

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:07-cv-00347-D

LULU ENTERPRISES, INC.,

Plaintiff,

v.

NOTICE OF FILING

HULU, LLC, *et al.*,

Defendants.

Defendant, Hulu, LLC, hereby gives notice of filing of the following documents, previously omitted in error, consisting of Exhibits 5, 7, 8 and 10 from the Declaration of Daniel H. Marti In Opposition to Plaintiff's Motion for a Preliminary Injunction.

Respectfully submitted, this the 15th day of October, 2007.

/s/ Hayden J. Silver, III

Hayden J. Silver, III
NC State Bar No. 10037
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Counsel for Defendant Hulu, LLC

CERTIFICATE OF SERVICE

This is to certify that on this date the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System which will send notice to the following CM/ECF participants:

Leslie C. O'Toole
leslie.otoole@elliswinters.com
Thomas Hamilton Segars
tom.segars@elliswinters.com

This the 15th day of October, 2007.

/s/ Hayden J. Silver, III

Attorney for Defendant

KILPATRICK STOCKTON LLP
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EXHIBIT 5

DECLARATION OF DANIEL MARTI



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Word Mark LULU

Goods and Services IC 009. US 021 023 026 036 038. G & S: Downloadable MP3 files, MP3 recordings; downloadable books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications via the internet and wireless devices; mouse pads. FIRST USE: 20030600. FIRST USE IN COMMERCE: 20030600

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books of general interest, namely fiction and non-fiction books on a variety of topics; pens; bookmarks; stickers. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 018. US 001 002 003 022 041. G & S: Tote bags. FIRST USE: 20030400. FIRST USE IN COMMERCE: 20030400

IC 025. US 022 039. G & S: Clothing, namely, hats and shirts. FIRST USE: 20030400. FIRST USE IN COMMERCE: 20030400

IC 035. US 100 101 102. G & S: Online ordering services featuring books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications; distributorship services in the field of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 041. US 100 101 107. G & S: Publishing services, namely, print on demand and publish on demand of books, brochures, calendars, images, music, audio and audiovisual materials; publication of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; multimedia publishing of books, brochures, magazines, journals, software, games, music, and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 042. US 100 101. G & S: Providing information on books, brochures, calendars, images, music,

audio and audiovisual materials via a global computer network; providing information on formatting, editing, design, marketing and distribution of books, brochures, publications, calendars, images, music, audio and audiovisual materials via a global computer network. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

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

Design Search Code 26.03.02 - Ovals, plain single line; Plain single line ovals

Serial Number 77226519

Filing Date July 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Lulu Enterprises, Inc. CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word LULU with an image of an oval-shaped ring superimposed over the top half of the word.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT 7

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Typed Drawing

Word Mark LULU

Goods and Services

IC 035. US 100 101 102. G & S: Administration of a discount program enabling participants to obtain discounts on goods and services; promoting the goods and services of others by placing advertisements and promotional materials in electronic publications accessed via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, by distributing advertisements and promotional materials via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, or through on-line promotional contests; arranging, conducting and promoting business and consumer conferences, business and consumer conventions, business and consumer exhibitions, and trade shows in the fields of business and commerce, education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing; business consultation services; contests and incentive award programs to promote the sale of goods and services of others; promoting educational and entertainment events of others in the nature of conferences, conventions, and exhibitions, in the fields of business and commerce, education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing by placing advertisements and promotional materials in electronic publications accessed via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, by distributing advertisements and promotional materials via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, or through on-line promotional contests, promoting the sale of goods and services of others through the distribution of on-line promotional material and promotional contests. providing consumer information in the fields of business and commerce, education, information services, science, and technology; and providing information in the fields of business and commerce; providing information in the nature of prerecorded audio and audiovisual messages and programs on the subjects of business, commerce via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing business advice and consumer information in the nature of audio, visual, and multimedia programs in the fields of business, commerce, and information services via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 041. US 100 101 107. G & S: Arranging and conducting educational conferences, conventions, and exhibitions, in the fields of education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing; entertainment services, namely, providing a web site featuring audio, visual, and multimedia performances, motion picture performances, and news and variety shows; entertainment services, namely, providing educational and motivational speakers in the fields of business and commerce, general knowledge, information services, science, and technology; providing recognition and incentives by the way of awards to demonstrate excellence or unusual performance in the fields of business and commerce, general knowledge, information services, science, and technology, other than such awards focused on the areas of advertising and marketing; and publication of electronic newspapers featuring general knowledge accessible via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST

USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 042. US 100 101. G & S: Providing information in the nature of prerecorded audio and audiovisual messages on the subjects of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing information in the nature of audio, visual, and multimedia materials in the fields of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks Providing information in the nature of prerecorded audio and audiovisual messages on the subjects of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing information in the nature of audio, visual, and multimedia materials in the fields of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST USE: 20030500. FIRST USE IN COMMERCE: 20030500

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78155152

Filing Date August 16, 2002

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition January 24, 2006

Owner (APPLICANT) Lulu Enterprises, Inc. CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT 8

DECLARATION OF DANIEL MARTI



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Record 1 out of 1[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)*(Use the "Back" button of the Internet**Browser to return to TESS)***Word Mark** LULU**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Downloadable MP3 files, MP3 recordings; downloadable books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications via the internet and wireless devices; mouse pads. FIRST USE: 20030600. FIRST USE IN COMMERCE: 20030600

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books of general interest, namely fiction and non-fiction books on a variety of topics; pens; bookmarks; stickers. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 018. US 001 002 003 022 041. G & S: Tote bags. FIRST USE: 20030400. FIRST USE IN COMMERCE: 20030400

IC 025. US 022 039. G & S: Clothing, namely, hats and shirts. FIRST USE: 20030400. FIRST USE IN COMMERCE: 20030400

IC 035. US 100 101 102. G & S: Online ordering services featuring books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications; distributorship services in the field of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 041. US 100 101 107. G & S: Publishing services, namely, print on demand and publish on demand of books, brochures, calendars, images, music, audio and audiovisual materials; publication of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; multimedia publishing of books, brochures, magazines, journals, software, games, music, and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 042. US 100 101. G & S: Providing information on books, brochures, calendars, images, music, audio and audiovisual materials via a global computer network; providing information on formatting, editing, design, marketing and distribution of books, brochures, publications, calendars, images, music, audio and audiovisual materials via a global computer network. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

Mark

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

Design Search Code 26.03.02 - Ovals, plain single line; Plain single line ovals

Serial Number 77226519

Filing Date July 11, 2007

Current Filing Basis 1A

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Owner (APPLICANT) Lulu Enterprises, Inc. CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word LULU with an image of an oval-shaped ring superimposed over the top half of the word.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Typed Drawing**Word Mark LULU****Goods and Services**

IC 035. US 100 101 102. G & S: Administration of a discount program enabling participants to obtain discounts on goods and services; promoting the goods and services of others by placing advertisements and promotional materials in electronic publications accessed via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, by distributing advertisements and promotional materials via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, or through on-line promotional contests; arranging, conducting and promoting business and consumer conferences, business and consumer conventions, business and consumer exhibitions, and trade shows in the fields of business and commerce, education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing; business consultation services; contests and incentive award programs to promote the sale of goods and services of others; promoting educational and entertainment events of others in the nature of conferences, conventions, and exhibitions, in the fields of business and commerce, education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing by placing advertisements and promotional materials in electronic publications accessed via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, by distributing advertisements and promotional materials via computer, communication networks, electronic networks, on-line web sites, telephone, or wireless networks, or through on-line promotional contests, promoting the sale of goods and services of others through the distribution of on-line promotional material and promotional contests, providing consumer information in the fields of business and commerce, education, information services, science, and technology; and providing information in the fields of business and commerce; providing information in the nature of prerecorded audio and audiovisual messages and programs on the subjects of business, commerce via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing business advice and consumer information in the nature of audio, visual, and multimedia programs in the fields of business, commerce, and information services via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 041. US 100 101 107. G & S: Arranging and conducting educational conferences, conventions, and exhibitions, in the fields of education, information services, science, and technology, other than such conferences, conventions, exhibitions and trade shows focused on the areas of advertising and marketing; entertainment services, namely, providing a web site featuring audio, visual, and multimedia performances, motion picture performances, and news and variety shows; entertainment services, namely, providing educational and motivational speakers in the fields of business and commerce, general knowledge, information services, science, and technology; providing recognition and incentives by the way of awards to demonstrate

