

**I. Applicant's Mark Is Not Merely Descriptive**

Applicant respectfully submits that for the reasons set forth below, BUTCHER BLOCK ACOUSTICS is not merely descriptive.

The question of whether or not a particular designation is merely descriptive must not be determined in the abstract but in relation to the goods or services for which registration is sought, the context in which the designation is being used on or in connection with said goods or services, and the possible significance that it would have, because of such manner of use, to the average purchaser of the goods or services. *In re Bright-Crest, Ltd.*, 204 U.S.P.Q. 591 (TTAB 1979); *Q-Tips Inc. v. Johnson & Johnson*, 95 U.S.P.Q. 264 (D.N.J. 1952).

**A. BUTCHER BLOCK ACOUSTICS Is Suggestive In Relation To The Applicant's Goods**

To be clear, Applicant is not selling butcher blocks on which butchers chop meat. Rather, Applicant's goods include audio platforms and brass footers for audio devices. Applicant submits that BUTCHER BLOCK ACOUSTICS is not merely descriptive of such goods.

In order to be suggestive, a trademark as applied to the goods or services must require imagination, thought, or perception to reach a conclusion as to the nature thereof. Whether a particular designation is merely descriptive must be determined by considering the meaning it is likely to have in the context in which it is used and when encountered by prospective purchasers in the marketplace. *In re Abcor Development Corp.*, 200 U.S.P.Q. 215 (CCPA 1978). Furthermore, the Board has emphasized that an immediate idea must be forthwith conveyed in order for the mark to be descriptive. *R.J. Reynolds Tobacco Company v. Brown & Williamson Tobacco Corp.*, 226 U.S.P.Q. 169, 177 (TTAB 1985).

Under the well-accepted test for distinguishing between suggestive and merely descriptive marks, the mark must describe Applicant's goods and services with particularity in order to be descriptive. *In re House Store Ltd.*, 221 U.S.P.Q. 92, 93 (TTAB 1983); *In re TMS Corporation of the Americas*, 200 U.S.P.Q. 57, 58 (TTAB 1978). In *House Store*, the TTAB reversed the refusal of the registration of the mark "The House Store" for retail store services in the field of furniture and housewares. The TTAB reasoned that the mark was "too

broad to describe such services with immediacy and particularity and, consequently, should be viewed as suggestive rather than impermissibly descriptive.” *House Store*, 221 U.S.P.Q. at 93.

It has also been accepted by the courts that a minor degree of descriptiveness does not destroy the suggestive, or trademark, significance of a mark. In fact, a mark must have a “shade” of descriptive meaning in order to even be suggestive. *Q-Tips, Inc. v. Johnson & Johnson*, 206 F.2d 144, 146, 98 U.S.P.Q. 86, 87 (3d Cir. 1952), *cert. denied*, 346 U.S. 867 (1953). This principal holds true for Applicant’s mark, which may possess a modicum of descriptiveness, but which ultimately leads the consumer to its suggestive meaning.

As was the situation in the case listed above, the BUTCHER BLOCK ACOUSTICS wording of Applicant’s mark is suggestive of Applicant’s goods. Along these lines, the BUTCHER BLOCK ACOUSTICS mark does not tell potential purchasers what Applicant’s goods are at all. Rather, such mark is capable of identifying a wide range of products. For instance, the mark may refer to musical instruments (see Appendix). The mark may also be used in relation to speaker components (see Appendix). In this regard, BUTCHER BLOCK ACOUSTICS is simply too broad and too remote from the goods offered in conjunction with the mark to be merely descriptive and is therefore suggestive of such goods and services. *See, Seaboard Seed Company v. Beemis Company, Inc.*, 632 F.Supp. 1133, 229 U.S.P.Q. 1007 (N.D. Ill. 1986) (QUICK GREEN suggestive of grass seed); *AMF Inc. v. Slickcraft Boats*, 599 F.2d 341, 204 U.S.P.Q. 808 (9th Cir. 1979) (Slickcraft suggestive of recreational boats).

