

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO.: 88/497,638

MARK: NATIONAL YOUTH ORCHESTRA OF THE UNITED STATES OF AMERICA

APPLICANT: The Carnegie Hall Corporation

SUBMITTED BY:

John Lynn
Kirkland & Ellis LLP
555 California Street
San Francisco, CA 94104

DECLARATION OF SARAH JOHNSON

I, Sarah Johnson, declare as follows:

1. My name is Sarah Johnson. I am Chief Education Officer for The Carnegie Hall Corporation (“Applicant”). I have worked for Applicant for more than 12 years.
2. The facts set forth herein are either based on my personal knowledge or facts that are within Applicant’s knowledge and not entirely within my personal knowledge. In the latter case, such facts have been determined by Applicant’s authorized employees, agents, and counsel. I am, therefore, informed and believe, and on that ground state that such facts are true.
3. I am submitting this Declaration in support of Applicant’s response to the Office Action dated September 26, 2019 (the “Office Action”), refusing registration of application Serial No. 88/497,638 for NATIONAL YOUTH ORCHESTRA OF THE UNITED STATES OF AMERICA (the “Mark”) filed July 2, 2019 on the ground that the applied-for Mark is descriptive. (Office Action at 2.) As described further below, I believe the Mark has become distinctive of Applicant’s services given its long period of use by Applicant, and the extensive publicity and advertising that the Mark has enjoyed.
4. To the best of my knowledge, Applicant has made substantially exclusive and continuous use of the Mark in commerce since at least as early as January 2012 when the orchestra was announced, which is more than five years before the date on which the claim of distinctiveness is made. *See Exhibit 1*, at 4.
5. The Mark has become distinctive of Applicant’s services with respect to the applied-for services, namely, “[o]rganizing and conducting musical programs, namely auditions, training and tour performances for young musicians who perform together as a symphony orchestra.”
6. The relevant consumers for the services Applicant offers under its Mark are primarily musicians, composers, students, music teachers and instructors, and enthusiasts of

orchestra music. The Mark has acquired distinctiveness, or secondary meaning, among these consumers.

7. There have been 43 total National Youth Orchestra of the United States of America concerts since the orchestra first debuted in the summer of 2013. Such concerts have been held both at Carnegie Hall in New York City, as well as various other venues across the United States and internationally. For instance, Applicant has sold more than 11,500 tickets to National Youth Orchestra of the United States of America concerts held at Carnegie Hall between Fiscal Year 2015 and November 13, 2019. The total number of tickets is even higher (*i.e.*, more than 12,500) if comped tickets are included. National Youth Orchestra of the United States of America concerts also have occurred at other venues across the country, including, without limitation, at Tanglewood Music Festival in Massachusetts, Appalachian State University in North Carolina, Sonoma State University in California, Walk Festival Hall in Wyoming, Jay Pritzker Pavilion in Chicago, Illinois, and Walt Disney Concert Hall in Los Angeles, California. Attendance at the orchestra's offsite concerts has exceeded 16,500 people.

8. The Mark has received substantial media coverage, including at least 304 press mentions in U.S. publications, based on a recent media search. *See Exhibit 2.* Such media coverage has appeared in a variety of publications, including national and well-known periodicals such as *The New York Times*, *The Boston Globe*, *The Wall Street Journal*, *The Washington Post*, and *The Los Angeles Times*. *See Exhibit 3.*

9. Major media outlets and trade publications have continued to discuss the National Youth Orchestra of the United States of America over time. For instance:

(a) A January 12, 2012 article titled "Carnegie to Launch Youth Orchestra" published by *The Wall Street Journal* reports on Carnegie Hall's creation of a new orchestra, which "will be called the National Youth Orchestra of the United States of America." *See Exhibit 3*, at 1-2.

(b) A January 12, 2012 article titled "Carnegie Hall to Establish National Youth Orchestra" published by *The New York Times* reports that "Carnegie Hall, in its latest act of musical empire building, is establishing the National Youth Orchestra of the United States of America." *See Exhibit 3*, at 3-4.

(c) A July 12, 2013 article titled "A World of Difference About This Youth Orchestra" published by *The Washington Post* reports on the creation of the "National Youth Orchestra of the United States of America" and notes that it is a "one-of-a-kind youth orchestra . . . founded by Carnegie Hall." *See Exhibit 3*, at 5-7.

(d) A July 28, 2014 article titled "New Youth Orchestra Spreads Wings At Home" published by *The Boston Globe* reviews a concert by the National Youth Orchestra of the United States of America at the Tanglewood Music Festival and reports that "last year, Carnegie's Weill Music Institute launched the National Youth Orchestra of the United States of America. Student musicians (120 of them, ages 16 to 19) are chosen each year from around the country." *See Exhibit 3*, at 8-9.

