



TTAB

12-16-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: December 2, 2002

Opposition No 91153683
Serial No. 76295515

VALEN BROST

770 SOUTHWOOD # 1
INCLINE VILLAGE, NV 89451

UNIVERSAL CITY STUDIOS, INC.

v.

Brost, Valen

JOAN KUPERSMITH LARKIN
SEYFARTH SHAW
ONE CENTURY PLAZA, 2029 CENTURY PARK EAST SUITE 300
LOS ANGELES, CA 90067-3063

02 DEC 23 AM 9:30

Kimberly Linton, Legal Assistant:

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: December 22, 2002

Discovery period to close: June 20, 2003

30-day testimony period for party
in position of plaintiff to close: September 18, 2003

30-day testimony period for party
in position of defendant to close: November 17, 2003

15-day rebuttal testimony period
for plaintiff to close: January 01, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

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



In the Matter of Application Serial No.: 76/295,515
Published in the Official Gazette of June 18, 2002

10-15-2002
U.S. Patent & TMOtc/TM Mail Reg. Ct. #58

08 OCT 24 AM 9:58
TRADEMARK TRIAL AND APPEAL BOARD

UNIVERSAL CITY STUDIOS, INC.,

Opposer,

vs.

VALEN BROST

Applicant.

Opposition No. _____

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL #EL12367492 US ADDRESSED TO THE U.S. PATENT AND TRADEMARK OFFICE, 290 CRYSTAL DRIVE, ARLINGTON, VA 22202-4313, BOX TTAB - FEB

BY: Neeraj K. Gupta

DATE OF SIGNATURE: 10/14/02

10/22/2002 ZCARRITH 00000016 76295515

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300.00 OP

NOTICE OF OPPOSITION

Opposer Universal City Studios, Inc. ("Opposer") believes that it will be damaged by registration of the mark shown in Application Serial No. 76/295,515, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with offices at 100 Universal City Plaza, Universal City, California 91608.
2. Opposer is the world famous motion picture studio that has been, since 1912, producing and distributing motion pictures under the mark UNIVERSAL. Opposer sells a wide variety of licensed goods, including toys, under the UNIVERSAL mark.
3. Upon information and belief, applicant Valen Brost ("Applicant") is an individual and U.S. citizen with an address at 770 Southwood, #1, Incline Village, Nevada 89451.
4. On August 6, 2001, Applicant filed Application Serial No. 76/295,515 (the "Opposed Application") to register the mark UNIVERSAL TOYS on the Principal Register for "toy rockets" on the basis of Applicant's alleged use of the mark in commerce.

Handwritten mark

5. Since a time long prior to the filing date of the Opposed Application, or any earlier dates of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer and/or its predecessors-in-interest, have continuously used the trademark and service mark UNIVERSAL, and other marks which incorporate the UNIVERSAL mark, on or in connection with a wide variety of entertainment, communication, marketing and development services and products, including the production, distribution and sale of motion pictures for theatrical and television display, narrated sightseeing tours of motion picture and television production facilities including exhibitions and demonstrations, presentation of musical and dramatic programs, and the licensing and sale of toys.

6. On or about September 29, 1965, a time long prior to the filing date of the Opposed Application, or any earlier dates of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer was incorporated and since that time has continuously operated and conducted business under the trade name Universal City Studios, Inc. or Universal City Studios.

7. Since a time long prior to the filing date of the Opposed Application, or any earlier dates of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer, its related companies, and/or its predecessors-in-interest, have continuously done business under and used UNIVERSAL, and other names which incorporate UNIVERSAL, as part of their trade names for businesses with a wide variety of entertainment, communication, marketing and development services and activities.

8. Opposer owns, among others, the following United States Trademark Registrations:

(a) Registration No. 1,144,545 for the mark UNIVERSAL for "entertainment services-namely, production of motion picture films for theatrical and television use and distribution of such films produced by applicant and by others."

(b) Registration No. 1,531,018 for the mark UNIVERSAL STUDIOS for "toys and games, namely, toy watches; toy sunglasses; dolls; stuffed toy animals; puzzles; Christmas tree ornaments."

(c) Registration No. 1,637,487 for the mark UNIVERSAL for "motion picture photoplays, motion picture and sound films."

(d) Registration No. 1,803,468 for the mark UNIVERSAL and Globe Design for "entertainment services; namely, production and distribution of a variety of motion pictures and television programs for presentation over television and in theaters."

(e) Registration No. 1,918,128 for the mark UNIVERSAL INTERACTIVE STUDIOS for "interactive video game programs and interactive video games of virtual reality comprised of computer hardware and software."

