band” serial No. 86386613 filed 9/5/2014; **Exhibit “37”** the 12/22/2014 Outgoing Office Action on that application; and **Exhibit “38”** the 7/27/2015 Notice of Abandonment of that application.

The above abandoned application is relevant because it is referenced by Petitioner in the cancellation proceeding, and helps establish Registrant’s affirmative defenses, including but not limited to Petitioner’s unclean hands, and Registrant’s general defenses that its trademark applications were properly prepared and registrations properly issued, and that Petitioner suffered no cognizable harm resulting from Registrant obtaining trademark registrations.

Exhibit “39” Petitioner’s application to register the word mark “The Marshall Tucker Band” serial No. 86386828 filed 9/5/2014; **Exhibit “40”** the Outgoing Office Action on that application; and **Exhibit “41”** the 7/27/2015 Notice of Abandonment of that application.

The above abandoned application is relevant because it is referenced by Petitioner
2
in the cancellation proceeding, and helps establish Registrant’s affirmative defenses,

including but not limited to Petitioner's unclean hands, and Registrant's general defenses that its trademark applications were properly prepared and registrations properly issued, and that Petitioner suffered no cognizable harm resulting from Registrant obtaining trademark registrations.

Date: January 2, 2020

Respectfully submitted,

/Richard L. Albert/

Richard L. Albert (Cal. Bar No. 204359)
Law Offices of Richard L. Albert
4605 Lankershim Blvd., STE 203
North Hollywood, CA 91602
(818) 752-2776 (Phone)
(818) 752-7471 (Fax)
rick@albertlawoffices.com

Attorney for Registrant M T Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing

**REGISTRANT'S NOTICE OF RELIANCE
PURSUANT TO 27 C.F.R. § 2.122(d)
(Trademark Registrations and USPTO Applications)**

has been served on SARAH S. BROOKS, ESQ. by forwarding said copy via email to:

SSBrooks@Venable.com

Signature: /Richard L. Albert/

Date: January 2, 2020

EXHIBIT “33”

United States of America

United States Patent and Trademark Office

MARSHALL TUCKER BAND

Reg. No. 4,616,427

Registered Oct. 7, 2014

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

MT INDUSTRIES, INC. (SOUTH CAROLINA CORPORATION)
315 SOUTH BEVERLY DRIVE SUITE # 300
BEVERLY HILLS, CA 90212

FOR: DIGITAL MEDIA, NAMELY, PRE-RECORDED DVDS, DOWNLOADABLE AUDIO AND VIDEO RECORDINGS, AND CDS FEATURING AND PROMOTING MUSIC; MUSICAL SOUND RECORDINGS; MUSICAL VIDEO RECORDINGS; PHONOGRAPH RECORDS FEATURING MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-0-1973; IN COMMERCE 4-0-1973.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND", APART FROM THE MARK AS SHOWN.

THE NAME "MARSHALL TUCKER" DOES NOT IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 86-137,626, FILED 12-6-2013.

DEIRDRE ROBERTSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Generated on: This page was generated by TSDR on 2019-12-27 15:02:49 EST

Mark: MARSHALL TUCKER BAND

MARSHALL TUCKER BAND

US Serial Number: 86137626

Application Filing Date: Dec. 06, 2013

US Registration Number: 4616427

Registration Date: Oct. 07, 2014

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Cancellation/Invalidation Pending

This trademark application has been registered with the Office, but it is currently undergoing a challenge which may result in its removal from the registry.

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 05, 2017

Publication Date: Jul. 22, 2014

Mark Information

Mark Literal Elements: MARSHALL TUCKER BAND

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

Disclaimer: "BAND"

Name Portrait Consent: The name "MARSHALL TUCKER" does not identify a living individual.

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: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical sound recordings; Musical video recordings; Phonograph records featuring music

International Class(es): 009 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 1973

Use in Commerce: Apr. 1973

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: MT Industries, Inc.

Owner Address: 8500 Wilshire Blvd., # 525
Beverly Hills, CALIFORNIA UNITED STATES 90211

Legal Entity Type: CORPORATION

State or Country SOUTH CAROLINA
Where Organized:

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: MT Industries, Inc.
8500 Wilshire Blvd., # 525
Beverly Hills, CALIFORNIA UNITED STATES 90211

Phone: 3105561956

Fax: 3105564617

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 30, 2019	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Oct. 30, 2019	REGISTERED - SEC. 8 (6-YR) ACCEPTED	77074
Oct. 30, 2019	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77074
Oct. 10, 2019	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 10, 2019	TEAS SECTION 8 RECEIVED	
Oct. 07, 2019	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Jul. 10, 2017	NOTICE OF SUIT	
Jul. 10, 2017	NOTICE OF SUIT	
May 15, 2017	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
May 15, 2017	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 05, 2017	CANCELLATION INSTITUTED NO. 999999	65794
May 09, 2016	NOTICE OF SUIT	
May 09, 2016	NOTICE OF SUIT	
Oct. 07, 2014	REGISTERED-PRINCIPAL REGISTER	
Jul. 22, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 22, 2014	PUBLISHED FOR OPPOSITION	
Jul. 02, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 18, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Jun. 12, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 11, 2014	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
May 31, 2014	WITHDRAWN FROM PUB - OG REVIEW QUERY	76621
May 20, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
May 09, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 09, 2014	RESTORE TO TEAS PLUS	78369
May 08, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
May 08, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
May 07, 2014	ASSIGNED TO LIE	70997
Apr. 22, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 18, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 18, 2014	NON-FINAL ACTION E-MAILED	6325
Mar. 18, 2014	NON-FINAL ACTION WRITTEN	78369
Mar. 18, 2014	REMOVED FROM TEAS PLUS	78369

Mar. 18, 2014 ASSIGNED TO EXAMINER
 Dec. 19, 2013 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
 Dec. 10, 2013 NEW APPLICATION ENTERED IN TRAM

78369

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 111

Date in Location: Oct. 30, 2019

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: [92065794](#)

Filing Date: Mar 27, 2017

Status: Pending

Status Date: Nov 04, 2019

Interlocutory Attorney: REBECCA J STEMPIEN_COYLE

Defendant

Name: MT Industries, Inc.

Correspondent Address: RICHARD L ALBERT
 LAW OFFICES OF RICHARD L ALBERT
 4605 LANKERSHIM BLVD, SUITE 203
 NORTH HOLLYWOOD CA UNITED STATES , 91602

Correspondent e-mail: rick@albertlawoffices.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MARSHALL TUCKER BAND	Cancellation Pending	86137626	4616427
THE MARSHALL TUCKER BAND	Cancellation Pending	86137638	4616428

Plaintiff(s)

Name: The Marshall Tucker Band, Inc.

Correspondent Address: SARAH S BROOKS
 VENABLE LLP
 2049 CENTURY PARK EAST, SUITE 2300
 LOS ANGELES CA UNITED STATES , 90067

Correspondent e-mail: ssbrooks@venable.com , asharon@venable.com , hedmonds@venable.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 27, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 05, 2017	May 15, 2017
3	PENDING, INSTITUTED	Apr 05, 2017	
4	ANSWER	May 15, 2017	
5	CHANGE OF CORRESP ADDRESS	May 15, 2017	
6	D NOTICE OF PENDING CIVIL ACTION	May 15, 2017	
7	UNDELIVERABLE MAIL	May 23, 2017	
8	D MOT TO SUSP PEND DISP CIV ACTION	Jun 02, 2017	
9	P CONSENT TO #8	Jun 19, 2017	
10	D COMMUNICATION	Jun 20, 2017	
11	P MOT TO RESUME	Jul 18, 2017	
12	PROC REMAIN SUSPENDED	Aug 08, 2017	
13	D MOT TO RESUME PROCEEDINGS	Aug 17, 2017	

