

ESTTA Tracking number: **ESTTA587933**

Filing date: **02/18/2014**

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

Notice of Opposition

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

Opposer Information

Name	DISH Network L.L.C.
Granted to Date of previous extension	02/16/2014
Address	9601 S. Meridian Blvd. Englewood, CO 80112 UNITED STATES

Attorney information	Charlene M. Krogh Dorsey & Whitney LLP 1400 Wewatta Street, Suite 400 Denver, CO 80202-5549 UNITED STATES docketing-dv@dorsey.com, krogh.charlene@dorsey.com Phone:303-629-3400
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Applicant Information

Application No	85581449	Publication date	08/20/2013
Opposition Filing Date	02/18/2014	Opposition Period Ends	02/16/2014
International Registration No.	NONE	International Registration Date	NONE
Applicant	The Trustees of The Hopper Art Trust c/o deBlois, Mejia & Kaplan LLP Beverly Hills, CA 90210 CANADA		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Motorcycle goggles; motorcycle helmets; protective clothing and gear, namely, articles of protective clothing for wear by motorcyclists for protection against accident or injury, bags specially adapted for protective helmets; protective helmets; cellular phones; sound recording apparatus, MP3 players, laptops; headphones; downloadable posters and photographs; sound recordings featuring motorcyclesounds, music, spoken word and soundtracks; downloadable sound recordings featuring motorcycle sounds, music, spoken word and soundtracks; audiovisual recordings featuring motion picture films, portions of motion picture films, stills from motion picture films, documentaries, interviews, and footage featuring motorcycles, motorcycle events, artwork and photography; downloadable audiovisual recordings featuring motion picture films, portions of motion picture films, stills from motion picture films, documentaries, interviews, and footage featuring motorcycles, motorcycle events, artwork and photography; downloadable ringtones and graphics for mobile phones and wireless devices; downloadable electronic sheet music and posters; electronic equipment, namely, headphones and audio speakers; vinyl covers specially adapted for cell phones, MP3 players, laptops; sound recording apparatus and accessories, namely, covers specially adapted for such sound recording</p>
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apparatus; musical sound recordings; downloadable music via the Internet and wireless devices; downloadable computer graphics; downloadable computer software containing sound and video recordings featuring motorcycles, art, photography, film, and the life of an actor and telephone ring tones; downloadable computer graphics in the nature of wallpapers, widgets, icons and photographs; downloadable computer graphics in the nature of banners; downloadable podcasts in the field of motorcycles, art, photography, film, and the life of an actor; downloadable electronic publications in the nature of books, magazines, newsletters, pamphlets, booklets and brochures in the field of motorcycles, art, photography, film, and the life of an actor; motion picture films in the field of motorcycles, art, photography, film, and the life of an actor; digital video discs in the field of motorcycles, art, photography, film, and the life of an actor; video game programs; electronic game programs; storage cases for CDs and DVDs; mobile telephone and personal electronic device cases and covers; computer mouse pads, earphones


Class 018. First Use: 0 First Use In Commerce: 0
 All goods and services in the class are opposed, namely: Bags, namely, messenger bags, all-purpose sports bags, duffel bags, carry-all bags; wallets; luggage; backpacks; trunks and traveling bags; tote bags; carrying cases; leather goods included in this class, namely, leather key chains, leather pouches, leather cases; umbrellas

Class 025. First Use: 0 First Use In Commerce: 0
 All goods and services in the class are opposed, namely: Clothing, namely, shirts, pants, jackets, t-shirts, denim shirts, jeans, denim jackets, leather jackets, ponchos; footwear, headwear; clothing, namely, motorcycle gloves, motorcycle jackets and motorcycle rain suits, footwear and headwear for use with motorcycles


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	4155801	Application Date	09/06/2011
Registration Date	06/05/2012	Foreign Priority Date	NONE
Word Mark	HOPPER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2012/01/09 First Use In Commerce: 2012/03/15 Digital video recorders; Electronic apparatus and devices for controlling access to pay-television services; communications equipment, namely, set-top boxes for receiving video programming; Television receivers; satellite receivers; set-top boxes; universal remote controls for home electronic devices, namely, televisions, VCRs, DVD players, digital video recorders, satellite receivers, stereo receivers, and stereo amplifiers; Computer hardware and software for streaming audio, video, image and data information to a variety of network devices, namely, personal computers, mobile phones, personal digital assistants		