excellence or unusual performance in the fields of business and commerce, general knowledge, information services, science, and technology, other than such awards focused on the areas of advertising and marketing; and publication of electronic newspapers featuring general knowledge accessible via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 042. US 100 101. G & S: Providing information in the nature of prerecorded audio and audiovisual messages on the subjects of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing information in the nature of audio, visual, and multimedia materials in the fields of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks Providing information in the nature of prerecorded audio and audiovisual messages on the subjects of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks; providing information in the nature of audio, visual, and multimedia materials in the fields of science, technology and information technology via stand-alone and networked computers, communication networks, electronic networks, web sites, telephone, or wireless networks. FIRST USE: 20030500. FIRST USE IN COMMERCE: 20030500

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78155152

Filing Date August 16, 2002

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition January 24, 2006

Owner (APPLICANT) **Lulu Enterprises**, Inc. CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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LULU STUDIO

Word Mark LULU STUDIO
Goods and Services IC 042. US 100 101. G & S: computer services, namely, non-downloadable software applications used for desktop publishing
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77257646
Filing Date August 17, 2007
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) **Lulu Enterprises, Inc.** CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560
Attorney of Record Douglas W. Kenyon
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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**Word Mark** LULU**Goods and Services**

IC 009. US 021 023 026 036 038. G & S: Downloadable MP3 files, MP3 recordings; downloadable books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications via the internet and wireless devices; mouse pads. FIRST USE: 20030600. FIRST USE IN COMMERCE: 20030600

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IC 025. US 022 039. G & S: Clothing, namely, hats and shirts. FIRST USE: 20030400. FIRST USE IN COMMERCE: 20030400

IC 035. US 100 101 102. G & S: Online ordering services featuring books, brochures, flyers, calendars, images, music, audio and audiovisual materials and electronic publications; distributorship services in the field of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 041. US 100 101 107. G & S: Publishing services, namely, print on demand and publish on demand of books, brochures, calendars, images, music, audio and audiovisual materials; publication of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; multimedia publishing of books, brochures, magazines, journals, software, games, music, and electronic publications. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

IC 042. US 100 101. G & S: Providing information on books, brochures, calendars, images, music, audio and

audiovisual materials via a global computer network; providing information on formatting, editing, design, marketing and distribution of books, brochures, publications, calendars, images, music, audio and audiovisual materials via a global computer network. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100

Mark
Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.03.02 - Ovals, plain single line; Plain single line ovals
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Attorney of Record Susan Freya Olive
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word **LULU** with an image of an oval-shaped ring superimposed over the top half of the word.
Type of Mark TRADEMARK. SERVICE MARK
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Word Mark LULU

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Downloadable MP3 files, MP3 recordings, online discussion boards, web casts, podcasts featuring music, audio books and news broadcasts; downloadable books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications via the internet and wireless devices; providing downloadable electronic newsletters in the field of publishing; CD-ROM disks and DVDs. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books of general interest, namely fiction and non-fiction books on a variety of topics; pens; bookmarks; stickers; newsletters in the field of publishing; business cards; postcards. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

