

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE:

Trademark Application Serial No. 88454319 filed on May 31, 2019, Mark: BEATS

Applicant:	)	
	)	
SoHo Beats, LLC	)	Erin Zaskoda Dyer
8 The Green, Suite #10201	)	Trademark Examining Attorney
Dover, DE 19901	)	Law Office 103

**RESPONSE TO OFFICE ACTION Dated August 22, 2019**

Hon'ble Examining Attorney was pleased to issue a Non-Final Office Action on August 22, 2019 thereby refusing Trademark Application Serial # 88454319 on the ground of Section 2(d) - Likelihood of Confusion. The applicant respectfully submits its response as under:

SUMMARY of Submissions

1. The Trademark Registrations and pending Trademark Applications cited by the Examining Attorney and referenced in Part 1 below are owned by Beats Electronics, LLC and those are all products of Fraud by Impersonation and Criminal Impersonation, hence, neither they enjoy the protection provided by The Trademark Act of 1946 nor their cancellation is governed by the provisions of the said Act.
2. Refusal of responding applicant's Trademark Application Serial No. 88454319 under Section 2(d) and pushing him to Cancellation Proceedings before the Trademark Trial and Appeal Board would

amount to extending the protections of The Trademark Act of 1946, which are meant only for bona fide Trademark Owners/Applicants, to the perpetrators of crime and exonerating them of their criminal liability.

3. It is the legal and constitutional duty of The United States Patent and Trademark Office, a Federal Agency mandated under the provisions of the Constitution of the United States, to take appropriate action against people who (1) access its system by criminally impersonating a Trademark Applicant/Registrant (2) make unauthorized and fraudulent submissions and sign false declarations of truth (3) to get illegal benefit and/or (4) to illegally injure, harm or damage other persons or businesses by depriving them of the use of their lawful trademarks.
4. As a custodian of its system, the USPTO has a duty to report the criminal abuse of its system to the State and Federal law enforcement and criminal investigation agencies. Once the criminal liability is established, the USPTO has a duty to cancel all the cited Registrations/Renewals/Applications belonging to Beats Electronics, LLC as products of crime and to register applicant's Mark in its Trademark Application Serial # 88454319.
5. If initiating a criminal investigation is beyond the authority of an Examining Attorney then the applicant respectfully requests that the matter be referred to higher officials who are responsible for making such decisions.
6. While the applicant has no right or authority to advise the USPTO as to the action it should take but it's important to note here that USPTO's decision about an action or inaction will be a statement of its policy in situations where its system is illegally accessed and abused by Criminal Impersonation.
7. In view of the above submissions, the responding applicant respectfully requests that the criminal activity of Apple's officers, directors, attorneys and other employees who planned, authorized,

perpetrated, abetted, connived or acquiesced in commission of any offence/criminal act as stated in this response, may kindly be formally investigated and the offenders be prosecuted and punished to the maximum extent of law; the cited registrations and pending applications apparently belonging to Beats Electronics, LLC may kindly be annulled and revoked as the products of crime; the Trademark Application Serial # 88454319 may kindly be accepted and applicant's mark may kindly be registered.

## **PART 1**

Trademark Registrations # 4035777, 4176105, 4177191, 4314478, 4314930, 4314931, 4361690, 4529746, 4537908, 4564379, 4572603, 4937568, 5161347, 5188070, 5387883, 5428637, 5448731, 5715751, 3532627, 3862142, 4314920, 4355601, 4455269, 4543712, 4695868, 4814903, 4836986, 5028678, 5273961, 5387349, 5396184, 5715752 and Pending Trademark Applications # 86257475, 86291191, 86819428, 86819445, 86819468 & 88370153

The responding applicant respectfully submits that the provisions of The Trademark Act of 1946 regarding examination of a trademark application are not applicable to the subject Trademark Application Serial # 88454319 regarding the cited Registrations/Applications listed under "PART 1" above which all belong to Beats Electronics, LLC, in view of the following:

### **A. Scope of the Trademark Act 1946**

- i. A Trademark Application can only be filed by the owner of the mark [TMEP §803.01].
- ii. Where the applicant is an LLC, it can be represented by:
  - a. A person having the title and authority of Manager, Member, Principal, or Owner or who has a corporate-officer-type title, such as President or Chief Executive Officer [TMEP §611.06(g)]
  - b. An attorney who is duly authorized by the owner of the mark [TMEP §601].


