

TTAB

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

In re: Applications of Spykiss, inc.
Serial No: 76/056122
Mark: SPYKISS

-----X
MIRAMAX FILM CORP.,

Serial No. 76/056122

Opposer,

OPPOSITION NO. 125,014

vs.

Mark: SPYKISS

SPYKISS, INC.,

Applicant.

-----X



11-21-2002

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

CHANGE OF ADDRESS CORRESPONDENCE

Please note the new address of Applicant Spykiss, inc. has changed FROM:

Spykiss, Inc.
400 S. Main Street
Suite 809
Los Angeles, CA 90013

Phone 213.253.4779
Fax 413.581.4350

TO the NEW ADDRESS:

Spykiss, inc.
5205 Hollywood Blvd.
Suite 211
Los Angeles, CA 90027

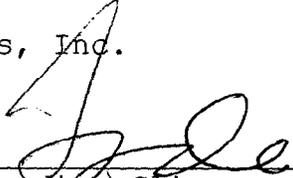
Phone: 323.377.7007
Fax: 413.581.4350

See

TRADEMARK
9509.53

Dated: Nov 18, 2002

Spykiss, Inc.

By: 
Kandice Cline

Its: Chief Executive Officer

Phone: 323.377.7007

Fax: 413.581.4350

EXPRESS MAIL Mailing Label No. _____

Date of Deposit: 11/15/02

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Box TTAB, No Fee, Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513

By:
Kandice Cline

TRADEMARK
9509.53

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

John Margiotta
FROSS, ZELNICK, LEHRMAN & ZISSU, PC
866 United Nations Plaza
New York, NY 10017

on this 18th day of November, 2002.

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

In re: Applications of Spykiss, inc.

Serial No: 76/056122

Mark: SPYKISS

-----X
MIRAMAX FILM CORP.,

Opposer,

Serial No. 76/056122

OPPOSITION NO. 125,014

vs.

SPYKISS, INC.,

Applicant.

Mark: SPYKISS

-----X

ANSWER OF SPYKISS, INC.

TO FIRST SET OF INTERROGATORIES AND

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Applicant Spykiss, Inc. ("Applicant") answers the First Set of Interrogatories and Requests (the "Interrogatories") of Miramax Film Corp. ("Opposer") as follows:

Interrogatory No. 1:

Identify and describe in detail each product or service that is, has been or will be sold, distributed, licensed or provided by Applicant or any other person or entity authorized by Applicant bearing or in connection with Applicant's Mark.

ANSWER:

Website, software, screenplay, teleplay, computer products, toys, retail store services in the field of publications, sporting goods, clothing, fashion accessories, housewares, and audio and visual recordings

Interrogatory No. 2

For each of the products and services identified in your response to Interrogatory No.1:

- (a) Describe in detail the manner in which Applicant's Mark is used, has been used or will be used in connection with the product or service;
- (b) Identify all channels of trade(eg retail stores, distributors, conventions, trade shows, mail-order catalogs, television programs, direct order newspaper advertisements, Internet) through which

the product or service is, has been or will be sold, offered or provided;

(c) State the date of first use of Applicant's Mark.

ANSWER (a):

Website: Applicant's Mark displays on all website HTML pages to identify products and services and as text and linked images for use in downloads and e-commerce of products and services.

Software: Applicant's Mark displays within software as an alert, link to participating URLs, as an directional function, link and auto download from CDROM, to launch audio visual recordings, emails, wizards, connecting users, groups, launch of product, installing of software on users computer, uninstall, electronic commerce, upload and download of audio, still and video images.

Screenplay: Applicant's Mark identifies screenplay name, concept, characters storyline and products and services.

Teleplay: Applicant's Mark identifies teleplay name, concept, characters storyline and products and services.

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

Computer Products: Applicant's Mark displays and works within software used in computer products including wireless, hardware, PDAs, Interactive TV, CDs, DVDs.

Toys: Applicant's Mark displays on all toys to identify products and services.

Retail Store: Applicant's Mark displays on all merchandise to identify products and services.

Sporting Goods: Applicant's Mark displays on all sporting goods to identify products and services.

Fashion Accessories: Applicant's Mark displays to identify products and services.

Housewares: Applicants Mark displays on all Housewares to identify products and services.

Audio and Visual Recordings: Applicant's Mark integrates into story-line, displays and is part of all audio and video recordings to identify products and services.

ANSWER(b):

Applicant's software, products and services will be offered on multiple download sites, commerce sites, fan and entertainment sites on the Internet. Applicant's entertainment products will be offered on television, online and in theaters. Applicant's consumer products, wireless services and toys will be offered online and in retail stores.

ANSWER(c):

Applicant's date of first use is February 13, 2000

Interrogatory No. 3:

- (a) Identify each person or entity, including but not limited to franchisees, assignees, licensees, distributors and any business owned or controlled by Applicant that will, has or does use, or is authorized to use, Applicant's Mark;
- (b) State the inclusive dates during which each person or entity identified in response to subsection (a) of this interrogatory has used Applicant's Mark and the goods and services in connection with which such use has been made.