IC 025. US 022 039. G & S: Clothing, namely, hats and shirts. FIRST USE: 20070500. FIRST USE IN COMMERCE: 20070500

IC 035. US 100 101 102. G & S: Online ordering services featuring books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; business consulting, namely provision of information and advice in the field of self-publishing; distributorship services in the field of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; advertising, marketing and promotion services. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

IC 038. US 100 101 104. G & S: Communication services, namely, electronic transmission of data and documents among users of computers; providing on-line forums for transmission of messages among computer users concerning self-publishing; communication services, namely, transmitting streamed sound and audio-visual recordings via the Internet. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

IC 041. US 100 101 107. G & S: Publishing services, namely, print on demand and publish on demand of books, brochures, calendars, images, music, audio and audiovisual materials; publication of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; multimedia publishing of

books, brochures, magazines, journals, software, games, music, and electronic publications; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; workshops and seminars in the field of self-publishing; providing on-line training in the field of self-publishing; on-line journals, namely, blogs featuring information about -self publishing; written text editing; video editing. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

IC 042. US 100 101. G & S: Providing information on books, brochures, calendars, images, music, audio and audiovisual materials via a global computer network; providing information on formatting, editing, design, marketing and distribution of books, brochures, publications, calendars, images, music, audio and audiovisual materials via a global computer network; graphic design services; design and development of multimedia products. FIRST USE: 20070300. FIRST USE IN COMMERCE: 20070300

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

Design Search Code 26.03.02 - Ovals, plain single line; Plain single line ovals

Serial Number 77217960

Filing Date June 28, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) **Lulu Enterprises, Inc.** CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word **LULU** with an image of an oval-shaped ring superimposed over the top half of the word.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Word Mark LULU.COM

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Downloadable MP3 files, MP3 recordings, online discussion boards, web casts, podcasts featuring music, audio books and news broadcasts; downloadable books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications via the internet and wireless devices; providing downloadable electronic newsletters in the field of publishing; CD-ROM disks and DVDs

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books of general interest, namely fiction and non-fiction books on a variety of topics; pens; bookmarks; stickers; newsletters in the field of publishing; business cards; postcards

IC 018. US 001 002 003 022 041. G & S: Tote bags

IC 025. US 022 039. G & S: Clothing, namely, hats and shirts

IC 035. US 100 101 102. G & S: Online ordering services featuring books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; business consulting, namely provision of information and advice in the field of self-publishing; distributorship services in the field of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; advertising, marketing and promotion services

IC 038. US 100 101 104. G & S: Communication services, namely, electronic transmission of data and documents among users of computers; providing on-line forums for transmission of messages among computer users concerning self-publishing; communication services, namely, transmitting streamed sound and audio-visual recordings via the Internet

IC 041. US 100 101 107. G & S: Publishing services, namely, print on demand and publish on demand of

books, brochures, calendars, images, music, audio and audiovisual materials; publication of books, brochures, calendars, images, music, audio and audiovisual materials and electronic publications; multimedia publishing of books, brochures, magazines, journals, software, games, music, and electronic publications; entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; workshops and seminars in the field of self-publishing; providing on-line training in the field of self-publishing; on-line journals, namely, blogs featuring information about self-publishing; written text editing; video editing

IC 042. US 100 101. G & S: Providing information on books, brochures, calendars, images, music, audio and audiovisual materials via a global computer network; providing information on formatting, editing, design, marketing and distribution of books, brochures, publications, calendars, images, music, audio and audiovisual materials via a global computer network; graphic design services; design and development of multimedia products

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

Design Search Code 26.03.02 - Ovals, plain single line; Plain single line ovals

Serial Number 77217955

Filing Date June 28, 2007

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) **Lulu Enterprises, Inc.** CORPORATION DELAWARE Suite 300 860 Aviation Parkway Morrisville NORTH CAROLINA 27560

Attorney of Record Susan Freya Olive

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Type of Mark TRADEMARK. SERVICE MARK

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