- iii. Once a trademark is registered, its validity can be challenged inter alia on the ground of fraudulent and deceptive misrepresentation to the USPTO regarding the subject matter of that trademark application [Trademark Act §14 (3)].
- iv. It's important to note that The Trademark Act of 1946 provides a remedy only in a case where fraud and deception is alleged against the Applicant/Owner of the Trademark. The Act does not address cases where someone other than the Applicant/Owner of the Trademark commits fraud on USPTO by impersonating as the Applicant/Owner of the Trademark. Such conduct constitutes a criminal act that falls within the scope of State Criminal Laws and Federal Criminal Laws.

**B. The Case of all the Trademark Registrations and Pending Trademark Applications Owned by Beats Electronics, LLC Cited in the Office Action Under Response and listed under “PART 1” above.**

- i. Beats Electronics, LLC an audio equipment business started by the legendary rapper and songwriter Dr. Dre and record producer Jimmy Iovine was acquired by Apple, Inc. in July 2014. [Exhibit - 1]
- ii. The above mentioned acquisition put Apple, Inc. in a complex dilemma. Apple's senior leadership wanted to get rid of the overheads and expenses of a separate legal entity but it also wanted to cash in on the large fan base of Dr. Dre and the popularity of Beats products. However, all the Beats Trademarks were the property of Beats Electronics, LLC.
- iii. Unlike a farm worker coming from a remote rural area with little or no understanding of business and trademark laws, Apple, Inc. enjoyed the knowledge and expertise of top corporate leadership and the advice & consultation of a whole team of experienced in house attorneys including a specialized group of Trademark Attorneys.
- iv. The decision makers at Apple, Inc. knew very well that the trademarks owned by Beats Electronics, LLC were not available for use by Apple, Inc. for its own products unless the

trademarks were formally assigned by Beats Electronics, LLC to Apple, Inc. However, the formal change of ownership of the trademarks meant total devastation of the business plan because the fan base of Dr. Dre knew only Beats Electronics, LLC as the genuine maker of BEATS and DR. DRE brands. Apple, Inc. was never known as a manufacturer of high end audio equipment like headphones and earphones.

- v. Apple, Inc.'s decision makers, knowing that discontinuation of Beats Electronics, LLC as an active and independent business entity would invalidate and cancel all the Trademark Registrations and Trademark Applications owned by the LLC, moved forward with a full scale merger of the LLC's business in to the parent company. As a result:
  - 1) LLC's Managing Body was dismantled.
  - 2) LLC's Human Resources Department and Payroll were abolished.
  - 3) Those of the Beats' employees, who could be a valuable addition to Apple's own teams, were formally hired by Apple, Inc. as its own employees and the rest were laid off. [Exhibit - 2]
- vi. As a part of the above mentioned merger, the website of Beats Electronics, LLC [www.beatsbydre.com](http://www.beatsbydre.com) was also taken over by Apple, Inc. The copyright notice of Beats Electronics, LLC [Exhibit - 5] was replaced with Apple, Inc.'s own copyright notice [Exhibit - 1]
- vii. Completion of the merger of the business before the end of year 2014 effectively marked the total discontinuation and death of Beats Electronics, LLC *as a business entity*.
- viii. The above mentioned measures reduced Beats Electronics, LLC to a mere name on papers with no Operating Agreement and no Managers or Officers of its own. But the name of Beats Electronics, LLC was all what the decision makers at Apple, Inc. needed to implement their illegal and unethical business strategy:

- 1) Apple, Inc. would itself manufacture all Beats Products as its own product-line under its exclusive control.
  - 2) The name “Beats Electronics, LLC” would be used with USPTO (1) to maintain the existing Trademark Registrations; (2) to pursue the pending Trademark Applications and (3) to file new Trademark Applications in the name of Beats Electronics, LLC as and when needed.
  - 3) Apple, Inc. would push its own products in the market under the trademarks owned by Beats Electronics, LLC without disclosure of the fact that Beats Electronics, LLC was neither a manufacturer nor did it actively control the specifications, nature and quality of the products. This was a deliberate way of cheating the consumers who trusted Beats Electronics, LLC and who had an emotional attachment with its founder Dr. Dre.
- ix. The demise and discontinuation of Beats Electronics, LLC mentioned above was admitted by Apple, Inc. in a class action titled *Morgan v Apple, Inc.* in the U.S. District Court, Northern District Of California (Case 3:17-cv-05277). The plaintiffs brought this action on the ground that POWERBEATS (a product that used two trademarks owned by Beats Electronics, LLC. The character mark POWERBEATS, Trademark Registration # 4937568 and the design mark , Trademark Registration # 3881677) was defective and not as advertised [Exhibit - 3]. Since a trademark can only be used by its owner or by its related company whose use of the mark is controlled by the owner of the trademark, therefore, Beats Electronics, LLC had not just an interest in the outcome of the legal action, rather, Beats Electronics, LLC was a necessary party. However, the defendant Apple, Inc., in its Certificate of Interested Entities [Exhibit - 4], declared as under:

Pursuant to Civil Local Rule 3-15, Defendant Apple Inc., by and through its undersigned attorney also certifies as of this date, *other than the named parties, there is no such interest to report.*

- x. Apple, Inc.'s declaration to the effect that it was the sole interested party in the matter of a trademark that was owned by Beats Electronics, LLC is a clear admission that Beats Electronics, LLC had practically ceased to exist as an active and independent legal entity.
- xi. As Beats Electronics, LLC ceased to exist as an active business entity, by operation of law, all its Trademark Registrations and pending Trademark Applications became invalid and abandoned because the owner of the marks and applications became unable to use the mark or to control the use of mark by a related company. *(Since a subsidiary cannot control its parent company, therefore, it has been consistently held that a parent company is not a related company in the context of trademark usage).*
- xii. After demise of Beats Electronics, in furtherance of its illegal and unethical plan, on March 18, 2015 Apple, Inc., a large corporation with a huge team of attorneys and deep pockets for litigation, confident that no person or business entity could challenge its illegal actions and criminal conduct in a meaningful way, took over all the registrations and registration applications previously owned by Beats Electronics, LLC, by criminal impersonation. Some of Apple, Inc.'s Attorney-Employees, working under instructions of and in connivance with the officers and directors of Apple, Inc., impersonated as representing the demised entity and filed *PTO Form 2196 - Revocation of Attorney and/or Appointment of Attorney* in 41 completed and pending Trademark Applications and thereby appointed some other employees of Apple, Inc. as Attorneys. Thenceforth, each submission, filing, signing of declaration of truth and communication with the USPTO was done under the cover of criminal impersonation and it continues to date.

- xiii. Later, at different times, Attorney-Employees of Apple, Inc. have filed 20 new Trademark Applications to date while criminally impersonating to be representing Beats Electronics, LLC; an entity that has no existence except a name on papers.
- xiv. As a result of the criminal impersonation referred to in the preceding paragraphs, all the Registrations/Renewals and the pending applications apparently belonging to Beats Electronics, LLC are void and subject to revocation/cancellation under the State and Federal Criminal Laws as being products of crime, without recourse to the provisions of The Trademark Act of 1946.
- xv. At this point, it's important to note that an LLC is a legal entity separate from and independent of its parent company. Both have their own rights, liabilities and spheres of action. In no circumstances does a parent have a right to impersonate as the LLC and engage in acts and conduct that create rights and liabilities in the name of the subsidiary LLC, all for parent company's own benefit.
- xvi. It's important and interesting to note here that while impersonating as representing Beats Electronics, LLC the Employee-Attorneys of Apple, Inc. unambiguously declared that they were acting in their capacity of being employees of Apple, Inc. (how daring). Of course, Apple, Inc. is not a law firm and if an attorney claims to be acting in his capacity of being an employee of Apple, Inc. then it means that he/she admits that he/she is getting instructions from his/her employer, i.e. Apple, Inc. Below is the information that they entered in the USPTO's system:

***Registrations/Applications with identical information have been grouped together.***

Registrations # 4035777, 4176105, 4177191, 4314478, 4314930, 4314931, 4361690, 4529746, 4537908, 4564379, 4572603, 5161347, 5428637, 5448731, 3532627,



3862142, 4314920, 4355601, 4455269, 4543712, 4695868, 4814903, 4836986, 5273961 and Trademark Applications Serial # 86257475 & 86291191:

- ***When Filed:*** In July 2014 or earlier.
- ***Applicant:*** Beats Electronics, LLC or its predecessor in interest.
- ***Illegal Takeover by Apple, Inc.:*** Impersonating as acting on behalf of the Trademark Owner/Applicant, *PTO Form 2196: Revocation of Attorney and Appointment of Attorney* filed by and on behalf of *Apple, Inc.* on March 18, 2015
- ***PTO Form 2196 Signed by:*** The *PTO Form 2196: Revocation of Attorney and Appointment of Attorney* mentioned above was signed and submitted by Thomas R. La Perle, an Attorney-Employee of Apple, Inc. impersonating as Assistant Secretary of Beats Electronics, LLC – a business entity that had died/discontinued long before this submission.

TMEP §611.06(g) provides as under:

*Generally, a signatory identified as "manager," "member," "principal," or "owner" may be presumed to have the authority to sign on behalf of a domestic or foreign limited liability company. In addition, anyone with a corporate-officer-type title, such as "President" or "Chief Executive Officer," may sign.*

In any case, in view of the above cited provision, signatures by an Assistant Secretary of an LLC are without authority and of no legal effect.

- *Attorneys After Illegal Takeover by Apple, Inc.:* Kimberly Eckhart, Thomas R. La Perle, John Donald, Jason Cody, Irene Chong, Yuka Sugar, Pamela Reid, and Scott Harlan of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com (its @apple.com)

Registration # 4937568

- *When Filed:* 9/9/2014.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Application Signed by:* Thomas R. La Perle, an Attorney-Employee of Apple, Inc., impersonating as Assistant Secretary of Beats Electronics, LLC - a business entity that had died/discontinued long before this submission.

TMEP §611.06(g) provides as under:

Generally, a signatory identified as "manager," "member," "principal," or "owner" may be presumed to have the authority to sign on behalf of a domestic or foreign limited liability company. In addition, anyone with a corporate-officer-type title, such as "President" or "Chief Executive Officer," may sign.

In any case, in view of the above cited provision, signatures by an Assistant Secretary of an LLC are without authority and of no legal effect.

- ***Illegal Takeover by Apple, Inc.:*** This application was initially filed by impersonation. However, impersonating again as acting on behalf of the Trademark Owner/Applicant, PTO Form 2196: Revocation of Attorney and Appointment of Attorney was filed by and on behalf of Apple, Inc. on March 18, 2015
- ***PTO Form 2196 Signed by:*** The PTO Form 2196: Revocation of Attorney and Appointment of Attorney mentioned above was signed and submitted by Thomas R. La Perle, an Attorney-Employee of Apple, Inc., impersonating as Assistant Secretary of Beats Electronics, LLC – a business entity that had died/discontinued long before this submission.

TMEP §611.06(g) provides as under:

Generally, a signatory identified as "manager," "member," "principal," or "owner" may be presumed to have the authority to sign on behalf of a domestic or foreign limited liability company. In addition, anyone with a corporate-officer-type title, such as "President" or "Chief Executive Officer," may sign.

In any case, in view of the above cited provision, signatures by an Assistant Secretary of an LLC are without authority and of no legal effect.

- *Attorneys After PTO Form 2196:* Kimberly Eckhart, Thomas R. La Perle, John Donald, Jason Cody, Irene Chong, Yuka Sugar, Pamela Reid, and Scott Harlan of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney  
Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com (its @apple.com)

Registration # 5188070

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)

- *Application Signed by:* Kimberly Eckhart (an *Attorney-Employee of Apple, Inc.*)
- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas LaPerle, John Donald, Jason Cody, Irene Chong, Erin Hickey, Pam Reid, Linda Du *of Apple Inc.*
- *Attorneys' Company/Firm Name:* *Apple, Inc.,*
- *Attorney's Physical Address:* *Apple, Inc.,* (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its *@apple.com*)
- *Contact Person for Correspondence:* Kimberly Eckhart (an *Attorney-Employee of Apple, Inc.*)
- *Company/Firm of the Contact for Correspondence:* *Apple, Inc.,*
- *Address for Correspondence:* *Apple, Inc.,* (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all *@apple.com*)

Registration # 5387883

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (*impersonated*).
- *Application Signed by:* Kimberly Eckhart (an *Attorney-Employee of Apple, Inc.*)

- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas La Perle, Jason Cody, Scott Harlan, Irene Chong, Pam Reid, Hillary Schroeder, Linda Du of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

Registrations # 5715751 & 5028678

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)

- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas La Perle, John Donald, Jason Cody, Pam Reid, Scott Harlan, Yuka Sugar, Irene Chong of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* keckhart@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

Registrations # 5387349 & 5715752

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)

- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas La Perle, John Donald, Jason Cody, Pam Reid, Scott Harlan, Yuka Sugar, Irene Chong of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* keckhart@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* Thomas La Perle, Yuka Sugar, John Donald, Jason Cody, Pam Reid, Irene Chong of Apple Inc. (these are all @apple.com)

Registration # 5396184

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)



- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Thomas La Perle and All attorneys in the Trademark Group *of Apple Inc.*
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Thomas La Perle (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; laperle@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

Trademark Application Serial # 88370153

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).
- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)

- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Thomas La Perle and All attorneys in the Trademark Group of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) One Apple Park Way, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Thomas La Perle (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) One Apple Park Way, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; laperle@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

Trademark Applications Serial # 86819428 and 86819445

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).

- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas La Perle, John Donald, Jason Cody, Yuka Sugar, Irene Chong, Pam Reid, Erin Hickey of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) 1 Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

Trademark Application Serial # 86819468

- *When Filed:* Filed after demise/discontinuation of Beats Electronics, LLC.
- *Applicant:* Beats Electronics, LLC (impersonated).

- *Applicant's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Application Signed by:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Application Signed by the Signor as:* Attorney of Record (A flagrant act of criminal impersonation. Beats Electronics, LLC had died/discontinued long before this submission).
- *Attorneys:* Kimberly Eckhart, Thomas La Perle, John Donald, Jason Cody, Yuka Sugar, Irene Chong, Pam Reid, Erin Hickey of Apple Inc.
- *Attorneys' Company/Firm Name:* Apple, Inc.,
- *Attorney's Physical Address:* Apple, Inc., (MS: 169-3IPL) Infinite Loop, Cupertino, CA 95014
- *Attorney's Email Address:* trademarkdocket@apple.com (its @apple.com)
- *Contact Person for Correspondence:* Kimberly Eckhart (an Attorney-Employee of Apple, Inc.)
- *Company/Firm of the Contact for Correspondence:* Apple, Inc.,
- *Address for Correspondence:* Apple, Inc., (MS: 169-3IPL) Infinite Loop, Cupertino, CA 95014
- *Email address for Correspondence:* trademarkdocket@apple.com; keckhart@apple.com; aroodzant@apple.com (these are all @apple.com)

## Does Apple's Conduct Constitute a Criminal Offense?

In view of the facts submitted above the primary and most important question that arises is whether or not Apple, Inc.'s acts and conduct constitute a criminal offense. Since the definition of the same offense may have been phrased differently in the criminal laws of different states and the federation, therefore, putting

forth the exact text of the applicable law requires determination of the criminal jurisdiction first, which is the duty and authority of the USPTO, the law enforcement agencies and the investigation officers. However, looking at the relevant laws of any state can offer a basic insight into a legislator's understanding of offenses involving fraud. With this end in view, here is how the Laws of the State of New York define criminal impersonation:

Section 190.25 (2) Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another.

Section 190.25 (4) Impersonates another by communication by internet website or electronic means with intent to obtain a benefit or injure or defraud another, or by such communication pretends to be a public servant in order to induce another to submit to such authority or act in reliance on such pretense.

**Pretends to be a representative of some person or organization**

At a time when Beats Electronics, LLC had ceased to exist as an active business entity and it was reduced to a mere name without any Operating Agreement and without a duly appointed Managing Body that could authorize representation on behalf of the LLC, the officers and attorneys of Apple, Inc. impersonated as representing Beats Electronics, LLC and in that pretended capacity made material submissions and filings to the USPTO and in doing so, signed false declarations of truth.