It is well established that suggestiveness is not a bar to registration on the Principal Register. Moreover, even the fact that persons in the trade are capable of analyzing the terms or recognizing its suggestion does not render the mark merely descriptive. *Audio Fidelity Inc., v. London Records Inc.*, 141 U.S.P.Q. 792 (CCPA 1964) (AUDIO FIDELITY not merely descriptive of phonographic records). Furthermore, the CCPA has held that a mark may even go so far as to possess a “descriptive connotation” that conveys an impression of goods or services. “The simple presence of that type of descriptive connotation, like the presence of suggestiveness, will not preclude registration where the mark is not merely descriptive of the goods.” *Coca Cola Company v. Seven-Up Company*, 182 U.S.P.Q. 207, 209 (CCPA 1974) (Uncola not merely descriptive of non-cola soft drinks); *Independent Nail Packaging Co. v. Stronghold Screw Products, Inc.*, 205 F.2d 921, 98 U.S.P.Q. 172 (7th Cir.

1953), *Cert. denied*, 346 U.S. 886 (1953) (STRONGHOLD not merely descriptive of nail products even though suggestive of one attribute of nail products).

In this case, BUTCHER BLOCK ACOUSTICS may have some connotation relative to Applicant's goods, but certainly does not merely describe such goods. As such, BUTCHER BLOCK ACOUSTICS is merely suggestive of Applicant's goods.

**B. Purchasers Will Not Attach A Descriptive Meaning To BUTCHER BLOCK ACOUSTICS**

As mentioned above, whether a particular mark or term within a mark is merely descriptive must be determined by considering the meaning it is likely to have in the context in which it is used and when encountered by prospective purchasers in the marketplace. *In re Abcor Development Corp.*, 200 U.S.P.Q. 215 (CCPA 1978).

This instant matter is similar (with respect to the descriptive issues) to the case of *Independent Nail and Packaging Co., Inc. v. Stronghold Screw Products, Inc.*, 205 F.2d 921, 98 U.S.P.Q. 172 (7th Cir. 1953), *Cert. denied*, 346 U.S. 886 (1953), wherein the Court held that the mark "STRONGHOLD" was not merely descriptive of the Plaintiff's nail products. The Court reasoned as follows:

Although the word "STRONGHOLD" is suggestive of one of the attributes of Plaintiff's nail with the annular thread, it is not descriptive of the nail, let alone that type of nail. A person unaware of the particular product or the manufacturer, upon seeing or hearing the name "STRONGHOLD," would find it virtually impossible to identify the product to which it might have been applied. *Independent Nail & Packing Co.*, 205 F.2d at 925.

Applicant's relevant market consists primarily of audio enthusiasts. These purchasers will not attach a descriptive meaning to the term BUTCHER BLOCK ACOUSTICS because such verbiage is incapable of describing the specific nature of the goods offered in connection with such mark. Thus, when determining the issue of descriptiveness with the proper standard, it is apparent that the use of the term BUTCHER BLOCK ACOUSTICS is not merely descriptive, but is at most suggestive.

**C. Any Doubt About Descriptiveness Should Be Resolved In Applicant's Favor**

In addition, any doubt as to whether the present mark is merely descriptive must be resolved in Applicant's favor according to controlling case law authority. *In re Rank Organisation Ltd.*, 222 U.S.P.Q. 324, 326 (TTAB 1984). *In re Noble Company*, 225 U.S.P.Q. 749, 750 (TTAB 1980) ([I]f there was any doubt about whether the term ... is merely descriptive ... that doubt should be resolved in favor of the Applicant); *In re Mobile Ray Inc.*, 224 U.S.P.Q. 247, 248 (TTAB 1984) (“[W]hen there is doubt in the matter, the doubt should be resolved in Applicant's behalf and the mark should be published for opposition”).

The same should be true for this application.

**II. Request For Information**

In the Office Action, the Examining Attorney requested additional information regarding Applicant's goods and services and wording appearing in the mark. Accordingly, Applicant is providing a printout from Applicant's website for consideration by the Examining Attorney.

In addition, the Examining Attorney asked Applicant to respond to the following questions. Applicant's answers are being provided in bold italics.

- Do the applicant's goods resemble a butcher's block?

***Using the definition provided by the Examining Attorney, a butcher's block is "made of or resembling a board of thick strips of hardwood like that on which butchers chop meat." Applicant goods are not used for chopping meat; rather, Applicant's goods are designed to placement under a wide range of audio equipment, and typically have a furniture style urethane finish.***

- Are the applicants goods used to absorb or control sound?