	(PDA), and stand-alone hardware decoders, namely, audio decoders and video decoders; electronic devices, namely, digital media streaming devices
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U.S. Registration No.	4377209	Application Date	12/05/2011
Registration Date	07/30/2013	Foreign Priority Date	NONE
Word Mark	HOPPER		
Design Mark			
Description of Mark	The mark consists of the word "hopper" to the left of an image of a kangaroo.		
Goods/Services	Class 009. First use: First Use: 2012/01/00 First Use In Commerce: 2012/01/00 Digital video recorders; Electronic apparatus and devices for controlling access to pay-television services; communications equipment, namely, set-top boxes for receiving video programming; Television receivers; satellite receivers; set-top boxes; universal remote controls for home electronic devices, namely, televisions, VCRs, DVD players, digital video recorders, satellite receivers, stereo receivers, and stereo amplifiers; Computer hardware and software for streaming audio, video, image and data information to a variety of network devices, namely, personal computers, mobile phones, personal digital assistants (PDA), and stand-alone hardware decoders, namely, audio decoders and video decoders; electronic devices, namely, digital media streaming devices		

U.S. Application No.	85775110	Application Date	11/08/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HOPPER TRANSFERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2013/01/17 First Use In Commerce: 2013/01/17 Computer hardware and software for transmitting and displaying audio, video, image and data information to a variety of network devices, namely, personal computers, tablets, mobile phones, and personal digital assistants (PDA);		

	computer software for operating hardware, translating digital signals, transmitting digital data and signals, data management, hardware and network security; computer programs utilizing radio communications networks and local communication networks; computer programs for facilitating wireless communication; computer programs for processing, receiving, transmitting, compressing, displaying, merging or enhancing previously recorded data for use in wireless communications; compression software for voice, data, image, graphic, audio, and video transmissions; computer application software for mobile phones and tablets, namely, software for receiving and displaying previously recorded audio, video, image and data information on devices, namely, personal computers, tablets, and mobile devices
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U.S. Application No.	86178878	Application Date	01/29/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HOPPER		
Design Mark			
Description of Mark	The mark consists of the word "hopper" to the left of an image of a kangaroo.		
Goods/Services	Class 028. First use: First Use: 2012/01/24 First Use In Commerce: 2012/01/24 Articles of clothing for toys; Stuffed and plush toys		

Attachments	85415859#TMSN.jpeg(bytes) 85487628#TMSN.jpeg(bytes) 85775110#TMSN.jpeg(bytes) 86178878#TMSN.jpeg(bytes) Notice of Opposition.pdf(207676 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/cmk2112/
Name	Charlene M. Krogh
Date	02/18/2014

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

In the matter of U.S. Trademark Application Serial No. 85/581,449
Mark: HOPPER
Published on August 20, 2013

DISH Network LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
The Trustees Of The Hopper Art Trust,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

DISH Network, L.L.C., a limited liability company organized and existing under the laws of Colorado, having a principal place of business at 9601 S. Meridian Blvd., Englewood, CO 80112 (“Opposer”), believes it will be damaged by the registration of the mark HOPPER shown in Application Serial No. 85/581,449, filed by The Trustees Of The Hopper Art Trust (“Applicant”) on March 27, 2012, and having been granted an extension of time to oppose until February 16, 2014, hereby opposes the same.

As grounds for this opposition, Opposer alleges the following:

1. Opposer is one of the largest providers of satellite-based entertainment services in the United States. Opposer provides television, audio and interactive television services to commercial and residential customers.

2. On September 6, 2011, Opposer filed an Intent To Use application for the standard character mark HOPPER in International Class 9. That application matured into United States Trademark Registration 4,155,801 on June 5, 2012 (the “’801 Registration”). Opposer has used the HOPPER mark in connection with the goods recited in the ‘801 Registration since at least as early as January 9, 2012. Thereafter, on December 5, 2011,

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Opposer filed an Intent To Use application for the mark HOPPER & Design in International Class 9. That application matured into United States Trademark Registration 4,377,209 on July 30, 2013 (the "209 Registration"). Opposer has used the HOPPER & Design mark in connection with the goods recited in the '209 Registration since at least as early as January, 2012. Currently, Opposer has two pending applications for additional registrations in the HOPPER family of marks. Specifically, on November 8, 2012, Opposer filed application serial number 85/775,110 for the standard character mark HOPPER TRANSFERS in International Class 9, and on January 29, 2014, Opposer filed application serial number 86/178,878 for HOPPER and design in International Class 28. The foregoing are marks referred to collectively as the "HOPPER marks."