ANSWER:

Core Objects 2001-2002

Renee Group 2001-2002

Aol Affiliates 2002

Paypal Affiliates 2002

Gotomedia 2000-2002

Mindspring 2001-2002

Idea Integration 2000-2001

Interrogatory No. 4:

Describe the nature of any advertisements and promotional material(e.g., brochures, television commercials, newspaper articles, Internet web sites or magazine advertisements), including identifying the specific geographic location and specific media(e.g., Time magazine, CBS Network TV, The New York Times), in which Applicant's Mark is or has been used;

ANSWER:

Downtown News

Futuredex

Entrepreneur Magazine

O'Reilly Peer 2 Peer News

Wall Street Journal Career Journal

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

Interrogatory No. 5:

For each media identified in response to Interrogatory No. 4, state the amount of money you have spent for advertising and promoting goods and/or services bearing Applicant's Mark for each year or portion thereof.

ANSWER:

Applicant has spent \$350K per year in cash and services for advertising and promotions of Applicant's Mark.

Interrogatory No. 6:

- (a) Identify those individuals most knowledgeable about the selection, creation, development and adoption of Applicant's Mark and describe the areas of knowledge of each person identified.
- (b) Describe the derivation of Applicant's Mark and any meaning or significance of the Applicant's Mark.

ANSWER(a):

Kandice Cline, CEO

Robert Cota, President

Kelly Goto, Creative Director

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

ANSWER(b):

Applicant's mark derivation and meaning is completely arbitrary and was imagined to be a favorable word by the founders.

Interrogatory No. 7:

Identify those individuals most knowledgeable about the sales, promotion, distribution, advertising and marketing of products and services offered by Applicant in connection with Applicant's Mark, and describe the areas of knowledge of each person identified.

ANSWER:

Kandice Cline, CEO. Areas of knowledge include: sales, promotion, distribution, advertising and marketing of products and services.

Robert Cota, President. Areas of knowledge include: sales, promotion, distribution, advertising and marketing of products and services

Interrogatory No. 8:

Describe the target audience or class of consumers for the goods and services sold, provided or rendered by or on behalf of Applicant under Applicant's Mark.

ANSWER:

Businesses, individuals and communities that are early adopters, 18 -35, genX/genY. Users of collaborative commerce applications in real estate, entertainment, auctions, jobs and autos.

Interrogatory No. 9:

Identify by name, tribunal and docket number each court litigation or Patent and Trademark Office ("inter partes") proceeding relating to Applicant's Mark to which Applicant or any party Applicant has authorized to use Applicant's Mark was or is a party, or of which Applicant has knowledge.

ANSWER:

There are no other proceedings relating to Applicant's Mark at this time.

Interrogatory No. 10:

Describe in detail how and when Applicant first became aware of Opposer's Mark.

ANSWER:

Applicant first became aware of Opposer's Mark April 28, 2000 via a Trademark search.

Interrogatory No. 11:

If at the time of selecting Applicant's Mark, Applicant was aware of Opposer's Mark, state in detail the reasons why Applicant did not believe there would be a likelihood of confusion between Applicant's Mark and Opposer's Mark.

ANSWER:

Applicant was advised by Counsel that Applicant's Mark as a whole is distinguishable from ALL other marks uncovered in the search report.

Interrogatory No. 12:

Describe in detail any and all present or future plans of Applicant, or any party authorized by Applicant, to offer
Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

any services under Applicant's Mark or any mark similar thereto that are not set forth in response to Interrogatory No 1.

ANSWER:

Applicant's software, products and services will be offered on multiple download sites, commerce sites, fan and entertainment sites on the Internet. Applicant's entertainment products will be offered on television, online and in theaters. Applicant's consumer products, wireless services and toys will be offered online and in retail stores.

Interrogatory No. 13:

Identify all Internet web pages through which Applicant's goods or services under Applicant's Mark are offered, sold or provided.

ANSWER:

www.spykiss.com www.spykiss.org www.spykiss.net

Interrogatory No. 14:

Identify all Internet web pages through which Applicant's goods or services under Applicant's Mark are offered, sold or provided.

ANSWER:

www.spykiss.com www.spykiss.org www.spykiss.net

Interrogatory No. 15:

Identify all instances of which you are aware in which third parties use the terms 'SPY' and 'KIDS' for goods which are similar to those of Opposer, as alleged in your First Affirmative Defense.

ANSWER:

Instance (1) Spy Kids Distro

Instance (2) spy zone for kids

Instance (3) ISPY

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

Instance (4) Spy Girls

Instance (5) SpyHouse

Instance (6) SpyCom

Instance (7) SpyGlass

Instance (8) Spy Dogs Saban

Instance (9) SheSpies

Instance (10) Gap Kids

Instance (11) Spy Games

Instance (12) PBS Kids

Interrogatory No. 16:

To the extent there have been any, state your gross sales by year, since the date of first use of Applicant's Mark,

for goods and services sold under Applicant's Mark, in both dollars and units sold.