***Applicant's goods are designed to attenuate vibration associated with signals typically emitted from high-end audio components.***

**III. Conclusion**

In summary, the refusal to register Applicant's mark under Section 2(e) should be withdrawn based upon the fact that Applicant's mark is not merely descriptive of the goods offered by Applicant. All other outstanding matters with respect to the present application have been addressed, and Applicant respectfully submits that the present application is in condition to be allowed and passed to publication. Early notice to that effect is respectfully requested. To the extent the Examining Attorney has any questions, requires additional information, or has any suggestions to expedite the resolution of any outstanding matters that may exist, the Examining Attorney is invited to contact Applicant's counsel.

KMS/MJZ

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# APPENDIX



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## Ludwig Classic Maple 13/16/22 3pc Drum Kit Butcher Block



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Description Policies

Preferred by professionals for its tonal versatility, Classic Maple drums are the ideal choice for any performance application. Its high sensitivity, wide dynamic tuning range, and sharp attack make it the ideal choice for live performance. Yet Classic Maple's 7-ply shell is crafted to respond to the player and environment quickly, making it adaptable to any playing style or preference.

Sizes are: 13x9, 16x16, 22x14

 1675 Views  20 Watchers

Product Specs

Finish - Natural

SKU - LUDCMBB3PC

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# Dayton ultimax 10 with butcher block baffle