14	P MOT TO RESUME PROCEEDINGS	Sep 07, 2017	
15	TRIAL DATES RESET	Sep 18, 2017	
16	D MOT TO DETERMINE SUFF OF RESP. TO ADMISSIONS	Dec 01, 2017	
17	P OPP/RESP TO MOTION	Dec 21, 2017	
18	D REPLY IN SUPPORT OF MOTION	Jan 02, 2018	
19	D REPLY IN SUPPORT OF MOTION	Jan 05, 2018	
20	D MOT TO SUSP PEND DISP OUTSTNDNG MOT	Jan 24, 2018	
21	P OPP/RESP TO MOTION	Jan 26, 2018	
22	D REPLY IN SUPPORT OF MOTION	Jan 30, 2018	
23	SUSP PEND DISP OF OUTSTNDNG MOT	Feb 02, 2018	
24	TRIAL DATES RESET	Apr 02, 2018	
25	TRIAL DATES REMAIN AS SET	May 15, 2018	
26	D RESP TO BD ORDER/INQUIRY	May 15, 2018	
27	D RESP TO BD ORDER/INQUIRY	May 17, 2018	
28	P CHANGE OF CORRESP ADDRESS	Jun 05, 2018	
29	TRIAL DATES REMAIN AS SET	Jun 18, 2018	
30	P MOT TO COMPEL DISCOVERY	Jun 29, 2018	
31	P NOTICE OF TAKING TESTIMONY	Jul 05, 2018	
32	D OPP/RESP TO MOTION	Jul 16, 2018	
33	D EXHIBITS	Jul 16, 2018	
34	P REPLY IN SUPPORT OF MOTION	Aug 06, 2018	
35	SUSP PEND DISP OF OUTSTNDNG MOT	Aug 28, 2018	
36	RESPONSE DUE 30 DAYS (DUE DATE)	Oct 31, 2018	Nov 30, 2018
37	CONFIDENTIAL PLAINTIFF'S MOTION TO COMPEL DISCOVERY OR DISCLOSURE	Nov 09, 2018	
38	P MOT TO COMPEL DISCOVERY	Nov 09, 2018	
39	D RESP TO BD ORDER/INQUIRY	Nov 27, 2018	
40	STIP MOT TO RESUME PROC	Dec 03, 2018	
41	PROCEEDINGS RESUMED	Feb 25, 2019	
42	P PROOF OF SERVICE RE PRETRIAL DISCLOSURES	May 13, 2019	
43	P DECL OF KRAUS	May 20, 2019	
44	D MOT TO STRIKE	May 22, 2019	
45	P TESTIMONY	May 29, 2019	
46	P NOTICE OF RELIANCE	May 30, 2019	
47	D MOT TO STRIKE	Jun 07, 2019	
48	P NOTICE OF RELIANCE	Jun 10, 2019	
49	P NOTICE OF RELIANCE	Jun 10, 2019	
50	P NOTICE OF RELIANCE	Jun 10, 2019	
51	P NOTICE OF RELIANCE	Jun 10, 2019	
52	P NOTICE OF RELIANCE	Jun 10, 2019	
53	P NOTICE OF RELIANCE	Jun 10, 2019	
54	P NOTICE OF RELIANCE	Jun 10, 2019	
55	P NOTICE OF RELIANCE	Jun 11, 2019	
56	P NOTICE OF RELIANCE	Jun 11, 2019	
57	P NOTICE OF RELIANCE	Jun 11, 2019	
58	P NOTICE OF RELIANCE	Jun 11, 2019	
59	P NOTICE OF RELIANCE	Jun 11, 2019	
60	P NOTICE OF RELIANCE	Jun 11, 2019	
61	P OPP/RESP TO MOTION	Jun 11, 2019	
62	P PROOF OF SERVICE	Jun 12, 2019	
63	D MOT TO STRIKE NOTICE OF RELIANCE	Jun 13, 2019	
64	P TESTIMONY	Jun 13, 2019	
65	P NOTICE OF RELIANCE	Jun 13, 2019	
66	P NOTICE OF RELIANCE	Jun 13, 2019	
67	P NOTICE OF RELIANCE	Jun 13, 2019	
68	P NOTICE OF RELIANCE	Jun 13, 2019	

69	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 14, 2019
70	D REPLY IN SUPPORT OF MOTION	Jun 18, 2019
71	P OPP/RESP TO MOTION	Jun 21, 2019
72	P TESTIMONY	Jun 25, 2019
73	D REPLY IN SUPPORT OF MOTION	Jun 26, 2019
74	PROCEEDINGS RESUMED	Nov 04, 2019
75	P AMENDED NOTICE OF RELIANCE	Nov 06, 2019
76	P TESTIMONY	Nov 14, 2019

EXHIBIT “34”

United States of America

United States Patent and Trademark Office



Reg. No. 4,616,428

Registered Oct. 7, 2014

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

MT INDUSTRIES, INC. (CALIFORNIA CORPORATION)
315 SOUTH BEVERLY DRIVE SUITE # 300
BEVERLY HILLS, CA 90212

FOR: DIGITAL MEDIA, NAMELY, PRE-RECORDED DVDS, DOWNLOADABLE AUDIO AND VIDEO RECORDINGS, AND CDS FEATURING AND PROMOTING MUSIC; MUSICAL RECORDINGS; MUSICAL SOUND RECORDINGS; MUSICAL VIDEO RECORDINGS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-0-2005; IN COMMERCE 1-0-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND", APART FROM THE MARK AS SHOWN.

THE NAME "MARSHAL TUCKER" DOES NOT IDENTIFY A LIVING INDIVIDUAL.

THE MARK CONSISTS OF "THE MARSHALL TUCKER BAND" IN STYLIZED FORM.

SER. NO. 86-137,638, FILED 12-6-2013.

DEIRDRE ROBERTSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

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DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

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Mark: THE MARSHALL TUCKER BAND



US Serial Number: 86137638

Application Filing Date: Dec. 06, 2013

US Registration Number: 4616428

Registration Date: Oct. 07, 2014

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Cancellation/Invalidation Pending

This trademark application has been registered with the Office, but it is currently undergoing a challenge which may result in its removal from the registry.

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Apr. 05, 2017

Publication Date: Jul. 22, 2014

Mark Information

Mark Literal Elements: THE MARSHALL TUCKER BAND

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 "The Marshall Tucker Band" in stylized form.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "BAND"

Design Search Code(s): 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Underlined words or letters; Overlined words or letters

Name Portrait Consent: The name "MARSHAL TUCKER" does not identify a living individual.

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: Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical recordings; Musical sound recordings; Musical video recordings

International Class(es): 009 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 2005

Use in Commerce: Jan. 2005

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: MT Industries, Inc.

Owner Address: 8500 Wilshire Blvd., # 525
Beverly Hills, CALIFORNIA UNITED STATES 90211

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: MT Industries, Inc.
8500 Wilshire Blvd., # 525
Beverly Hills, CALIFORNIA UNITED STATES 90211

Phone: 3105561956

Fax: 3105564617

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 30, 2019	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Oct. 30, 2019	REGISTERED - SEC. 8 (6-YR) ACCEPTED	76874
Oct. 30, 2019	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76874
Oct. 10, 2019	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Oct. 10, 2019	TEAS SECTION 8 RECEIVED	
Oct. 07, 2019	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
May 15, 2017	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
May 15, 2017	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 05, 2017	CANCELLATION INSTITUTED NO. 999999	65794
Oct. 07, 2014	REGISTERED-PRINCIPAL REGISTER	
Jul. 22, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 22, 2014	PUBLISHED FOR OPPOSITION	
Jul. 02, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 18, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Jun. 12, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 11, 2014	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
May 31, 2014	WITHDRAWN FROM PUB - OG REVIEW QUERY	76621
May 20, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
May 09, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 09, 2014	RESTORE TO TEAS PLUS	78369
May 08, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	70997
May 08, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	70997
May 07, 2014	ASSIGNED TO LIE	70997
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Mar. 18, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 18, 2014	NON-FINAL ACTION E-MAILED	6325
Mar. 18, 2014	NON-FINAL ACTION WRITTEN	78369
Mar. 18, 2014	REMOVED FROM TEAS PLUS	78369

Mar. 18, 2014 ASSIGNED TO EXAMINER
 Dec. 20, 2013 NOTICE OF DESIGN SEARCH CODE E-MAILED
 Dec. 19, 2013 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
 Dec. 10, 2013 NEW APPLICATION ENTERED IN TRAM

78369

TM Staff and Location Information

TM Staff Information - None File Location

Current Location: TMO LAW OFFICE 111

Date in Location: Oct. 30, 2019

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: [92065794](#)

Filing Date: Mar 27, 2017

Status: Pending

Status Date: Nov 04, 2019

Interlocutory Attorney: REBECCA J STEMPIEN_COYLE

Defendant

Name: MT Industries, Inc.

Correspondent Address: RICHARD L ALBERT
 LAW OFFICES OF RICHARD L ALBERT
 4605 LANKERSHIM BLVD, SUITE 203
 NORTH HOLLYWOOD CA UNITED STATES , 91602

Correspondent e-mail: rick@albertlawoffices.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MARSHALL TUCKER BAND	Cancellation Pending	86137626	4616427
THE MARSHALL TUCKER BAND	Cancellation Pending	86137638	4616428

Plaintiff(s)

Name: The Marshall Tucker Band, Inc.