3. As a result of extensive use, promotion and advertisement, the consuming public and trade have come to recognize and do recognize the HOPPER marks as being uniquely identified and associated with Opposer. Opposer derives substantial goodwill and value from the aforesaid recognition, association and identification by the consuming public and trade.

4. Applicant filed U.S. Trademark Application Serial No. 85/581,449, the subject of this opposition, on March 27, 2012, for the mark HOPPER for use in connection with, among other things, "cellular phones; sound recording apparatus, MP3 players, laptops; headphones; downloadable posters and photographs; sound recordings featuring motorcycle sounds, music, spoken word and soundtracks; downloadable sound recordings featuring motorcycle sounds, music, spoken word and soundtracks; audiovisual recordings featuring motion picture films, portions of motion picture films, stills from motion picture films, documentaries, interviews, and footage featuring motorcycles, motorcycle events, artwork and photography; downloadable audiovisual recordings featuring motion picture films, portions of motion picture films, stills from motion picture films, documentaries, interviews, and footage featuring motorcycles, motorcycle

events, artwork and photography; downloadable ringtones and graphics for mobile phones and wireless devices; downloadable electronic sheet music and posters; electronic equipment, namely, headphones and audio speakers; vinyl covers specially adapted for cell phones, MP3 players, laptops; downloadable music via the Internet and wireless devices; downloadable computer graphics; downloadable computer software containing sound and video recordings featuring motorcycles, art, photography, film, and the life of an actor and telephone ring tones; downloadable computer graphics in the nature of wallpapers, widgets, icons and photographs; downloadable computer graphics in the nature of banners; downloadable podcasts in the field of motorcycles, art, photography, film, and the life of an actor; video game programs; electronic game programs; mobile telephone and personal electronic device cases and covers” in the exact same class as the `801 Registration, International Class 9. The opposed application includes a priority claim to September 28, 2011.

5. The opposed application was prosecuted under Section 1(b) of the Trademark Act, based on Applicant’s intent to use the mark HOPPER in commerce on or in connection with the goods specified in the application.

6. Upon information and belief, Applicant has not yet used the HOPPER mark on or in connection with the goods specified in the application.

7. Opposer’s HOPPER mark has been in use in U.S. commerce, either actually or constructively, prior to the filing of the subject application (and any priority date validly claimed therein) by Applicant and/or any use of the mark HOPPER in commerce by Applicant.

8. On information and belief, the goods identified in the subject application are identical, complementary and/or highly related to the products offered by Opposer in connection with its HOPPER mark.

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9. On information and belief, the products identified in the subject application will be offered in the same channels of trade and offered to the same class of purchasers as those products offered by Opposer in connection with its HOPPER mark.

10. Applicant's HOPPER mark is identical or nearly identical to the literal elements in each of Opposer's HOPPER marks and is likely, when used in connection with the goods covered by the subject application, to cause confusion, to cause mistake or to deceive, with consequent injury to Opposer and the public.

11. Specifically, and without limitation, the marketing and offering of Applicant's aforementioned products under the mark HOPPER mark is likely to cause consumers to believe that Applicant's products are those of Opposer, or that Applicant's products are connected with the products and services of Opposer, or that Applicant is somehow related, sponsored or endorsed by Opposer. Accordingly, Applicant's mark is not entitled to registration pursuant to 15 U.S.C. §1052(d). Further, Applicant's mark falsely suggests a connection with Opposer in violation of 15 U.S.C. §1052(a).

12. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this Notice of Opposition be sustained and that the registration sought by Applicant be denied.


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ATTORNEYS FOR OPPOSER

Please recognize as attorney for Opposer in this proceeding Charlene M. Krogh and Scott Sinor of Dorsey & Whitney, LLP, 1400 Wewatta Street, Suite 400, Denver, Colorado 80202-5549. Please address all communications regarding this opposition proceeding to Charlene M. Krogh.

Dated: February 18, 2014

Respectfully submitted,
DORSEY & WHITNEY LLP

By: 

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ATTORNEYS FOR OPPOSER DISH NETWORK
L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on The Trustees Of The Hopper Art Trust by mailing said copy on February 18, 2014, via First Class Mail, postage prepaid, to:

LAWRENCE E. APOLZON
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 UNITED NATIONS PLZ
NEW YORK, NEW YORK 10017-1822
UNITED STATES

Dated: February 18, 2014