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**jstslamd**

Been Around Awhile

Join Date: Dec 2010  
Posts: 119

## Dayton ultimax 10 with butcher block baffle

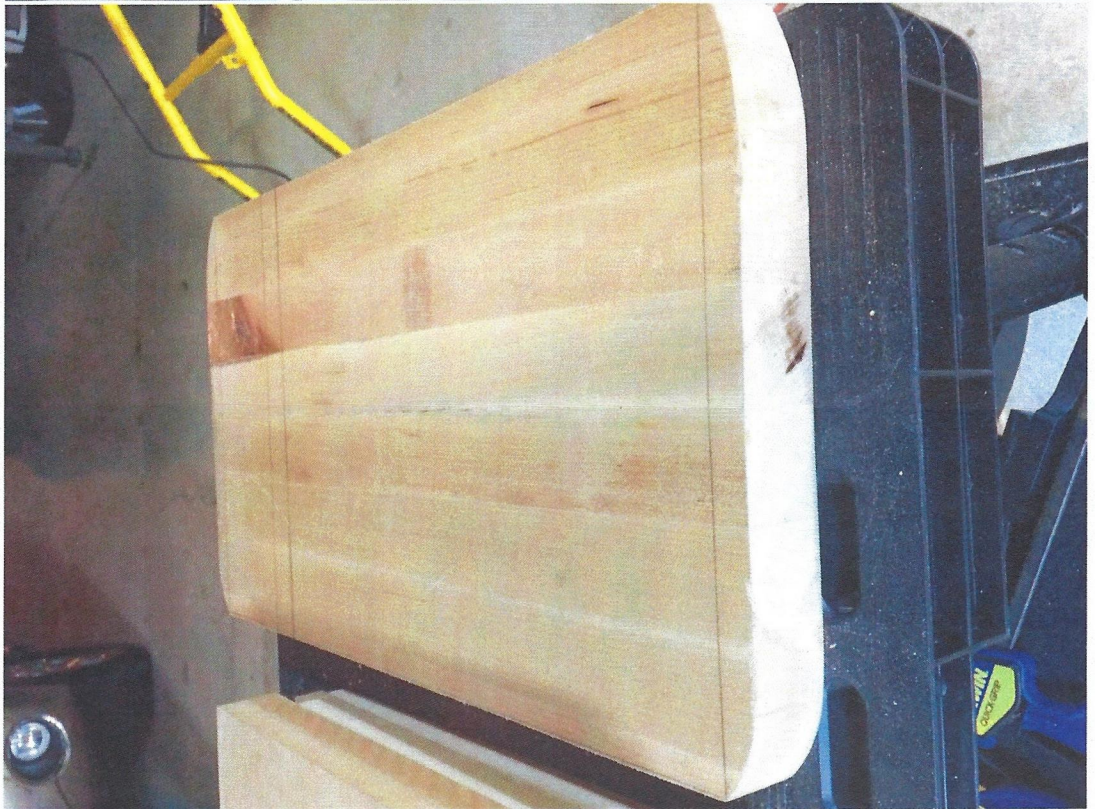
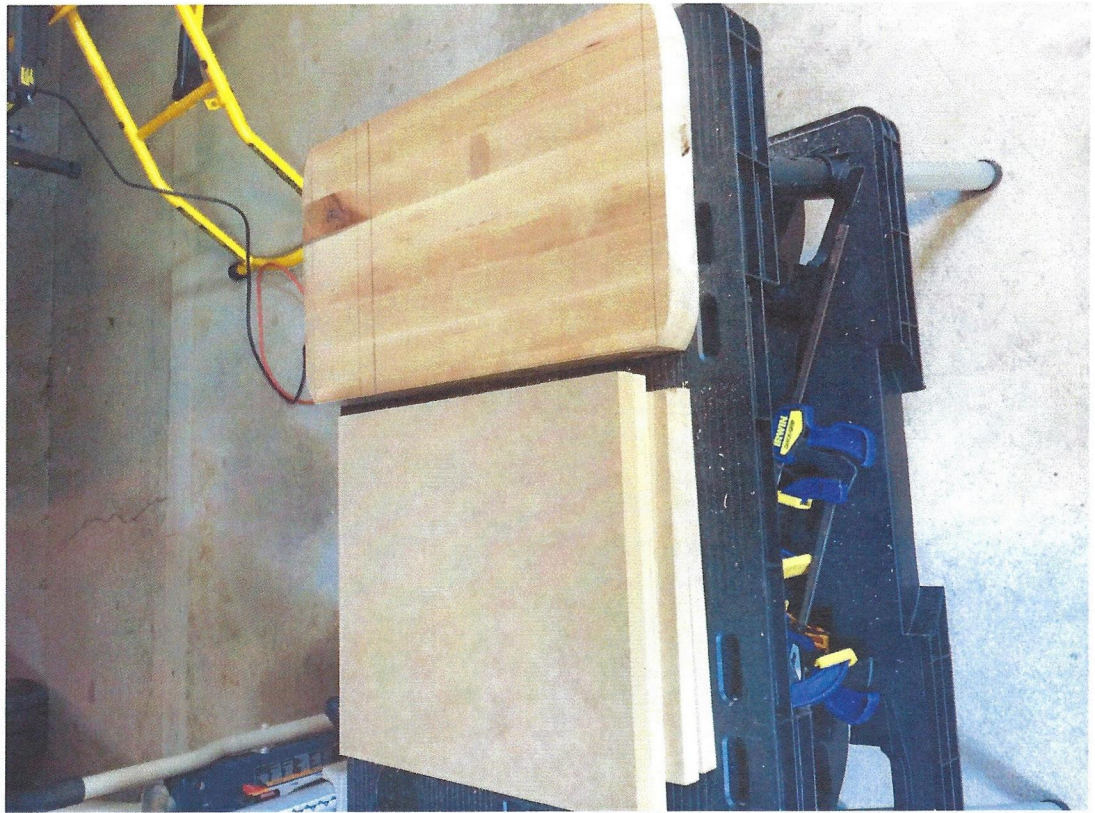
#1

10-09-2013, 06:53 AM

Long time lurker going in for his first build thread. I've had a um-10 and a bash 300 amp sitting here teasing me since last winter so I thought its about time to get things started. This will be a small (just over 1cf seal) design using a piece of butcher block maple to make the baffle. I'm going to rear mount the driver just to jazz it up a bit too. Here are a few quick pics. There will be more to come. Stay tuned.







Tags: None



**jstslamd**  
Been Around Awhile

10-09-2013, 06:54 AM

Re: Dayton ultimax 10 with butcher block baffle

#2

Join Date: Dec 2010  
Posts: 119

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**andykiech**  
Senior Member

Join Date: Nov 2006

10-09-2013, 11:17 AM

#3

Re: Dayton ultimax 10 with butcher block baffle

looks like a good build. The butcher block should look really nice.

Couple of things.

1. could you rotate your pics before posting? I know it is a small thing, but makes a difference to my neck ;-)
2. Are you planning on putting the amp in a sealed off area within the box for air-tightness? if not, it might be a good idea as the pressure in there

Posts: 925



could get substantial.

Good luck.  
Andy.