ANSWER:

Present Gross Sales < \$100K(See attached future revenue projections)

Interrogatory No. 17:

For the purpose of this interrogatory, a claim shall be defined as a demand brought by or against you, by or against a third party, that the party to whom the demand is addressed cease use or modify its use of a mark alleged to be confusingly similar to the Applicant's Mark, and which has not resulted in a litigation or a trademark inter partes proceeding. Identify each person or entity against whom you have asserted a claim or which has asserted a claim against you.

- (a) state the mark concerned;
- (b) state how and when the claim was asserted (e.g., cease-and-desist letter, conference between the parties);

- (c) describe the current status of the claim (e.g., claim rejected, no further action taken; claim resolved by agreement; claim still unresolved and negotiations pending); and
- (d) identify all documents concerning any such claim, including but not limited to demand letters and all settlement agreements or letters embodying a settlement of a claim

ANSWER:

There have been no other claims

Interrogatory No. 18:

Identify all Applicant's applications or registrations for Applicant's Mark, or variations thereof, in the U.S. Patent and Trademark Office, or the trademark registry of any state.

ANSWER:

SPYKISS

Interrogatory No. 19:

- (a) Identify all opinions, search reports, or other communications concerning your right to register Applicant's Mark or the existence of possible conflicting marks;
- (b) Indicate when the search report was prepared and who prepared the search report; and
- (c) Set forth all opinions concerning your right to register Applicant's Mark or the existence of possible conflicting marks.

ANSWER(a):

National availability search, Search Report delivered April 28th 2000

ANSWER(b):

Search Report prepared by Jill M. Pietrini of Manatt, Phelps and Phillips.

ANSWER(c):

Opinion is Applicant's Mark is distinguishable from the other Marks.

Interrogatory No. 20:

Identify each person who answered or provided information used in answering the preceding interrogatories, specifying the particular interrogatories to which each person answered or provided information.

ANSWER:

Robert Cota President - Interrogatories 1 through 25

Kandice Cline CEO - Interrogatories 1 through 25

Interrogatory No. 21:

Have you conducted or do you plan to conduct or cause to be conducted any Market Research or trademark searches or surveys regarding Opposer's Mark or Applicant's Mark?

ANSWER:

NO

Interrogatory No. 22:

- (a) Identify and describe such Market Research, trademark search, or survey:
- (b) Identify each search report, report or summary of reports of Market Research, testing or survey relating to the level of public recognition of the Applicant's Mark or Opposer's Mark or the types of goods or services with which consumers associate either mark; and
- (c) Identify each search report, report, or summary of reports of Market Research, testing or survey relating to confusion or lack of confusion between Applicant's Mark and Opposer's Mark and/or goods and Applicant's Mark and Opposer's Mark and/or goods and /or services bearing each of the marks.

ANSWER:

N/A

Interrogatory No. 23:

State whether you have ever:

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

(a) Received mail, telephone calls, bills, payments, invoices or any other materials referring to or inquiring about Opposer or its goods and/or services, or

(b) Obtained any knowledge or information regarding confusion on the part of any person as to the source, sponsorship, affiliation or approval of the goods and/or services provided by Opposer.

ANSWER(a):

Applicant has not received mail, telephone calls, bills, payments, invoices or any other materials referring to or inquiring about Opposer or its goods and/or services.

ANSWER(b):

Applicant has not obtained any knowledge or information regarding confusion on the part of any person as to the source, sponsorship, affiliation or approval of the goods and/or services provided by Opposer.

Interrogatory No. 24:

If the answer to any of the interrogatories in number 23 is in the affirmative:

Interrogatory_Answer.doc DATE \@ "MMMM d, yyyy"

- (a) Identify each and every person or entity that corresponded with Applicant or made statements to Applicant or was otherwise confused;
- (b) Give the dates on which such contact was made;
- (c) Identify all persons who have knowledge of the matter described in this interrogatory; and
- (d) Identify all documents concerning confusion.

ANSWER:

N/A

Interrogatory No. 25:

Identify each person who answered or provided information used in answering the preceding interrogatories, specifying the particular interrogatories to which each person answered or provided information.

ANSWER:

Robert Cota - Provided information for interrogatories 1 through 25

Kandice Cline - Provided information for interrogatories 1 through 25

TRADEMARK

9509.53

Dated: Nov 15, 2002

Spykiss, Inc.

By:



Kandice Cline

Its: Chief Executive Officer

Phone: 323.377.7007

Fax: 413.581.4350

EXPRESS MAIL Mailing Label No. EU71374390ZUS

Date of Deposit: 11/15/02

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Box TTAB, No Fee, Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-

3513

By:

Kandice Cline

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

John Margiotta

FROSS, ZELNICK, LEHRMAN & ZISSU, PC

866 United Nations Plaza

New York, NY 10017

on this 15th day of November, 2002.