(e) An August 5, 2014 article titled "Review: National Youth Orchestra is Sensational at Disney Hall" published by *The Los Angeles Times*, reports on a concert at Walt Disney Concert Hall and states: "This was the final concert on the tour of the National Youth Orchestra of the United States of America, a summer training program founded last year by Carnegie Hall for 120 musicians ages 16 to 19." See **Exhibit 3**, at 10–15.

(f) A December 14, 2014 article titled "Classical Artistry in Young Hands" published by *The New York Times* reports on how "Carnegie Hall assembled the National Youth Orchestra of the United States of America in rehearsals at the State University of New York at Purchase." See **Exhibit 3**, at 16–17.

(g) A January 8, 2015 article titled "Cultivating a More Youthful Orchestra" published by *The New York Times* reports that "The National Youth Orchestra of the United States of America [] was created in 2013 for top-flight American players in their upper teens by Carnegie Hall's education wing." See **Exhibit 3**, at 18–19.

(h) A January 27, 2016 article titled "Carnegie Maintains Its Classical Emphasis" published by *The New York Times* reports on Carnegie Hall's 2016–17 season and notes that "The National Youth Orchestra of the United States of America, which Carnegie founded four years ago, will play there" with certain musicians. See **Exhibit 3**, at 20–21.

(i) A July 20, 2017 article titled "Classical Music in NYC This Week" published by *The New York Times* reports on an upcoming concert by the "NATIONAL YOUTH ORCHESTRA OF THE UNITED STATES OF AMERICA at Carnegie Hall (July 21, 8 p.m.)." See **Exhibit 3**, at 22–23.

(j) A July 12, 2018 article titled "6 Classical Music Concerts to See in N.Y.C. This Weekend" published by *The New York Times* reports on an upcoming concert of the "NATIONAL YOUTH ORCHESTRA OF THE UNITED STATES OF AMERICA at Carnegie Hall (July 19, 7:30 p.m.)." See **Exhibit 3**, at 24–25.

(k) A July 20, 2018 article titled "Review: An Orchestra of Teenagers, but No Apologies Necessary" published by *The New York Times* reports on the National Youth Orchestra of the United States of America, stating in the first sentence of the article that "There's a delicate balance to the National Youth Orchestra of the United States of America, an educational initiative and touring group organized by Carnegie Hall with late-teenage players." See **Exhibit 3**, at 26–27.

(l) A March 6, 2019 article titled "Carnegie Hall Announces Teen Musicians Selected For the 2019 National Youth Orchestra of the USA" published by *Broadway World* reports in the first sentence that "Carnegie Hall today announced the names of the 119 outstanding young musicians selected from across the country for the seventh annual National Youth Orchestra of the United States of America (NYO-USA)." See **Exhibit 3**, at 28–31.

10. Applicant also has promoted the Mark on its website from 2012 to the present on a page specifically dedicated to the National Youth Orchestra of the United States of America at <https://www.carnegiehall.org/Education/Young-Musicians/National-Youth-Ensembles/NYO-USA>. See **Exhibit 4**. Since the National Youth Orchestra of the United States of America was announced in 2012, that webpage, along with its event pages for its concerts have received more than 753,000 total pages views. Of those views, more than 549,000 are unique.

11. Musicians and politicians have tweeted about the Mark using the well-recognized NYOUSA acronym for the Mark as a hashtag on Twitter. See **Exhibit 5**. Twitter posts using the #NYOUSA hashtag have collectively been retweeted more than 540 times and “liked” over 3,900 times.

12. There also have been nearly 4,000 posts on Instagram using the #NYOUSA hashtag. See **Exhibit 6**.

13. Applicant also has promoted the Mark extensively, including on social media, where it has attained a significant following. The Facebook account dedicated to the National Youth Orchestra of the United States of America has been “liked” more than 46,000 times and has nearly 47,000 followers. See **Exhibit 7**. The “NYO.USA” Instagram account, which has posted using the Mark, has 3,774 followers. See **Exhibit 8**, at 1, 3, 7–8. The YouTube account for the National Youth Orchestra of the United States of America has posted videos of National Youth Orchestra of the United States of America concerts, amassed more than 2.5 million views, and has more than 8,500 subscribers. See **Exhibit 9**.