**jstslamd**

Been Around Awhile

Join Date: Dec 2010  
Posts: 119



10-09-2013, 04:58 PM

#4

Re: Dayton ultimax 10 with butcher block baffle

Sorry about the turned images I did this from my iPhone. And as far as making the amp in its on compartment I was told by a bunch of people not to worry about separating them.



**badman**

Seasoned Veteran

Join Date: Jul 2008  
Posts: 1446



10-09-2013, 05:51 PM

#5

Re: Dayton ultimax 10 with butcher block baffle

*Originally posted by jstslamd*  
*Sorry about the turned images I did this from my iPhone. And as far as making the amp in its on compartment I was told by a bunch of people not to worry about separating them.*

A bunch of people are wrong. With a high output, small box sub like this, you're just begging for whistles and such and will likely rattle the heck out of the amp.



**greywarden**  
Seasoned Veteran

Join Date: Sep 2010  
Posts: 4436



10-09-2013, 09:22 PM

#6

Re: Dayton ultimax 10 with butcher block baffle

Yeah those amps can't possibly be completely sealed. I would either add a box the area where the amp will be or make it an outboard amplifier.

रेतुर्न तो थे स्रोत

leviathan system thread  
deadhorse thread  
shockwave build thread

instagram :: greywarden\_13

*in war, victory . . . in peace, vigilance . . . in death, sacrifice.*



**kejolly**  
New Member

Join Date: Apr 2012  
Posts: 12



10-10-2013, 04:12 PM

#7

Re: Dayton ultimax 10 with butcher block baffle

Please keep the pictures coming and when finished, let us know what you think of the sound. Looking good so far!

Thanks,

Kevin



**jtslamd**  
Been Around Awhile

Join Date: Dec 2010  
Posts: 119

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10-10-2013, 07:11 PM

Re: Dayton ultimax 10 with butcher block baffle

Will do



**xxbaker**  
New Member

Join Date: Apr 2013  
Posts: 46

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10-13-2013, 01:36 AM #9

Re: Dayton ultimax 10 with butcher block baffle

Hey man, cool build! A rear mount um10 will look really trick I think.

I also like the 400EX you've got there! One time my friend's bike was making a lot of noise one time on a trip but we couldn't really figure out why. When we got back to camp and started digging in turns out it was basically out of oil! Somehow the piston didn't seize don't ask me how. We filled it back up with some oil and it purred like a kitten. Those things are bullet proof. I ride an LTR450 and make a few trips to Glamis (CA) each year. Where do you ride?

Back on topic I have a bash 300 I was thinking of pairing with a um10 for a sub build for my younger sister - you'll have to let me know how that works out and sounds when it's all done.



**abn1701**  
Midrange Member

Join Date: Jun 2008  
Posts: 306

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10-14-2013, 10:15 AM #10

Re: Dayton ultimax 10 with butcher block baffle

I'm just a little confused. Is it a rear mounting or rear firing design?  
THX



**jtslamd**  
Been Around Awhile

Join Date: Dec 2010  
Posts: 119

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10-14-2013, 12:14 PM #11

Re: Dayton ultimax 10 with butcher block baffle

Thanks brother. I like the 400 too it a darn shame I don't get it out much anymore. If give my left leg to ride glamis. I'm on the east coast in jersey. We don't have many places like that out here. Ill deff let you know how the sub works out

Abn1701

Rear mounted. Not rear firing.



**joeybutts**  
Seasoned Veteran

Join Date: Oct 2008  
Posts: 4740

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10-14-2013, 12:26 PM #12

Re: Dayton ultimax 10 with butcher block baffle

Can't wait to see this done! I agree with the rear mount.

**Builds** - C-Killa - Speedsters - LithMTM - Talking Sticks - Pocket Rockets - Khanspires - Dayton RS Center - RS225/28A - Kairos - Adelphos - SEOS TD12X - Dayton 8 - Needles - 871S - eD6c - Overnight Sensations - Tritrix (ported) - Lineup F4 - Stentorians - The Cheapies - Tub Thumpers - Barbells - Tuba HT - Numerous subwoofers - probably missing a few..... :p



**jstslamd**  
Been Around Awhile

Join Date: Dec 2010  
Posts: 119



10-16-2013, 09:55 AM

#13

Re: Dayton ultimax 10 with butcher block baffle



this is where the piece of butcher block came from. It was the plug I cut out for my kitchen sink. It's heavy stuff.