All of these registrations are valid and subsisting and have become incontestible. Copies of Opposer's registrations are attached hereto as Exhibit 1 and are incorporated by reference herein.

9. Through the long, continuous and extensive use of the UNIVERSAL marks and trade names on and in connection with Opposer's goods, services, and businesses, the marks and trade names have become well-known by the consuming public in the United States. Opposer has developed an exceedingly valuable goodwill with respect to its UNIVERSAL marks and trade names, and has come to be recognized by consumers, the trade and the public at large as identifying and distinguishing Opposer as the source and origin of goods, services and businesses sold under those marks and names.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion with Opposer's Registered Marks)

10. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-9, inclusive, as if fully set forth herein.

11. The mark shown in the Opposed Application so resembles Opposer's registered UNIVERSAL marks, as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d), as amended.

12. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration of the mark would give Applicant prima facie evidence of ownership of, and exclusive right to use in commerce, a mark that is confusingly similar to Opposer's marks.

SECOND CLAIM FOR RELIEF
(Likelihood of Confusion with Previously-Used Trademarks, Service Marks and Trade Names)

13. Opposer repeats and realleges the allegations contained in preceding paragraphs 1-9, inclusive, as if fully set forth herein.

14. The mark shown in the Opposed Application so resembles Opposer's trademarks and service marks UNIVERSAL, and its other marks which incorporate the UNIVERSAL mark, as well as its trade names which incorporate UNIVERSAL, as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d), as amended.

15. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration of the mark would give Applicant prima facie evidence of ownership of, and exclusive right to use in commerce, a mark that is confusingly similar to Opposer's marks and trade names.

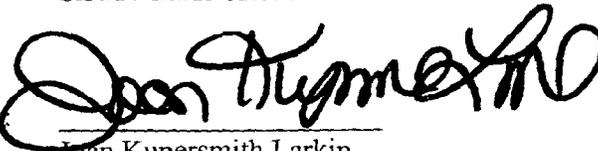
WHEREFORE, Opposer prays for the entry of judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

A duplicate copy of this Notice of Opposition, with exhibits, and the filing fee of \$300 are enclosed. Please charge any deficiency or credit any overpayment to Deposit Account No. 50-2291 and direct all correspondence in connection with this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW

Dated: October ¹⁴ 2002

By: 
Joan Kupersmith Larkin
Christopher C. Larkin
Attorneys for Opposer
UNIVERSAL CITY STUDIOS, INC.

One Century Plaza
2029 Century Park East
Suite 300
Los Angeles, California 90067-3063
(310) 277-7200

Int. Cl.: 41

Prior U.S. Cl.: 107

United States Patent and Trademark Office

Reg. No. 1,144,545

Registered Dec. 23, 1980

SERVICE MARK
Principal Register

UNIVERSAL

Universal City Studios, Inc. (Delaware corporation)
100 Universal City Plz.
Universal City, Calif. 91608

For: ENTERTAINMENT SERVICES—NAME-
LY, PRODUCTION OF MOTION PICTURE
FILMS FOR THEATRICAL AND TELEVISION
USE AND DISTRIBUTION OF SUCH FILMS
PRODUCED BY APPLICANT AND BY OTH-
ERS, in CLASS 41 (U.S. Cl. 107).

First use May 20, 1912; in commerce May 20,
1912.

Owner of U.S. Reg. Nos. 105.030, 947.751 and
others.

Ser. No. 203,908, filed Feb. 14, 1979.

MARC BERGSMAN, Primary Examiner

CARLISLE WALTERS, Examiner

Int. Cl.: 28

Prior U.S. Cls.: 22 and 50

United States Patent and Trademark Office **Reg. No. 1,531,018**
Registered Mar. 21, 1989

**TRADEMARK
PRINCIPAL REGISTER**

UNIVERSAL STUDIOS

UNIVERSAL CITY STUDIOS, INC. (DELA-
WARE CORPORATION)
100 UNIVERSAL CITY PLAZA
UNIVERSAL CITY, CA 91608

FIRST USE 1-1-1964; IN COMMERCE
1-1-1964.

OWNER OF U.S. REG. NOS. 1,095,505, 1,355,894
AND OTHERS.

FOR: TOYS AND GAMES, NAMELY, TOY
WATCHES; TOY SUNGLASSES; DOLLS;
STUFFED TOY ANIMALS; PUZZLES; CHRIST-
MAS TREE ORNAMENTS, IN CLASS 28 (U.S.
CLS. 22 AND 50).