14. In addition to promoting the Mark through social media, Applicant also has advertised with the Mark over time across various channels, including radio advertisements, online advertisements, e-mail, brochures, mailers, postcards, banner advertisements, and through marketing collateral such as stickers, tote bags, T-shirts, folders, luggage tags, backpacks, water bottles, journals, lapel pins, lanyards, and pull-up banners. For instance:

(a) An advertisement from 2012, which appeared in the *School Band and Orchestra Magazine*, to recruit young musicians to register for the “National Youth Orchestra of the United States of America” is attached hereto as **Exhibit 10**. According to <https://sbomagazine.com/files/SBO-mediakit.pdf>, the *School Band and Orchestra Magazine* reaches “nearly 22,000 qualified subscribers.”

(b) An advertisement from 2012, which appeared in *Symphony* magazine, to recruit young musicians to register for the “National Youth Orchestra of the United States of America” is attached hereto as **Exhibit 11**. According to <https://americanorchestras.org/symphony-magazine/advertise.html>, *Symphony* magazine has a circulation of 20,000 and an estimated readership of 54,000.

(c) A brochure poster from 2013 advertising the Mark is attached hereto as **Exhibit 12**. This advertisement was printed 50,000 times and mailed to various teachers, ensemble directors, students, high school performing arts groups, community music schools, youth orchestras, and state arts commissions, among others.

(d) An advertisement to recruit young musicians to apply for the 2014 Season of the "National Youth Orchestra of the United States of America," which appeared in the *School Band and Orchestra Magazine*, is attached hereto as **Exhibit 13**.

(e) A popup banner advertisement from 2014 advertising the Mark is attached hereto as **Exhibit 14**. This advertisement was posted on arrival day for the musicians at a check-in point at Purchase College, State University of New York. It also was posted at special events throughout the summer of 2014.

(f) A program for a National Youth Orchestra of the United States of America concert at Walt Disney Concert Hall in Los Angeles, California on August 4, 2014 is attached hereto as **Exhibit 15**.

(g) An advertisement to recruit young musicians to apply for the 2015 Season of the "National Youth Orchestra of the United States of America," which appeared in *The Strad* magazine, is attached hereto as **Exhibit 16**. According to https://www.thestrاد.com/Uploads/t/i/g/stradmediapack2019_mediainfo_539153.pdf *The Strad* is "distributed in over 70 countries worldwide" and has a "digital audience of over 150,000."

(h) A T-shirt design from 2015 advertising the Mark is attached hereto as **Exhibit 17**. Approximately 1,000 T-shirts are made each year and distributed to the musicians and staff of the National Youth Orchestra of the United States of America, as well as provided as gifts for faculty and partners.

(i) An advertisement to recruit young musicians to apply for the 2016 Season of the "National Youth Orchestra of the United States of America," which appeared in *International Musician*, the Official Journal of the American Federation of Musicians of the United States and Canada, is attached hereto as **Exhibit 18**. According to <https://internationalmusician.org/display-ads/>, advertisements in the *International Musician* "will be seen by a readership in excess of 80,000."

(j) A commemorative book for the National Youth Orchestra of the United States of America from 2016 is attached hereto as **Exhibit 19**. There were 1,000 copies of the commemorative book printed. These copies were distributed to musicians, donors, the press, and the home youth orchestras of the musicians of the National Youth Orchestra of the United States of America.

(k) A recruitment postcard for the National Youth Orchestra of the United States of America from 2017 is attached hereto as **Exhibit 20**. There were 30,000 copies of this postcard printed and distributed to a mailing list, including various teachers, ensemble directors, students, high school performing arts groups, community music schools, youth orchestras, and state arts commissions, among others.

(l) A trifold pamphlet discussing the National Youth Orchestra of the United States of America from 2017 is attached hereto as **Exhibit 21**. This advertisement was mailed to ticket buyers and was available in the Carnegie Hall lobby and other public spaces.

(m) A 2017 advertisement for a "National Youth Orchestra of the United States of America" concert on Friday, July 21 at 8 p.m., which appeared in the *School Band and Orchestra Magazine*, is attached hereto as **Exhibit 22**.

(n) An advertisement, which appeared in the *School Band and Orchestra Magazine* to recruit young musicians to apply for the "National Youth Orchestra of the United States of America" by the November 15, 2018 deadline, is attached hereto as **Exhibit 23**.

(o) A 2018 advertisement, which appeared in *Strings* magazine and states that "The National Youth Orchestra of the United States of America brings together the country's brightest young musicians for an intensive summer of training, coaching, and an international tour," is attached hereto as **Exhibit 24**.

15. Since the orchestra was first announced in 2012, Applicant has invested a substantial amount in advertising the Mark.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON: December 17, 2019



Sarah Johnson
Chief Education Officer
The Carnegie Hall Corporation