Correspondent Address: SARAH S BROOKS
 VENABLE LLP
 2049 CENTURY PARK EAST, SUITE 2300
 LOS ANGELES CA UNITED STATES , 90067

Correspondent e-mail: ssbrooks@venable.com , asharon@venable.com , hedmonds@venable.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 27, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 05, 2017	May 15, 2017
3	PENDING, INSTITUTED	Apr 05, 2017	
4	ANSWER	May 15, 2017	
5	CHANGE OF CORRESP ADDRESS	May 15, 2017	
6	D NOTICE OF PENDING CIVIL ACTION	May 15, 2017	
7	UNDELIVERABLE MAIL	May 23, 2017	
8	D MOT TO SUSP PEND DISP CIV ACTION	Jun 02, 2017	
9	P CONSENT TO #8	Jun 19, 2017	
10	D COMMUNICATION	Jun 20, 2017	
11	P MOT TO RESUME	Jul 18, 2017	
12	PROC REMAIN SUSPENDED	Aug 08, 2017	

13	D MOT TO RESUME PROCEEDINGS	Aug 17, 2017	
14	P MOT TO RESUME PROCEEDINGS	Sep 07, 2017	
15	TRIAL DATES RESET	Sep 18, 2017	
16	D MOT TO DETERMINE SUFF OF RESP. TO ADMISSIONS	Dec 01, 2017	
17	P OPP/RESP TO MOTION	Dec 21, 2017	
18	D REPLY IN SUPPORT OF MOTION	Jan 02, 2018	
19	D REPLY IN SUPPORT OF MOTION	Jan 05, 2018	
20	D MOT TO SUSP PEND DISP OUTSTNDNG MOT	Jan 24, 2018	
21	P OPP/RESP TO MOTION	Jan 26, 2018	
22	D REPLY IN SUPPORT OF MOTION	Jan 30, 2018	
23	SUSP PEND DISP OF OUTSTNDNG MOT	Feb 02, 2018	
24	TRIAL DATES RESET	Apr 02, 2018	
25	TRIAL DATES REMAIN AS SET	May 15, 2018	
26	D RESP TO BD ORDER/INQUIRY	May 15, 2018	
27	D RESP TO BD ORDER/INQUIRY	May 17, 2018	
28	P CHANGE OF CORRESP ADDRESS	Jun 05, 2018	
29	TRIAL DATES REMAIN AS SET	Jun 18, 2018	
30	P MOT TO COMPEL DISCOVERY	Jun 29, 2018	
31	P NOTICE OF TAKING TESTIMONY	Jul 05, 2018	
32	D OPP/RESP TO MOTION	Jul 16, 2018	
33	D EXHIBITS	Jul 16, 2018	
34	P REPLY IN SUPPORT OF MOTION	Aug 06, 2018	
35	SUSP PEND DISP OF OUTSTNDNG MOT	Aug 28, 2018	
36	RESPONSE DUE 30 DAYS (DUE DATE)	Oct 31, 2018	Nov 30, 2018
37	CONFIDENTIAL PLAINTIFF'S MOTION TO COMPEL DISCOVERY OR DISCLOSURE	Nov 09, 2018	
38	P MOT TO COMPEL DISCOVERY	Nov 09, 2018	
39	D RESP TO BD ORDER/INQUIRY	Nov 27, 2018	
40	STIP MOT TO RESUME PROC	Dec 03, 2018	
41	PROCEEDINGS RESUMED	Feb 25, 2019	
42	P PROOF OF SERVICE RE PRETRIAL DISCLOSURES	May 13, 2019	
43	P DECL OF KRAUS	May 20, 2019	
44	D MOT TO STRIKE	May 22, 2019	
45	P TESTIMONY	May 29, 2019	
46	P NOTICE OF RELIANCE	May 30, 2019	
47	D MOT TO STRIKE	Jun 07, 2019	
48	P NOTICE OF RELIANCE	Jun 10, 2019	
49	P NOTICE OF RELIANCE	Jun 10, 2019	
50	P NOTICE OF RELIANCE	Jun 10, 2019	
51	P NOTICE OF RELIANCE	Jun 10, 2019	
52	P NOTICE OF RELIANCE	Jun 10, 2019	
53	P NOTICE OF RELIANCE	Jun 10, 2019	
54	P NOTICE OF RELIANCE	Jun 10, 2019	
55	P NOTICE OF RELIANCE	Jun 11, 2019	
56	P NOTICE OF RELIANCE	Jun 11, 2019	
57	P NOTICE OF RELIANCE	Jun 11, 2019	
58	P NOTICE OF RELIANCE	Jun 11, 2019	
59	P NOTICE OF RELIANCE	Jun 11, 2019	
60	P NOTICE OF RELIANCE	Jun 11, 2019	
61	P OPP/RESP TO MOTION	Jun 11, 2019	
62	P PROOF OF SERVICE	Jun 12, 2019	
63	D MOT TO STRIKE NOTICE OF RELIANCE	Jun 13, 2019	
64	P TESTIMONY	Jun 13, 2019	
65	P NOTICE OF RELIANCE	Jun 13, 2019	
66	P NOTICE OF RELIANCE	Jun 13, 2019	
67	P NOTICE OF RELIANCE	Jun 13, 2019	

68	P NOTICE OF RELIANCE	Jun 13, 2019
69	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 14, 2019
70	D REPLY IN SUPPORT OF MOTION	Jun 18, 2019
71	P OPP/RESP TO MOTION	Jun 21, 2019
72	P TESTIMONY	Jun 25, 2019
73	D REPLY IN SUPPORT OF MOTION	Jun 26, 2019
74	PROCEEDINGS RESUMED	Nov 04, 2019
75	P AMENDED NOTICE OF RELIANCE	Nov 06, 2019
76	P TESTIMONY	Nov 14, 2019

EXHIBIT “35”

Int. Cl.: 41

Prior U.S. Cl.: 107

United States Patent Office

Reg. No. 1,023,429

Registered Oct. 21, 1975

SERVICE MARK

Principal Register

**THE MARSHALL TUCKER
BAND**

The Marshall Tucker Band, Inc. (South Carolina corporation)
715 Montgomery Bldg.
Spartanburg, S.C.

For: ENTERTAINMENT SERVICES — NAMELY, PRESENTATIONS AND APPEARANCES BY A VOCAL AND INSTRUMENTAL GROUP—in CLASS 41 (U.S. CL. 107).

First use as early as June 1970; in commerce as early as June 1970.

No registration rights are claimed for the word "Band" apart from the mark shown, but applicant waives none of its common law rights of the mark shown, or any feature thereof.

Ser. No. 12,470, filed Feb. 4, 1974.

B. P. LIVINGSTON, JR., Examiner

BULK DATA: Since May 7 at 12 a.m., the TSDR Application Programming Interface (API) has not included all information. Images of trademark registration certificates issued since July 2016 and some office actions are absent in the API. Customers who need to retrieve a copy of a registration certificate or an office action should download it directly from the TSDR documents tab.

INTERMITTENT SYSTEM ISSUES: Due to high-volume usage, you may experience intermittent issues on the Trademark Status and Document Retrieval (TSDR) system between 6 – 8 a.m. ET. Refreshing your web browser should resolve the issue. If you still need assistance accessing a document, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS	DOCUMENTS	MAINTENANCE	Back to Search	Print
Generated on: This page was generated by TSDR on 2019-12-27 13:09:42 EST				
Mark: THE MARSHALL TUCKER BAND		No Image exists for this case.		
US Serial Number:	73012470	Application Filing Date:	Feb. 04, 1	
US Registration Number:	1023429	Registration Date:	Oct. 21, 1	
Register:	Principal			
Mark Type:	Service Mark			
TM5 Common Status Descriptor:		DEAD/REGISTRATION/Expired		
		The trademark application registered, but subsec registry when the registration was not successful		
Status:	This registration was not renewed and therefore has expired.			
Status Date:	Jul. 29, 1996			
▼ Mark Information				▲ Collapse All
Mark Literal Elements:	THE MARSHALL TUCKER BAND			
Standard Character Claim:	No			
Mark Drawing Type:	1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)			
Disclaimer:	NO REGISTRATION RIGHTS ARE CLAIMED FOR THE WORD "BAND" APART FROM THE M WAIVES NONE OF ITS COMMON LAW RIGHTS OF THE MARK SHOWN, OR ANY FEATUR			

▼ 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, PRESENTATIONS AND APPEARANCES BY A VOC

International Class(es): 041 - Primary Class

U.S Class(es): 107

Class Status: EXPIRED

Basis: 1(a)

First Use: Jun. 1970

Use in Commerce: Jun. 1970

▼ 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: MARSHALL TUCKER BAND, INC., THE

Owner Address: 715 MONTGOMERY BLDG.
SPARTANBURG, SOUTH CAROLINA UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: SOUTH C

▼ Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent ?