SER. NO. 728,725, FILED 5-16-1988.

ESTHER A. BORSUK, EXAMINING ATTOR-
NEY

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,637,487

Registered Mar. 12, 1991

**TRADEMARK
PRINCIPAL REGISTER**

UNIVERSAL

UNIVERSAL CITY STUDIOS, INC. (DELA-
WARE CORPORATION)
100 UNIVERSAL CITY PLAZA
UNIVERSAL CITY, CA 91608

FOR: MOTION PICTURE PHOTOPLAYS,
MOTION PICTURE AND SOUND FILMS, IN
CLASS 9 (U.S. CL. 38).

FIRST USE 5-20-1912; IN COMMERCE
5-20-1912.
OWNER OF U.S. REG. NOS. 874,303, 1,394,409
AND OTHERS.

SER. NO. 74-060,226. FILED 5-17-1990.

ELISSA ROSENBURGH, EXAMINING ATTOR-
NEY

Int. Cl.: 41

Prior U.S. Cl.: 107

United States Patent and Trademark Office

Reg. No. 1,803,468

Registered Nov. 9, 1993

**SERVICE MARK
PRINCIPAL REGISTER**



UNIVERSAL CITY STUDIOS, INC. (DELA-
WARE CORPORATION)
100 UNIVERSAL CITY PLAZA
UNIVERSAL CITY, CA 91608

FOR: ENTERTAINMENT SERVICES;
NAMELY, PRODUCTION AND DISTRIBUTION
OF A VARIETY OF MOTION PICTURES AND
TELEVISION PROGRAMS FOR PRESENTA-
TION OVER TELEVISION AND IN THEA-
TERS, IN CLASS 41 (U.S. CL. 107).

FIRST USE 5-25-1990; IN COMMERCE
5-25-1990.

THE LINING IN THE DRAWING IS A FEAT-
URE OF THE MARK AND DOES NOT REP-
RESENT COLOR.

SER. NO. 74-367,629, FILED 3-12-1993.

GERALD C. SEEGARS, EXAMINING ATTOR-
NEY

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50



United States Patent and Trademark Office

Reg. No. 1,918,128

Registered Sep. 12, 1995

**TRADEMARK
PRINCIPAL REGISTER**

UNIVERSAL INTERACTIVE STUDIOS

UNIVERSAL CITY STUDIOS, INC. (DELA-
WARE CORPORATION)
100 UNIVERSAL CITY PLAZA
UNIVERSAL CITY, CA 91608

FOR: INTERACTIVE VIDEO GAME PRO-
GRAMS AND INTERACTIVE VIDEO GAMES
OF VIRTUAL REALITY COMPRISED OF COM-
PUTER HARDWARE AND SOFTWARE, IN
CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 5-10-1994; IN COMMERCE
5-10-1994.

OWNER OF U.S. REG. NOS. 1,095,505, 1,646,420
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "INTERACTIVE", APART
FROM THE MARK AS SHOWN.

SER. NO. 74-530,174, FILED 5-27-1994.

ALAN ATCHISON, EXAMINING ATTORNEY

**TTAB NOTICE CONCERNING CORRESPONDENCE ADDRESS
(TRADEMARK RULE 2.18)**

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.

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Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

❖ DECISION; RECONSIDERATION; APPEAL
TTAB Deliberation. Writing of Opinion and Decision in due course.

❖ Request for rehearing, reconsideration or modification, if filed, due within one month. Brief

in opposition due within 15 days. 37 CFR 2.129(c).

❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).

NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet

FOOTNOTES

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be **damaged by registration of the mark** and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$200 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-in-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

ADDRESSES AND TELEPHONE

All papers not requiring a fee should be mailed to:

**Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513**

NOTE: For papers with fee, use "Box TTAB Fee"

TTAB Office Location and Telephone Number

**2900 Crystal Drive
South Tower, Suite 9B40
Arlington, Virginia 22202-3513**

Telephone: (703) 308-9300

United States Patent and Trademark Office

Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

If Undeliverable Return in Ten Days

OFFICIAL BUSINESS

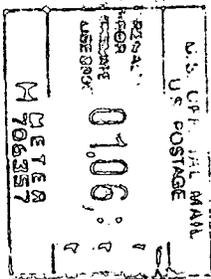
PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER

91153683

VALEN BROST
770 SOUTHWOOD # 1
INCLINE VILLAGE, NV 89451

FIRST CLASS



NO MAIL
RETURNED TO SENDER