**Brent\_S**  
Midrange Member

Join Date: May 2008  
Posts: 370



10-16-2013, 12:13 PM

#14

Re: Dayton ultimax 10 with butcher block baffle

Originally posted by **badman**

*A bunch of people are wrong. With a high output, small box sub like this, you're just begging for whistles and such and will likely rattle the heck out of the amp.*

I'll identify myself as a member of the "wrong people bunch". I've had a 315HO-4 pounding away at the same BASH300 the OP is using for years in a 1 ft^3 sealed enclosure. Nary a whistle or rattle to be heard (not counting the room itself). I don't doubt that there are some plate amps that will leak enough to impact performance, but the BASH300 doesn't appear to be one of them.



**jstslamd**  
Been Around Awhile

Join Date: Dec 2010  
Posts: 119



10-16-2013, 12:22 PM

#15

Re: Dayton ultimax 10 with butcher block baffle

All of the info that I've collected from other PE bash 300 amps tells me I don't need to put it in a separate air space. So I'll be moving forward as I originally planned.



PE Style ▾ [HELP](#) | [CONTACT US](#) | [TERMS AND CONDITIONS](#) | [GO TO TOP](#)

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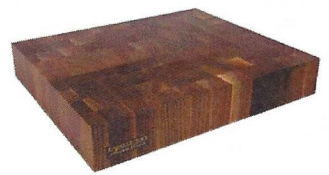
MAPLE AUDIO PLATFORMS



WALNUT AUDIO PLATFORMS



EDGE-GRAIN AUDIO PLATFORMS



END-GRAIN AUDIO PLATFORMS

ACCESSORIES



ANTI-VIBRATION ACCESSORIES



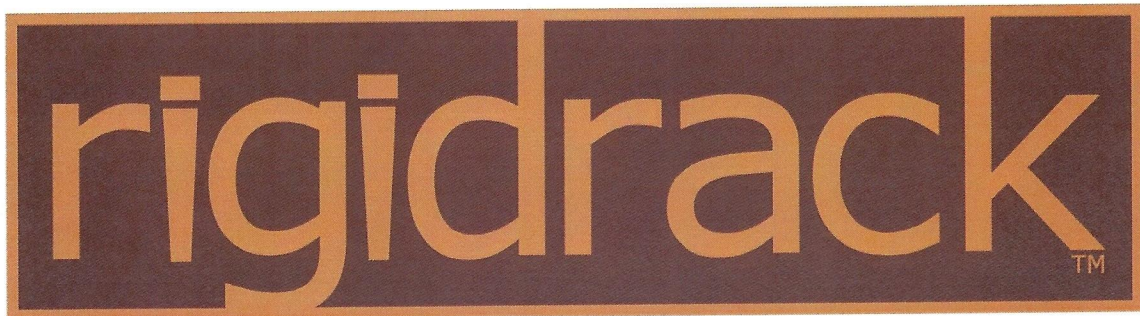
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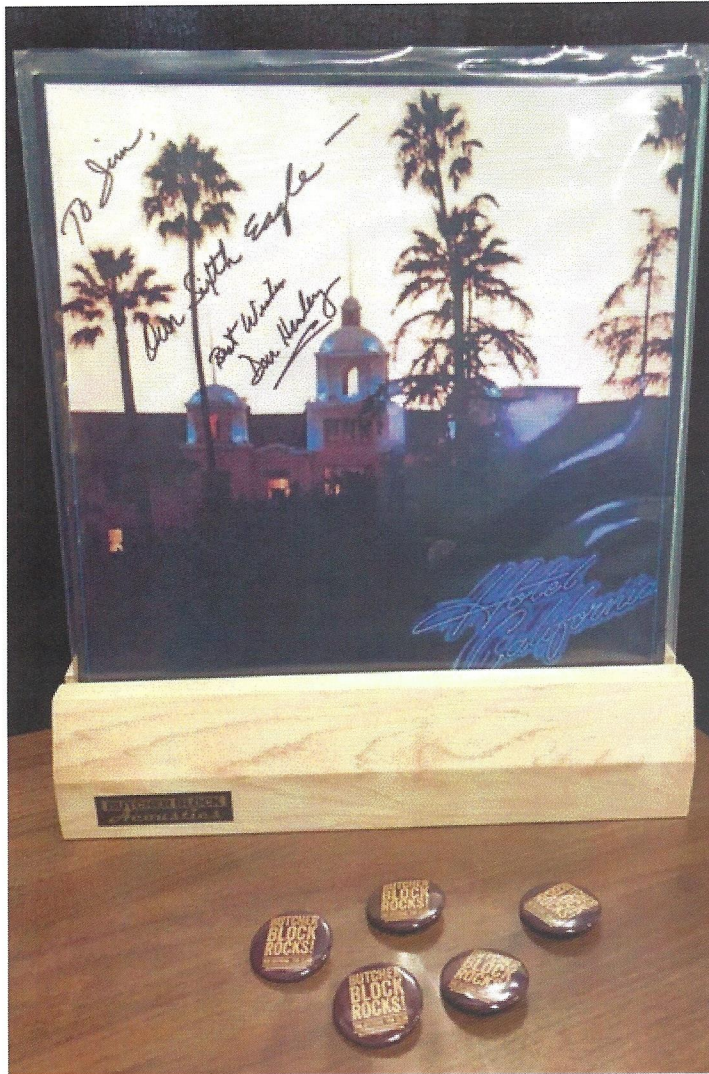