Name/Address:

Domestic Representative - Not Found

▼ **Prosecution History**

Date	Description	Proceeding Number
Jul. 29, 1996	EXPIRED SEC. 9	
Nov. 09, 1981	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	

▼ **TM Staff and Location Information**

TM Staff Information - None

File Location

Current Location: Not Found

Date in Location: Not Found

▲ **Assignment Abstract Of Title Information - None recorded**

▲ **Proceedings - None recorded**

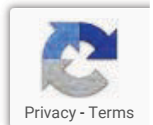


EXHIBIT “36”

EXHIBIT “36”

Trademark/Service Mark Application, Principal Register

Serial Number: 86386613

Filing Date: 09/05/2014

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86386613
MARK INFORMATION	
*MARK	The words, "The Marshall Tucker Band"
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	The words, "The Marshall Tucker Band"
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Marshall Tucker Band, Inc.
*STREET	P.O. Box 5865
*CITY	Spartanburg
*STATE (Required for U.S. applicants)	South Carolina
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	29304
PHONE	(864) 316-0042
EMAIL ADDRESS	hgray88844@aol.com
WEBSITE ADDRESS	http://marshalltucker.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	South Carolina
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services in the nature of live visual and audio performances by The Marshall Tucker Band
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/01/1972
FIRST USE IN COMMERCE DATE	At least as early as 05/01/1972
SPECIMEN FILE NAME(S)	

ORIGINAL PDF FILE	SPE00-68115163130-20140905135720863565 . MTB band performance photo.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\866\86386613\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	Album cover photograph of The Marshall Tucker Band performing in a concert on the band's "Carolina Dreams Tour '77"
ATTORNEY INFORMATION	
NAME	Ellen S. Cheek
FIRM NAME	Wilkes Law Firm, PA
INTERNAL ADDRESS	Suite 200
STREET	127 Dunbar Street
CITY	Spartanburg
STATE	South Carolina
COUNTRY	United States
ZIP/POSTAL CODE	29306
PHONE	(864) 591-1113
FAX	(864) 591-1767
EMAIL ADDRESS	echeek@wilkeslaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	Ellen S. Cheek
FIRM NAME	Wilkes Law Firm, PA
INTERNAL ADDRESS	Suite 200
STREET	127 Dunbar Street
CITY	Spartanburg
STATE	South Carolina
COUNTRY	United States
ZIP/POSTAL CODE	29306
PHONE	(864) 591-1113
FAX	(864) 591-1767
EMAIL ADDRESS	echeek@wilkeslaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Ellen S. Cheek/

SIGNATORY'S NAME	Ellen S. Check
SIGNATORY'S POSITION	Attorney of Record, SC and GA bar member
DATE SIGNED	09/05/2014

Trademark/Service Mark Application, Principal Register

Serial Number: 86386613

Filing Date: 09/05/2014

To the Commissioner for Trademarks:

MARK: The words, "The Marshall Tucker Band" (Standard Characters, see [mark](#))
The literal element of the mark consists of The words, "The Marshall Tucker Band".
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Marshall Tucker Band, Inc., a corporation of South Carolina, having an address of
P.O. Box 5865
Spartanburg, South Carolina 29304
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Entertainment services in the nature of live visual and audio performances by The Marshall Tucker Band

In International Class 041, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 05/01/1972, and first used in commerce at least as early as 05/01/1972, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Album cover photograph of The Marshall Tucker Band performing in a concert on the band's "Carolina Dreams Tour '77".

Original PDF file:

[SPE00-68115163130-20140905135720863565_._MTB_band_performance_photo.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

For informational purposes only, applicant's website address is: <http://marshalltucker.com>

The applicant's current Attorney Information:

Ellen S. Cheek of Wilkes Law Firm, PA

Suite 200
127 Dunbar Street
Spartanburg, South Carolina 29306
United States

The applicant's current Correspondence Information:

Ellen S. Cheek
Wilkes Law Firm, PA
Suite 200
127 Dunbar Street
Spartanburg, South Carolina 29306
(864) 591-1113(phone)
(864) 591-1767(fax)
echeek@wilkeslaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application 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.

Declaration Signature

Signature: /Ellen S. Cheek/ Date: 09/05/2014
Signatory's Name: Ellen S. Cheek
Signatory's Position: Attorney of Record, SC and GA bar member
RAM Sale Number: 86386613
RAM Accounting Date: 09/08/2014

Serial Number: 86386613
Internet Transmission Date: Fri Sep 05 14:51:26 EDT 2014
TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-201409051451262
39387-86386613-500aeca3c835811b3bc276eee
8d16a796b39d98929f553f1f1639e28281b360d6
-CC-1686-20140905135720863565

The words, "The Marshall
Tucker Band"



EXHIBIT “37”

To: Marshall Tucker Band, Inc. (echeek@wilkeslaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86386613 - THE WORDS, "THE MARSHALL TUCKER - N/A

Sent: 12/22/2014 11:09:46 PM

Sent As: ECOM117@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86386613	
MARK: THE WORDS, "THE MARSHALL TUCKER	*86386613*
CORRESPONDENT ADDRESS: ELLEN S. CHEEK WILKES LAW FIRM, PA 127 DUNBAR ST STE 200 SPARTANBURG, SC 29306-5191	CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response_forms.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Marshall Tucker Band, Inc.	
CORRESPONDENT'S REFERENCE/DOCKET NO : N/A CORRESPONDENT E-MAIL ADDRESS: echeek@wilkeslaw.com	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/22/2014

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4616427 and 4616428. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or

services. *Syndicat Des Proprietaires Viticulteurs De Chateauf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Applicant seeks to register the mark THE WORDS, “THE MARSHALL TUCKER BAND” for use with “entertainment services in the nature of live visual and audio performances by The Marshall Tucker Band.”

The Registrant in U.S. Registration number 4616427 owns the mark THE MARSHALL TUCKER BAND stylized for use with “Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical sound recordings; Musical video recordings; Phonograph records featuring music”.

The Registrant in U.S. Registration number 4616428 owns the mark THE MARSHALL TUCKER BAND stylized for use with “Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical recordings; Musical sound recordings; Musical video recordings”.

The same Registrant owns U.S. Registration Number 4616427 and 4616428.

In the first step of the analysis, the examining attorney finds that the terms THE MARSHALL TUCKER BAND in the applicant’s mark are identical to the marks THE MARSHALL TUCKER BAND in each of the registrant’s marks.

Adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). See *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (finding MACHO and MACHO COMBOS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.

The additional wording, THE WORDS in the applicant’s mark does not obviate the overall similarity of the marks. The marks are overall confusingly similar and impart a similar commercial impression.

In the second step of the analysis, the examining attorney finds that the applicant’s services and the registrant’s goods are related. The applicant is a group of musicians. The registrant’s goods, in each mark, featuring musical recordings. Thus consumers in the marketplace for the registrant’s recordings are likely to believe that the source of the recordings is the musical group that performs the applicant’s services.

Because the applicant’s mark shares identical terms with the registrant’s marks and the source of the applicant’s services and the registrant’s goods appear musically related, the examining attorney refuses registration of the mark under Section 2(d) of the Trademark Act. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.*

Applicant May Respond

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Ownership of Cited Registrations

If the marks in the cited registrations have been assigned to applicant, applicant may provide evidence of ownership of the marks by satisfying one of the following:

- (1) Record the assignment with the USPTO’s Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at <http://etas.uspto.gov>) and promptly notify the trademark examining attorney that the assignment has been duly recorded.
- (2) Submit copies of documents evidencing the chain of title.

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant is the owner of U.S. Registration Nos. 4616428 and 4616427.”**

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

Services

The wording “THE MARSHALL TUCKER BAND” in the identification of services is a registered mark not owned by applicant. See enclosed copy of U.S. Registration No(s). 4616428 and 4616427. An applicant may not use a registered mark owned by another party in the identification. A registered mark indicates origin in one party and cannot be used to define goods or services that originate in a party other than the registrant. TMEP §1402.09; *see Camloc Fastener Corp. v. Grant*, 119 USPQ 264, 264 n.1 (TTAB 1958).

