

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

FILED VIA EXPRESS MAIL POST OFFICE  
TO ADDRESSEE, MAILING LABEL NO.  
ET680077926US

IBERTECH, INC.,  
Opposer,

**ANSWER TO OPPOSITION  
and  
AFFIRMATIVE DEFENSES**

Opposition No. 123,877

Mark: ALOHA GOLD  
Serial No. 78/047,357  
Registration No. 2502228

Filed: February 8, 2001  
Published: August 7, 2001  
Registration Issued: October 31, 2001

V.

KONAMI GAMING, INC.  
Applicant.

**ANSWER TO OPPOSITION**

Now comes Konami Gaming, Inc. (Applicant), through its attorneys, and states in answer to Opposer's grounds for opposition as follows:

1. Applicant admits upon information and belief only that Opposer appears to be the owner of U.S. Trademark Reg. No. 2144355, only for the particular stylized form of "Aloha" as set forth in that registration, and only in connection with the particular goods and services claimed and described therein. Applicant denies the remainder of the allegations and implications of this paragraph as untrue.
2. Applicant admits upon information and belief only that Opposer appears to be the owner of U.S. Trademark Reg. No. 2144355, only for the particular stylized form of "Aloha" as set forth in that registration, and only in connection with the particular goods and services in Class 9 claimed and described therein.
3. Applicant denies each of the allegations and implications of this paragraph as untrue, in that there is no likelihood of causing confusion or mistake or deception of consumers, nor will Applicant's use of the subject mark result in damage or detriment to Opposer.

Howard  Howard  
law for business

The Pinehurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304.5151  
248.645.1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007.4802  
616.382.1483

The Phoenix Building  
Suite 500  
222 North Washington Square  
Lansing, MI 48933.1817  
517.485.1483

One Technology Plaza  
Suite 600  
211 Fulton Street  
Peoria, IL 61602.1350  
309.672.1483



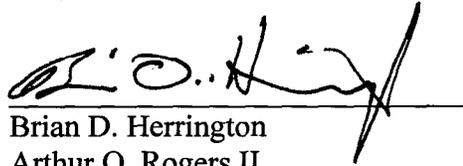
11-21-2001  
U.S. Patent & TMO/TM Mail Rpt Dt. #61

Wherefore, registration should proceed<sup>1</sup> on Application serial number 78/047,357 and the opposition should be denied and dismissed.

Respectfully submitted:

Dated: November 21, 2001

By:



Brian D. Herrington  
Arthur O. Rogers II  
Howard & Howard Attorneys, P.C.  
222 N. Washington Sq., Suite 500  
Lansing, MI 48933  
517-485-1483  
517-485-1568 (fax)  
bh@h2law.com  
aor@h2law.com  
Attorneys for Applicant

**Howard & Howard**  
law for business

The Pinchurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304.5151  
248.645.1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007.4802  
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**AFFIRMATIVE DEFENSES**

Now comes Konami Gaming, Inc. (Applicant), through its attorneys, and states that it may rely on any or all of the following affirmative defenses in this Opposition:

1. There is no actual or likelihood of confusion between Opposer's and Applicant's goods and/or services in connection with the Applicant's and Opposer's marks.
2. Opposer seeks rights in gross with respect to the word "Aloha" in contravention of established principles of trademark law.
3. Opposer is misusing its U.S. Trademark Reg. No. 2144355 in violation of federal antitrust laws through an impermissible attempt to expand the scope of its existing registration.
4. Opposer's rights in "Aloha" are limited to the goods and services set forth in its registration and do not encompass Applicant's goods or services.
5. Opposer's rights in "Aloha" are limited to the specific stylized depiction of that word set forth in its registration.
6. Opposer is estopped from pursuing this opposition.
7. Opposer is precluded from pursuing this opposition as a result of Opposer's unclean hands.

<sup>1</sup> Applicant would note that the U.S. Patent and Trademark Office has already, following the filing of the Opposition, proceeded to issue the registration on this mark (Reg. No. 2502228; October 31, 2001).

8. Based on the issuance of Applicant's registration by the U.S. Patent and Trademark Office on October 31, 2001, the Opposer's opposition is moot.

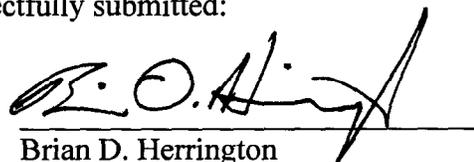
9. Based on the issuance of Applicant's registration by the U.S. Patent and Trademark Office on October 31, 2001, the Opposer's opposition was determined by the Office to be untimely filed.

10. Applicant reserves the right to supplement these defenses with different or additional defenses that may be revealed during the course of discovery.

Respectfully submitted:

Dated: November 21, 2001

By:



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Howard & Howard Attorneys, P.C.  
222 N. Washington Sq., Suite 500  
Lansing, MI 48933  
517-485-1483  
517-485-1568 (fax)  
bh@h2law.com  
aor@h2law.com  
Attorneys for Applicant

**Howard & Howard**  
Law for Business

The Firehurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304.5151  
248.645.1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007.4802  
616.382.1483

The Phoenix Building  
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IBERTECH, INC.,  
Opposer,

**CERTIFICATE OF SERVICE/  
EXPRESS MAILING**

Opposition No. 123,877

v.

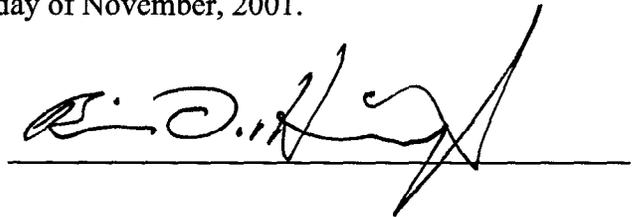
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I hereby certify that the enclosed Answer to Opposition and Affirmative Defenses is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope as Express Mail Post Office to Addressee, Mailing Label No. ET680077926US, and addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, with a copy of said Answer to Opposition and Affirmative Defenses served upon Jeffrey W. Storie, Decker, Jones, McMackin, McClane, Hall & Bates, P.C., 801 Cherry Street, Suite 2000, Fort Worth, Texas 76102-6836, via First Class Mail, postage prepaid, on the 21<sup>st</sup> day of November, 2001.



**Howard & Howard**  
Law for business

The Pinchurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304.5151  
248.645.1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007.4802  
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211 Fulton Street  
Peoria, IL 61602.1350  
309.672.1483

Bloomfield Hills Kalamazoo Lansing Peoria

**Howard & Howard**  
law for business

TTAB

direct dial: 517.377.0619

Brian D. Herrington

email: BHerrington@howardandhoward.com

November 21, 2001

11/23 11:30 AM

**United States Patent and Trademark Office**  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

*Via Express Mail*

**RE: *Ibertech, Inc. v Konami Gaming, Inc.***  
**Opposition No. 123,877**



11-21-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

Dear Sir/Madam:

Enclosed for filing is Konami Gaming, Inc.'s Answer to Opposition and Affirmative Defenses together with a Certificate of Service/Express Mailing.

Please contact me if you have any questions regarding the enclosures.

**HOWARD & HOWARD ATTORNEYS, P.C.**



**Brian D. Herrington**

Enclosures

cc w/enc: Jeffrey W. Storie

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