ISO-FEET / ISO-CONE









**"NOW PLAYING" BLOCK**

13" X 3" X 3" With LP Groove

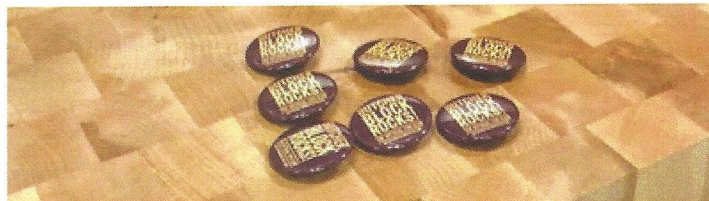
MAPLE BLOCK

**"NOW PLAYING" BLOCK**

13" X 3" X 3" With LP Groove

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*I received the 24 x 20 x 3 maple platform earlier today and was compelled to comment. First, it was very carefully packaged and arrived in perfect condition. Next, the maple is really beautiful and it is an impressive, massive, heavy platform which I placed on top on my equipment rack and then placed my VPI turntable upon that beautiful maple. Finally, I've had this turntable for many years and it seriously has never sounded so good (and it already sounded great). The bass totally tightened up and is better defined as is the imaging and sound-staging, vocals are also fuller and richer. I expected to hear some improvements but I was not expecting the great degree of overall improvement that I am now enjoying. This was as good or even better than some of the improvements in sound that I have enjoyed in the past by upgrading my interconnects, power cords, cartridges, and tubes...and at a fraction of the price of those upgrades.*

*Highly recommend. In the future I hope to purchase one of your four-shelf equipment racks and some more platforms for my amps and preamps.*

*Thank you for a wonderful product and my best wishes for the on-going success of Butcher Block Acoustics.*

Erie, PA



### PUREPOINT™ BRASS FOOTERS - FOR CARPET

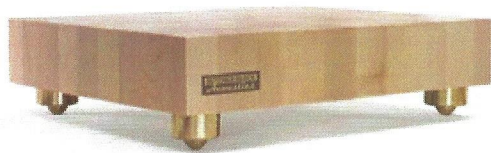
WALNUT END-GRAIN WITH 2" DIA X 2" TALL THREADED FOOTER



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MAPLE END-GRAIN WITH 2" DIA X 2 3/4" TALL THREADED FOOTER

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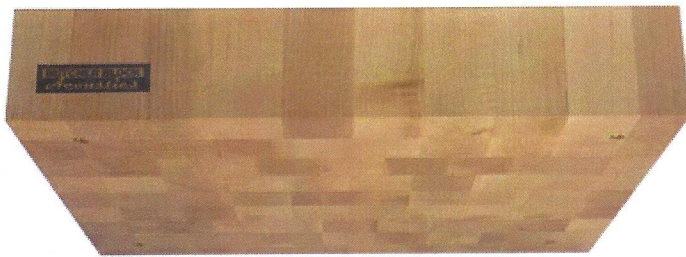