Therefore, applicant must amend the identification of services to delete the wording “THE MARSHALL TUCKER BANK” and substitute the common commercial or generic name of the services.

The applicant should recite the services in common commercial terms. The applicant may adopt the following services.

Entertainment services in the nature of live visual and audio performances **by a musical group.** *International Class 41.*

Disclaimer

Applicant must disclaim the wording “BAND” in the mark because it identifies the musical entity that is a group, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence from Merriam Webster online dictionary shows this wording BAND means “a group of musicians organized for ensemble playing.” Therefore, the wording merely describes the applicant and the musical entertainment services it provides.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “BAND” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

Consent

Applicant must clarify whether the name MARSHALL TUCKER in the mark identifies a particular living individual. *See* 37 C.F.R. §2.61(b); TMEP §§813, 1206.03. In this case, the application neither specifies whether the name in the mark identifies a particular living individual nor includes a written consent. *See* TMEP §§813.01(a)-(b), 1206.04(a), 1206.05.

To register a mark that consists of or comprises the name of a particular living individual, including a first name, pseudonym, stage name, or nickname, an applicant must provide a written consent personally signed by the named individual. 15 U.S.C. §1052(c); TMEP §§813, 1206.04(a).

Accordingly, if the name in the mark does not identify a particular living individual, applicant must submit a statement to that effect (e.g.,

“The name shown in the mark does not identify a particular living individual.”).

However, if the name in the mark does identify a particular living individual, applicant must submit both of the following:

- (1) The following **statement**: “The name(s) shown in the mark identifies a living individual(s) whose consent(s) to register is made of record.” If the name is a pseudonym, stage name, or nickname, applicant must provide the following statement: “MARSHALL TUCKER identifies _____ <specify actual name>, a living individual whose consent is of record.”
- (2) A **written consent**, personally signed by the named individual(s), as follows: “I consent to the use and registration by _____ <specify applicant’s name> of my MARSHALL TUCKER as a trademark and/or service mark with the USPTO.”

For an overview of the requirements pertaining to names appearing in marks, and instructions on how to satisfy this requirement online using the Trademark Electronic Application System (TEAS) response form, please go to <http://www.uspto.gov/trademarks/law/consent.jsp>.

Failing to respond to this inquiry may result in a refusal to register the mark. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); TMEP §814.

Specimen – Mark Differs on Drawing and Specimen

Registration is refused because the specimen does not show the applied-for mark in the drawing in use in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(g)(i). Specifically, the specimen displays the mark as THE MARSHALL TUCKER BAND; however, the drawing displays the mark as THE WORDS, “THE MARSHALL TUCKER BAND”.

The drawing shows the mark sought to be registered, and must be a substantially exact representation of the mark as used on or in connection with the goods and/or services, as shown by the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a). Because the mark in the drawing is not a substantially exact representation of the mark on the specimen, applicant has failed to provide the required evidence of use of the applied-for mark in commerce on or in connection with applicant’s goods and/or services. *See* TMEP §807.12(a).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i). Examples of specimens for services include advertising and marketing materials, brochures, photographs of business signage and billboards, and webpages that show the mark used in the actual sale, rendering, or advertising of the services. *See* TMEP §1301.04(a), (h)(iv)(C).

Regarding whether applicant may submit an amended drawing in response to this refusal, applicant is advised that the drawing of a mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2); *see* TMEP §§807.12(a), 807.14 *et seq.* In this case, amending the mark in the drawing to conform to the mark on the specimen would be a material alteration and would not be accepted, because the difference between the mark in the specimen and the drawing is significant and each mark creates a different commercial impression. Specifically, applicant cannot remove the wording, THE WORDS from the mark.

Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the applied-for mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege use.
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#), for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen at a subsequent date.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to http://www.uspto.gov/trademarks/law/J3_1.jsp.

If the applicant has any questions or needs assistance in responding to this Office action, please call or e-mail the assigned examining attorney.

/D. Beryl Gardner/
Examining Attorney
Law Office 117
571-272-9162 (O)
571-273-9162 (F)
beryl.gardner@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86137626

Status

REGISTERED

Word Mark

MARSHALL TUCKER BAND

Standard Character Mark

Yes

Registration Number

4616427

Date Registered

2014/10/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

MT Industries, Inc. CORPORATION SOUTH CAROLINA 315 South Beverly Drive
Suite # 300 Beverly Hills CALIFORNIA 90212

Goods/Services

Class Status -- ACTIVE, IC 009, US 021 023 026 036 038, G & S:
Digital media, namely, pre-recorded DVDs, downloadable audio and video
recordings, and CDs featuring and promoting music; Musical sound
recordings; Musical video recordings; Phonograph records featuring
music. First Use: 1973/04/00. First Use In Commerce: 1973/04/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND" APART FROM THE
MARK AS SHOWN.

Name/Portrait Statement

The name "MARSHALL TUCKER" does not identify a living individual.

Filing Date

2013/12/06

Examining Attorney

Print: Dec 20, 2014

86137626

ROBERTSON, DEIRDRE

Attorney of Record

Michael P. Martin

MARSHALL TUCKER BAND

DESIGN MARK

Serial Number

86137638

Status

REGISTERED

Word Mark

THE MARSHALL TUCKER BAND

Standard Character Mark

No

Registration Number

4616428

Date Registered

2014/10/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

MT Industries, Inc. CORPORATION CALIFORNIA 315 South Beverly Drive
Suite # 300 Beverly Hills CALIFORNIA 90212

Goods/Services

Class Status -- ACTIVE, IC 009, US 021 023 026 036 038, G & S:
Digital media, namely, pre-recorded DVDs, downloadable audio and video
recordings, and CDs featuring and promoting music; Musical recordings;
Musical sound recordings; Musical video recordings, First Use:
2005/01/00. First Use In Commerce: 2005/01/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND" APART FROM THE
MARK AS SHOWN.

Name/Portrait Statement

The name "MARSHAL TUCKER" does not identify a living individual.

Description of Mark

The mark consists of "The Marshall Tucker Band" in stylized form.

Colors Claimed

Print: Dec 20, 2014

86137638

Color is not claimed as a feature of the mark.

Filing Date

2013/12/06

Examining Attorney

ROBERTSON, DEIRDRE

Attorney of Record

Michael P. Martin

THE
MARSHALL
MATTUCKER
BAND

Dictionary Thesaurus Merriam-Webster Spanish Central

band

band

19 ENTRIES FOUND

- band
- Band Aid
- band brake

Additional Links

Want to place your ad here?
ADVERTISEMENT

band *\ˈbænd*

Definition of BAND

- something that confines or constricts while allowing a degree of movement
- something that binds or restrains legally, morally, or spiritually
- a strip serving to join or hold things together: as
 - BELT 2
 - a cord or strip across the back of a book to which the sections are sewn
- a thin flat encircling strip: as
 - a close-fitting strip that confines material at the waist, neck, or cuff of clothing
 - a strip of cloth used to protect a newborn baby's navel without allowing air to reach it
 - a ring of elastic
- a strip (as of living tissue or rock) or a stripe (as on an

Hitachi Inspire the Next
SOCIAL INNOVATION
IT'S OUR FUTURE

Test Your Vocabulary
Take Our 10-Question Quiz

Shop Now
PRICE MATCH GUARANTEE
Merriam-Webster

AdChoices

Samsung - Smart Wi-Fi
Built-in Blu-ray Player
\$699

Shop Now
BEST BUY
PRICE MATCH GUARANTEE

MORE QUIZZES

Name That Thing
Take our visual vocabulary quiz.
Test Your Knowledge »

True or False?
A quick quiz about stuff worth knowing.
Take It Now »

Spell It
The commonly misspelled words quiz.
Hear It, Spell It »

AdChoices



- a** : a strip (as of living tissue or rock) or a stripe (as on an animal) differentiable (as by color, texture, or structure) from the adjacent material or area
- b** : a more or less well-defined range of wavelengths, frequencies, or energies
- c** : RANGE 7a
- d** : a narrow strip serving chiefly as decoration: as
 - a** : a narrow strip of material applied as trimming to an article of dress
 - b plural** : a pair of strips hanging at the front of the neck as part of a clerical, legal, or academic dress
 - c** : a ring without raised portions
- 7** : (TRACK 1e(2))