**With intent to obtain a benefit or to injure or defraud another**

- 1) Apple's team impersonated Beats Electronics, LLC with the purpose of illegally benefiting Apple, Inc. by enabling it to push its own products under the name and trademarks of Beats Electronics, LLC and, thereby, to cash in on the popularity of Beats' products and the large fan base of Dr. Dre.
- 2) Apple's team knew that pushing its own products under the name and trademarks of Beats Electronics, LLC was a misrepresentation as to the source of products and amounted to cheating tens of millions of end consumers.
- 3) While benefiting from the name and trademarks of Beats Electronics, LLC, in its pretended capacity, Apple, Inc. also filed Oppositions and Requests for Extension of Time for Opposition against numerous individuals and businesses (147 since acquisition to date) thereby causing them loss of business, financial damage and undue expense.

## **What Offenses Apple, Inc.'s Team Is Liable For and The Question of Jurisdiction**

It's the authority and responsibility of the USPTO, concerned Law Enforcement Agencies and the Investigation Officers to decide what offenses have been committed and where the jurisdiction lies.

However, the following appear to be the case:

- 1) Criminal impersonation.
- 2) Apple's team perpetrated its criminal activity while located in California, therefore, the State of California may have jurisdiction.
- 3) Apple's team perpetrated its criminal activity against the USPTO whose offices are located in Virginia, therefore, the State of Virginia may have concurrent jurisdiction.
- 4) In case the servers of the USPTO in a third state then that state may have concurrent jurisdiction.
- 5) Apple's team illegally accessed the system of the USPTO to commit criminal acts. Since the USPTO is a federal agency, therefore, the Federal Criminal Laws may be applicable.

- 6) Apple's team illegally and criminally accessed the electronic filing system of the USPTO using the Internet, therefore, it may be a Cyber Crime that's exclusive jurisdiction of FBI.

### **Is There Sufficient Proof of Criminal Activity?**

The documents attached to this response and the record of the USPTO bears enough prima facie evidence to warrant a thorough investigation of the matter. It's the authority and duty of the Law Enforcement Agencies and Investigation Officers to dig out and gather actionable evidence by:

- 1) Interviewing and interrogating the concerned officers, directors, attorneys and other employees of Apple, Inc.
- 2) Summoning and examining the relevant record including the record of relevant communications.
- 3) Getting forensic examination of any faked, dubious and questionable pieces of physical and digital evidence.

### **The Need for Record**

The answering applicant has done its duty by reporting the criminal activity against USPTO's electronic filing system but it's the duty and authority of the USPTO to take the necessary action against those who illegally accessed its electronic filing system over the Internet with criminal intention and actually committed hundreds of instances of criminal impersonation over a period of more than five years and the criminal activity continues to date. However, in case the USPTO decides not to take an action then the answering applicant and all the individuals and businesses who have faced and who are currently facing oppositions on the hands of the impersonators may have legal standing to seek criminal investigation of the matter and prosecution of the offenders. Therefore, the responding applicant very respectfully requests that in case the USPTO decides not to take an action then that decision and its reasons may kindly be placed clearly on the record of this application to witness that the answering applicant did bring the matter first to the attention of the USPTO whose system was illegally accessed and used by the offenders.

## PART 2

### The advisory Trademark Applications that do not belong to Beats Electronics, LLC

- 1) Trademark Application Serial # 88409039: Abandoned 01/16/2020
- 2) Trademark Application Serial # 88238211: Abandoned 10/08/2019
- 3) Trademark Application Serial # 86386047: The applicant filed this trademark application without specifying a Filing Basis. Hon'ble Examining Attorney raised this issue in his Office Action dated 12/16/2014 and advised the applicant to provide a Filing Basis. However, the applicant didn't comply with the legal requirement. Later, the application was suspended due to oversight instead of dismissal for non-compliance. The applicant respectfully requests that Trademark Application Serial # 86386047 may kindly be removed from the advisory list as being incomplete and invalid.

In view of the above submissions, the responding applicant respectfully requests that the criminal activity of Apple's officers, directors, attorneys and other employees who planned, authorized, perpetrated, abetted, connived or acquiesced in commission of any offence/criminal act as stated above, may kindly be formally investigated and the offenders be prosecuted and punished to the maximum extent of law; the cited registrations and pending applications apparently belonging to Beats Electronics, LLC may kindly be annulled and revoked as the products of crime; the Trademark Application Serial # 88454319 may kindly be accepted and applicant's mark may kindly be registered.

Respectfully submitted,

/Khalid Mian/

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Member

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