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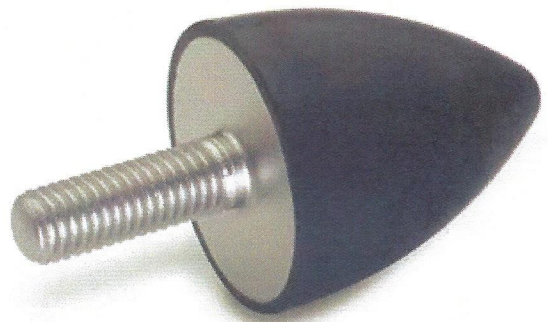
ISO-FEET BY BBA



### NEW! ISOLATION LEVELING CONE FEET

Adjustable Anti-Vibration Isolation Cone Feet for our Audio Platforms with Integrated Threaded Inserts

ISO-CONE BY BBA



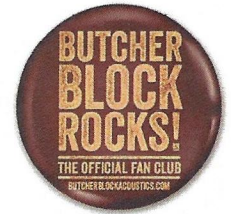
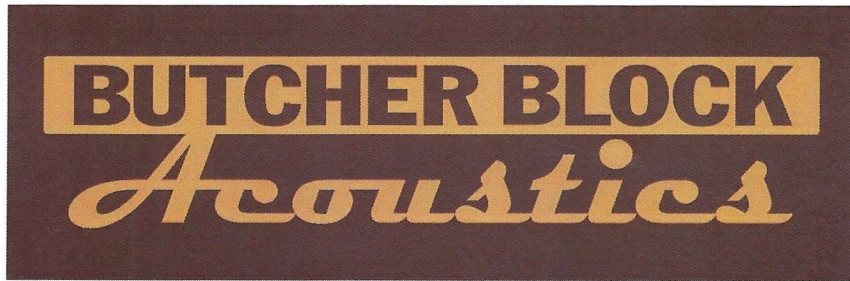
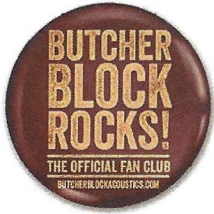
### PLATFORMS WITH SPIKES / CONES / ISO-FEET





BUTCHER BLOCK ACOUSTICS

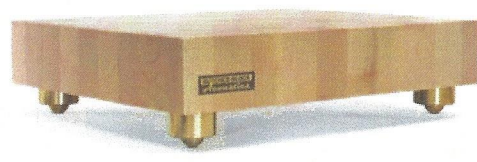
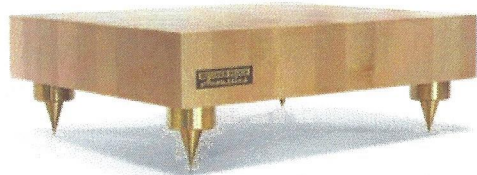
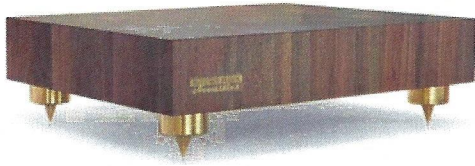
*Hardwood is resilient and durable. Hardwood acts as nature's solution for the absorption and dissipation of the energy that causes vibration. Made in the USA since 1881, Wood Welded produces the world's finest butcher block. They have invested in timberlands and acres of space to allow the lumber to air dry until thoroughly seasoned. And the craftsmen that create our isolation platforms belong to families that have been on the job for generations. If you own a Butcher Block Acoustics Audio Platform, the laminated pieces of wood come together in a unique pattern of colors and grain – resulting in its own sound... The warm, rich sound of hardwood. Audio Platforms, Anti-Vibration Accessories and Hardwood Audio Racks... Butcher Block Acoustics - The Audiophile's Choice.*



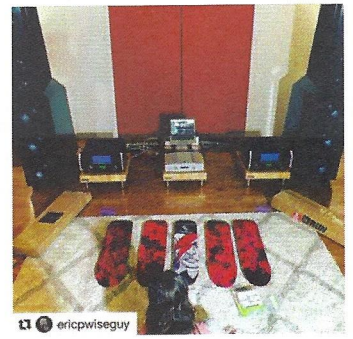
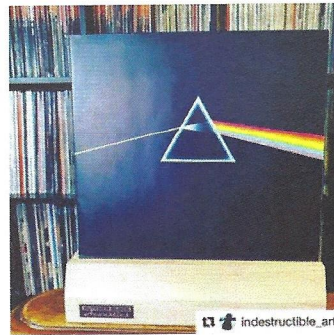
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