Origin of BAND

in senses 1 & 2, from Middle English *band*, *band* something that constricts, from Old Norse *band*; akin to Old English *bindan* to bind; in other senses, from Middle English *bande* strip, from Middle French, from Vulgar Latin **binda*, of Germanic origin; akin to Old High German *binda* fillet; akin to Old English *bindan* to bind, *band* fetter — more at BIND
First Known Use: 12th century

Rhymes with BAND

band, brand, canned, gland, grand, hand, land, married, NAND, rand, sand, stand, stand, strand

band *verb*

Definition of BAND

transitive verb

- 1** : to affix a band to or tie up with a band
- 2** : to finish or decorate with a band
- 3** : to gather together : UNITE *-banded themselves together for protection*

intransitive verb

: to unite for a common purpose —often used with *together* *-have banded together in hopes of attacking the blight that is common to them all — J. B. Conants*

— *bander* *noun*

TOP 10 LISTS



2014 Word of the Year: Culture
Here's What This Year's Top Look-ups Say About Us



Word of the Year Retrospective
Editors CHOOSE Their Favorite Words from the Past Decade



See band defined for English-language learners »

Examples of BAND

- <banded the waist of the dress with a speckled belt>
- <banded the newspapers together for delivery>

First Known Use of BAND

15th century

Related to BAND

Synonyms

gird, begird, belt, engird [archaic], engirdle, enwind, girdle, girt, girth, wrap

Antonyms

ungird, unwrap

[+] more

band *noun*

Definition of BAND

: a group of persons, animals, or things; especially : a group of musicians organized for ensemble playing

Origin of BAND

Middle French *bande* troop, from Old Occitan *banda*, of Germanic origin; akin to Gothic *bandwo* sign, standard — more at *BANNER*

First Known Use: 15th century

Other Music Terms

cacophony, chorister, concerto, counterpoint, madrigal, obbligato, presto, presto, refrain, riff, segue

band *noun* \ˈbænd/ (Medical Dictionary)

Medical Definition of BAND

1 : a thin flat encircling strip especially for binding; as

a : a strip of cloth used to protect a newborn baby's navel—called also *bellyband*

navel—called also bellyband

b : a thin flat strip of metal that encircles a tooth
(orthodontic bands)

2 : a strip separated by some characteristic color or texture or considered apart from what is adjacent: as

a : a stripe, streak, or other elongated mark on an animal; especially : one transverse to the long axis of the body

b : a line or streak of differentiated cells

c : one of the alternating dark and light segments of skeletal muscle fibers

d : BAND FORM

e : a strip of abnormal tissue either congenital or acquired; especially : a strip of connective tissue that causes obstruction of the bowel

Learn More About BAND

- Thesaurus: All synonyms and antonyms for "band"
- Spanish Central: Spanish translation of "band"
- SCRABBLE
- : Playable words you can make from "band"
- Britannica.com: Encyclopedia article about "band"

Browse

- Next Word in the Dictionary: banda (noun)
- Previous Word in the Dictionary: Bancroft's law
- All Words Near: band

Ask the Editors videos



W Seen & Heard in

To: Marshall Tucker Band, Inc. (echeek@wilkeslaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86386613 - THE WORDS, "THE MARSHALL TUCKER - N/A"
Sent: 12/22/2014 11:09:49 PM
Sent As: ECOM117@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **12/22/2014** FOR U.S. APPLICATION SERIAL NO. 86386613

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **12/22/2014** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For technical assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT “38”



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Jul 27, 2015

NOTICE OF ABANDONMENT

TM117

ELLEN S. CHEEK
WILKES LAW FIRM, PA
127 DUNBAR ST STE 200
SPARTANBURG, SC 29306-5191

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 86/386613
MARK: THE WORDS, "THE MARSHALL TUCKER BAND"
APPLICANT: Marshall Tucker Band, Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED IN FULL ON 06/23/2015 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 12/22/2014 WAS RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR) AVAILABLE AT <http://tportal.uspto.gov/external/portal/tow>.

YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:

- * YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- * YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO RULE 2.197, 37 CFR SEC. 2.197.

YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX THIS INFORMATION TO 571-273-8950.

IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) AVAILABLE AT <http://www.uspto.gov/teas/index.html>. USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:

- * A "PETITION TO REVIVE" **TO BE FILED WITHIN 2 MONTHS** OF THE DATE PRINTED AT THE TOP OF THIS NOTICE;
- * A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- * A PETITION FEE OF \$100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- * A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION - OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

FOR FURTHER INFORMATION CALL 1-800-786-9199

EXHIBIT “39”

Trademark/Service Mark Application, Principal Register

Serial Number: 86386828
 Filing Date: 09/05/2014

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86386828
MARK INFORMATION	
*MARK	The Marshall Tucker Band
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	The Marshall Tucker Band
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Marshall Tucker Band, Inc.
*STREET	P.O. Box 5865
*CITY	Spartanburg
*STATE (Required for U.S. applicants)	South Carolina
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	29304
PHONE	(864) 316-0042
EMAIL ADDRESS	hgray88844@aol.com
WEBSITE ADDRESS	http://marshalltucker.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	South Carolina
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Digital materials, namely, a series of records, cassettes, and CDs featuring music by The Marshall Tucker Band
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/01/1973
FIRST USE IN COMMERCE DATE	At least as early as 04/01/1973
SPECIMEN FILE NAME(S)	

ORIGINAL PDF FILE	SPE00-68115163130-20140905155402935581 . MTB_album_cover.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\868\86386828\xml1\APP0003.JPG
SPECIMEN DESCRIPTION	An album cover of The Marshall Tucker Band's "Live! From Spartanburg, South Carolina" album
ATTORNEY INFORMATION	
NAME	Ellen S. Cheek
FIRM NAME	Wilkes Law Firm, PA
INTERNAL ADDRESS	Suite 200
STREET	127 Dunbar Street
CITY	Spartanburg
STATE	South Carolina
COUNTRY	United States
ZIP/POSTAL CODE	29306
PHONE	(864) 591-1113
FAX	(864) 591-1767
EMAIL ADDRESS	echeek@wilkeslaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	Ellen S. Cheek
FIRM NAME	Wilkes Law Firm, PA
INTERNAL ADDRESS	Suite 200
STREET	127 Dunbar Street
CITY	Spartanburg
STATE	South Carolina
COUNTRY	United States
ZIP/POSTAL CODE	29306
PHONE	(864) 591-1113
FAX	(864) 591-1767
EMAIL ADDRESS	echeek@wilkeslaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Ellen S. Cheek/
SIGNATORY'S NAME	Ellen S. Cheek

SIGNATORY'S POSITION	Attorney, SC and GA bar member
DATE SIGNED	09/05/2014

Trademark/Service Mark Application, Principal Register

Serial Number: 86386828

Filing Date: 09/05/2014

To the Commissioner for Trademarks:

MARK: The Marshall Tucker Band (Standard Characters, see [mark](#))

The literal element of the mark consists of The Marshall Tucker Band.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Marshall Tucker Band, Inc., a corporation of South Carolina, having an address of
P.O. Box 5865
Spartanburg, South Carolina 29304
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 009: Digital materials, namely, a series of records, cassettes, and CDs featuring music by The Marshall Tucker Band

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 04/01/1973, and first used in commerce at least as early as 04/01/1973, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) An album cover of The Marshall Tucker Band's "Live! From Spartanburg, South Carolina" album.

Original PDF file:

[SPE00-68115163130-20140905155402935581_.MTB_album_cover.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

For informational purposes only, applicant's website address is: <http://marshalltucker.com>

The applicant's current Attorney Information:

Ellen S. Cheek of Wilkes Law Firm, PA

Suite 200
127 Dunbar Street
Spartanburg, South Carolina 29306
United States

The applicant's current Correspondence Information:

Ellen S. Cheek
Wilkes Law Firm, PA
Suite 200
127 Dunbar Street
Spartanburg, South Carolina 29306
(864) 591-1113(phone)
(864) 591-1767(fax)
echeek@wilkeslaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application 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.

Declaration Signature

Signature: /Ellen S. Cheek/ Date: 09/05/2014

Signatory's Name: Ellen S. Cheek

Signatory's Position: Attorney, SC and GA bar member

RAM Sale Number: 86386828

RAM Accounting Date: 09/08/2014

Serial Number: 86386828

Internet Transmission Date: Fri Sep 05 16:16:45 EDT 2014

TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-201409051616450

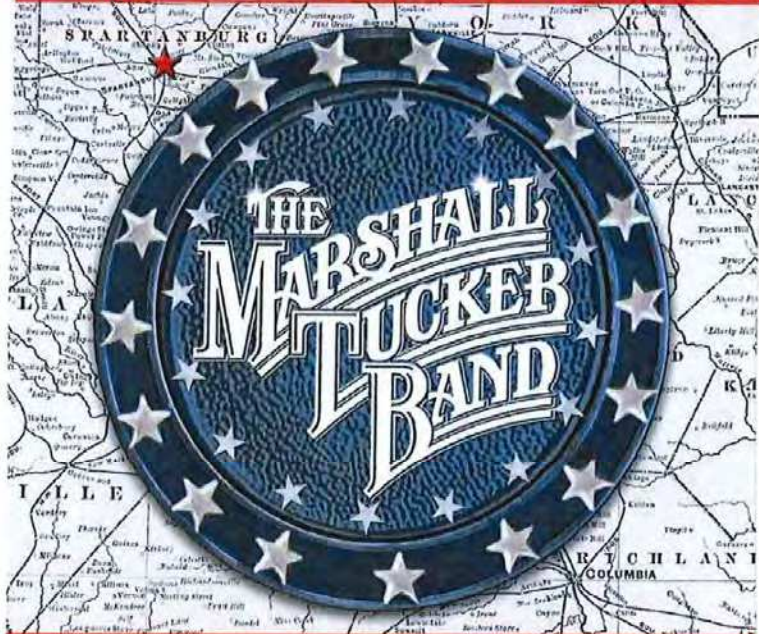
32496-86386828-500efea8244c9ae423f4c2b17

f8972bcad416c60a0fba2fe6f3b3c48eff498e02

9-CC-3447-20140905155402935581

The Marshall Tucker Band

LIVE! FROM SPARTANBURG, SOUTH CAROLINA



The South Carolina Music Hall of Fame Concert

EXHIBIT “40”

To: Marshall Tucker Band, Inc. (echeek@wilkeslaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86386828 - THE MARSHALL TUCKER BAND - N/A

Sent: 12/22/2014 11:10:27 PM

Sent As: ECOM117@USPTO.GOV

Attachments: [Attachment - 1](#)
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86386828 MARK: THE MARSHALL TUCKER BAND	*86386828*
CORRESPONDENT ADDRESS: ELLEN S. CHEEK WILKES LAW FIRM, PA 127 DUNBAR ST STE 200 SPARTANBURG, SC 29306-5191	CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response_forms.jsp VIEW YOUR APPLICATION FILE
APPLICANT: Marshall Tucker Band, Inc.	
CORRESPONDENT'S REFERENCE/DOCKET NO : N/A CORRESPONDENT E-MAIL ADDRESS: echeek@wilkeslaw.com	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/22/2014

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4616427 and 4616428. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or

services. *Syndicat Des Proprietaires Viticulteurs De Chateauf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Applicant seeks to register the mark THE MARSHALL TUCKER BAND for use with “Digital materials, namely, a series of records, cassettes, and CDs featuring music by The Marshall Tucker Band.”

The Registrant in U.S. Registration number 4616427 owns the mark THE MARSHALL TUCKER BAND stylized for use with “Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical sound recordings; Musical video recordings; Phonograph records featuring music”.

The Registrant in U.S. Registration number 4616428 owns the mark THE MARSHALL TUCKER BAND stylized for use with “Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical recordings; Musical sound recordings; Musical video recordings”.

The same Registrant owns U.S. Registration Number 4616427 and 4616428.

In the first step of the analysis, the examining attorney finds that the applicant’s mark THE MARSHALL TUCKER BAND is identical to the registrant’s marks THE MARSHALL TUCKER BAND.

In the second step of the analysis, the examining attorney finds that the applicant’s goods and the registrant’s goods are the same. Where the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods and/or services need not be as close to support a finding of likelihood of confusion. See *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

Nevertheless, both the applicant and the registrant provide recorded music on digital materials. Thus consumers will encounter the applicant’s goods and the registrant’s goods in the same marketplace.

Because the marks are the same and the goods are the same, the examining attorney refuses registration of the mark under Section 2(d) of the Trademark Act. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.*

The applicant should also note the following additional ground for refusal.

Title of Single Work

Applicant seeks to register the mark THE MARSHALL TUCKER BAND for use with “Digital materials, namely, a series of records, cassettes, and CDs featuring music by The Marshall Tucker Band”.

Registration is refused because the applied-for mark, as used on the specimen of record (1) is used only as the title of a single creative work, namely, the title of a specific CD; and (2) does not function as a trademark to indicate the source of applicant’s goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; see *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162-63, 64 USPQ2d 1375, 1378-79 (Fed. Cir. 2002); *In re Cooper*, 254 F.2d 611, 615-16, 117 USPQ 396, 399-400 (C.C.P.A. 1958); TMEP §§904.07(b), 1202.08.

In this case, the submitted specimen shows the applied-for mark, THE MARSHALL TUCKER BAND appearing on a single album cover. There is no evidence of a series of different album covers. As shown in the single specimen of record, such use shows the mark would be perceived only as a title. There is no evidence in the application record that applicant’s CD is part of a series of works, nor are there specimens or evidence in the record otherwise showing proper trademark use of the applied-for mark for the identified goods.

Therefore, consumers would view the applied-for mark as the title of a single work, rather than as a trademark to indicate the source of applicant’s goods and to distinguish applicant’s goods from others.

In appropriate circumstances, applicant may overcome this refusal by satisfying one of the following options:

- (1) Submit evidence that the applied-for mark is used to identify a [series of creative works](#).
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#). This option will later necessitate additional fee(s) and filing requirements.

For an overview of *both* response options referenced above and instructions on how to satisfy each option online using the Trademark Electronic Application System (TEAS) form, please go to http://www.uspto.gov/trademarks/law/title_single_work.jsp.

Applicant May Respond

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Ownership of Cited Registrations

If the marks in the cited registrations have been assigned to applicant, applicant may provide evidence of ownership of the marks by satisfying one of the following:

- (1) Record the assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at <http://etas.uspto.gov>) and promptly notify the trademark examining attorney that the assignment has been duly recorded.
- (2) Submit copies of documents evidencing the chain of title.
- (3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant is the owner of U.S. Registration Nos. 4616428 and 4616427.”**

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

Goods

The applicant must indicate that the good are “pre-recorded”. *See* TMEP §§1402.01, 1402.03.

Moreover, the wording “THE MARSHALL TUCKER BAND” in the identification is a registered mark not owned by applicant. *See* enclosed copy of U.S. Registration No(s). 4616428 and 4616427. An applicant may not use a registered mark owned by another party in the identification. A registered mark indicates origin in one party and cannot be used to define goods or services that originate in a party other than the registrant. TMEP §1402.09; *see Camloc Fastener Corp. v. Grant*, 119 USPQ 264, 264 n.1 (TTAB 1958).

Therefore, applicant must amend the identification of goods to delete the wording “THE MARSHALL TUCKER BANK” and substitute the common commercial or generic name of the services.

An applicant may only amend an identification to clarify or limit the goods, but not to add to or broaden the scope of the goods. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

Applicant may substitute the following wording, if accurate:

Digital media, namely, pre-recorded records, cassettes, and CDs all featuring music by a band. International Class 9.

Disclaimer

Applicant must disclaim the wording “BAND” in the mark because it identifies the musical entity that is a group, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence from Merriam Webster online dictionary shows this wording BAND means “a group of musicians organized for ensemble

playing.” Therefore, the wording merely describes the applicant and the musical entertainment services it provides.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “BAND” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

Consent

Applicant must clarify whether the name MARSHALL TUCKER in the mark identifies a particular living individual. *See* 37 C.F.R. §2.61(b); TMEP §§813, 1206.03. In this case, the application neither specifies whether the name in the mark identifies a particular living individual nor includes a written consent. *See* TMEP §§813.01(a)-(b), 1206.04(a), 1206.05.

To register a mark that consists of or comprises the name of a particular living individual, including a first name, pseudonym, stage name, or nickname, an applicant must provide a written consent personally signed by the named individual. 15 U.S.C. §1052(c); TMEP §§813, 1206.04(a).

Accordingly, if the name in the mark does not identify a particular living individual, applicant must submit a statement to that effect (e.g., “The name shown in the mark does not identify a particular living individual.”).

However, if the name in the mark does identify a particular living individual, applicant must submit both of the following:

(1) The following **statement**: “The name(s) shown in the mark identifies a living individual(s) whose consent(s) to register is made of record.” If the name is a pseudonym, stage name, or nickname, applicant must provide the following statement: “MARSHALL TUCKER identifies _____ <specify actual name>, a living individual whose consent is of record.”

(2) **A written consent**, personally signed by the named individual(s), as follows: “I consent to the use and registration by _____ <specify applicant’s name> of my MARSHALL TUCKER as a trademark and/or service mark with the USPTO.”

For an overview of the requirements pertaining to names appearing in marks, and instructions on how to satisfy this requirement online using the Trademark Electronic Application System (TEAS) response form, please go to <http://www.uspto.gov/trademarks/law/consent.jsp>.

Failing to respond to this inquiry may result in a refusal to register the mark. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); TMEP §814.

If the applicant has any questions or needs assistance in responding to this Office action, please call or e-mail the assigned examining attorney.

/D. Beryl Gardner/
Examining Attorney
Law Office 117
571-272-9162 (O)
571-273-9162 (F)
beryl.gardner@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application.

For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86137626

Status

REGISTERED

Word Mark

MARSHALL TUCKER BAND

Standard Character Mark

Yes

Registration Number

4616427

Date Registered

2014/10/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

MT Industries, Inc. CORPORATION SOUTH CAROLINA 315 South Beverly Drive
Suite # 300 Beverly Hills CALIFORNIA 90212

Goods/Services

Class Status -- ACTIVE, IC 009, US 021 023 026 036 038, G & S:
Digital media, namely, pre-recorded DVDs, downloadable audio and video
recordings, and CDs featuring and promoting music; Musical sound
recordings; Musical video recordings; Phonograph records featuring
music. First Use: 1973/04/00. First Use In Commerce: 1973/04/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND" APART FROM THE
MARK AS SHOWN.

Name/Portrait Statement

The name "MARSHALL TUCKER" does not identify a living individual.

Filing Date

2013/12/06

Examining Attorney

Print: Dec 20, 2014

86137626

ROBERTSON, DEIRDRE

Attorney of Record

Michael P. Martin

MARSHALL TUCKER BAND

DESIGN MARK

Serial Number

86137638

Status

REGISTERED

Word Mark

THE MARSHALL TUCKER BAND

Standard Character Mark

No

Registration Number

4616428

Date Registered

2014/10/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

MT Industries, Inc. CORPORATION CALIFORNIA 315 South Beverly Drive
Suite # 300 Beverly Hills CALIFORNIA 90212

Goods/Services

Class Status -- ACTIVE, IC 009, US 021 023 026 036 038, G & S:
Digital media, namely, pre-recorded DVDs, downloadable audio and video
recordings, and CDs featuring and promoting music; Musical recordings;
Musical sound recordings; Musical video recordings, First Use:
2005/01/00. First Use In Commerce: 2005/01/00.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAND" APART FROM THE
MARK AS SHOWN.

Name/Portrait Statement

The name "MARSHAL TUCKER" does not identify a living individual.

Description of Mark

The mark consists of "The Marshall Tucker Band" in stylized form.

Colors Claimed

Print: Dec 20, 2014

86137638

Color is not claimed as a feature of the mark.

Filing Date

2013/12/06

Examining Attorney

ROBERTSON, DEIRDRE

Attorney of Record

Michael P. Martin

THE
MARSHALL
MATTUCKER
BAND

Dictionary Thesaurus Merriam-Webster Spanish Central

band

band

19 ENTRIES FOUND

- band
- Band Aid
- band brake

Additional Links

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band *\ˈbænd*

Definition of BAND

- 1 : something that confines or constricts while allowing a degree of movement
- 2 : something that binds or restrains legally, morally, or spiritually
- 3 : a strip serving to join or hold things together: as
 - a : BELT 2
 - b : a cord or strip across the back of a book to which the sections are sewn
- 4 : a thin flat encircling strip: as
 - a : a close-fitting strip that confines material at the waist, neck, or cuff of clothing
 - b : a strip of cloth used to protect a newborn baby's navel without allowing drafts
 - c : a ring of elastic
- 5 a : a strip (as of living tissue or rock) or a stripe (as on an

Hitachi Inspire the Next
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Hear It, Spell It »

AdChoices



- a** : a strip (as of living tissue or rock) or a stripe (as on an animal) differentiable (as by color, texture, or structure) from the adjacent material or area
- b** : a more or less well-defined range of wavelengths, frequencies, or energies
- c** : RANGE 7a
- d** : a narrow strip serving chiefly as decoration: as
 - a** : a narrow strip of material applied as trimming to an article of dress
 - b plural** : a pair of strips hanging at the front of the neck as part of a clerical, legal, or academic dress
 - c** : a ring without raised portions
- 7** : (TRACK 1e(2))

Origin of BAND

in senses 1 & 2, from Middle English *band*, *band* something that constricts, from Old Norse *band*; akin to Old English *bindan* to bind; in other senses, from Middle English *bande* strip, from Middle French, from Vulgar Latin **binda*, of Germanic origin; akin to Old High German *binda* fillet; akin to Old English *bindan* to bind, *band* fetter — more at BIND
First Known Use: 12th century

Rhymes with BAND

band, brand, canned, gland, grand, hand, land, married, NAND, rand, sand, stand, stand, strand

band *verb*

Definition of BAND

transitive verb

- 1** : to affix a band to or tie up with a band
- 2** : to finish or decorate with a band
- 3** : to gather together : UNITE *-banded themselves together for protection*

intransitive verb

: to unite for a common purpose —often used with *together* *-have banded together in hopes of attacking the blight that is common to them all — J. B. Conants*

— *bander* *noun*

TOP 10 LISTS



2014 Word of the Year: Culture
Here's What This Year's Top Look-ups Say About Us



Word of the Year Retrospective
Editors CHOOSE Their Favorite Words from the Past Decade



See band defined for English-language learners »

Examples of BAND

- <banded the waist of the dress with a speckled belt>
- <banded the newspapers together for delivery>

First Known Use of BAND

15th century

Related to BAND

Synonyms

gird, begird, belt, engird [archaic], engirdle, enwind, girdle, girt, girth, wrap

Antonyms

ungird, unwrap

[+] more

band *noun*

Definition of BAND

: a group of persons, animals, or things; especially : a group of musicians organized for ensemble playing

Origin of BAND

Middle French *bande* troop, from Old Occitan *banda*, of Germanic origin; akin to Gothic *bandwo* sign, standard — more at *BANNER*

First Known Use: 15th century

Other Music Terms

cacophony, chorister, concerto, counterpoint, madrigal, obbligato, presto, presto, refrain, riff, segue

band *noun* \ˈbænd\ (*Medical Dictionary*)

Medical Definition of BAND

1 : a thin flat encircling strip especially for binding; as

a : a strip of cloth used to protect a newborn baby's navel—called also *bellyband*

navel—called also bellyband

b : a thin flat strip of metal that encircles a tooth
(orthodontic bands)

2 : a strip separated by some characteristic color or texture or considered apart from what is adjacent: as

a : a stripe, streak, or other elongated mark on an animal; especially : one transverse to the long axis of the body

b : a line or streak of differentiated cells

c : one of the alternating dark and light segments of skeletal muscle fibers

d : BAND FORM

e : a strip of abnormal tissue either congenital or acquired; especially : a strip of connective tissue that causes obstruction of the bowel

Learn More About BAND

- Thesaurus: All synonyms and antonyms for "band"
- Spanish Central: Spanish translation of "band"
- SCRABBLE
- : Playable words you can make from "band"
- Britannica.com: Encyclopedia article about "band"

Browse

- Next Word in the Dictionary: banda (noun)
- Previous Word in the Dictionary: Bancroft's law
- All Words Near: band

Ask the Editors videos



W Seen & Heard in

To: Marshall Tucker Band, Inc. (echeek@wilkeslaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86386828 - THE MARSHALL TUCKER BAND - N/A
Sent: 12/22/2014 11:10:29 PM
Sent As: ECOM117@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **12/22/2014** FOR U.S. APPLICATION SERIAL NO. 86386828

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **12/22/2014** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For technical assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT “41”

Side - 1



NOTICE OF ABANDONMENT
MAILING DATE: Jul 27, 2015

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Dec 22, 2014 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 86386828
MARK: THE MARSHALL TUCKER BAND
OWNER: Marshall Tucker Band, Inc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
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