TTAB

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

In re Trademark Application Serial No. 76/499,086
Filed: March 20, 2003
Trademark: COBRA DESIGN
Published in the *Official Gazette* at TM 345 on November 18, 2003

11-12-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #11

FORD MOTOR COMPANY Opposer, v. HASBRO, INC. Applicant.	Opposition No. 91160618

APPLICANT'S MOTION TO SET ASIDE DEFAULT
AND REINSTATE AMENDED APPLICATION

Applicant submits this Motion to Set Aside Default and Reinstate Amended Application for its mark COBRA DESIGN. Applicant has obtained consent for this motion from Opposer through its attorney, Elizabeth F. Janda, Esq., of Brooks & Kushman P.C.

Opposer filed a Notice of Opposition for the above mark on or around May 17, 2004. (Attached hereto as Exhibit 1). Since then, Applicant and Opposer have been in discussion to settle this opposition proceeding. Settlement was reached in June 2004, when Opposer agreed to withdraw its Notice of Opposition if Applicant agreed to amend the identification of goods on the subject application to read "toy action figures, toy military vehicles and accessories for use therewith." Applicant filed an Amendment After Publication, with Opposer's consent, on or around September 14, 2004. (Attached hereto as Exhibit 2). The parties then filed a Stipulated Withdrawal of Opposition Without Prejudice with the TTAB on or

around September 20, 2004. (Attached hereto as Exhibit 3). The parties believed that they had resolved this matter, and that the amended application for Hasbro's COBRA DESIGN mark would be approved.

Applicant thereafter received, on or around September 24, 2004, a notice from the Trademark Trial and Appeal Board that judgment by default was entered against it, that the opposition was sustained, and that registration was refused. (Attached hereto as Exhibit 4). Applicant did not respond to the prior Notice of Default, dated August 3, 2004, because it mistakenly believed that, based on the settlement, the Opposition was being withdrawn by Opposer's attorneys in late June 2004.

Applicant, via its counsel Sneha Desai, Esq., spoke to Board Attorney Karen Kuhlke, Esq. to determine the proper way to proceed from this point forward. Ms. Kuhlke advised that, if Applicant still had the consent of Opposer, the best way to proceed would be to file a motion to set aside the default and reinstate the application. Applicant has spoken to Opposer's counsel, Elizabeth F. Janda Esq., and has obtained consent to set aside the default and reinstate the amended application. The written consent is indicated below.

Applicant therefore hereby respectfully requests that the Board set aside the default judgment and reinstate the application as amended in Exhibit 2.

Dated: New York, New York
November 10, 2004

PATTERSON, BELKNAP, WEBB & TYLER LLP

By: Sneha Desai

Kim J. Landsman
Sneha Desai
Attorneys for Hasbro, Inc.
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000

1116633v1

CONSENT OF THE OPPOSER

Ford Motor Company consents to the motion to set aside the default in Opposition no. 91160618, and to reinstate the amended application S.N. 76/499, 086 filed by Hasbro, Inc. as referenced above.

FORD MOTOR COMPANY

By: _____
Elizabeth F. Janda, Esq.
BROOKS KUSHMAN P.C.
Attorney for Ford Motor Company

Dated: November 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2004, I caused a copy of the foregoing APPLICANT'S MOTION TO SET ASIDE DEFAULT AND REINSTATE AMENDED APPLICATION to be served by depositing a true and correct copy thereof enclosed in a sealed envelope, first class mail, postage prepaid, in a mail depository maintained by the U.S. Postal Service upon the following attorneys for the Opposer, Ford Motor Company:

Elizabeth F. Janda, Esq.
Brooks & Kushman P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075

Lorri Emanu

1116633v1

CERTIFICATE OF MAILING -- EXPRESS LABEL CERTIFICATION

"Express Mail" Label No. **EV 594446844US** Date of Deposit November 10, 2004.

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the U.S. Patent and Trademark Office, Commissioner for Trademarks, 600 Dulany Street, Arlington, VA Alexandria, VA 22314; **ATTN.: TTAB – NO FEE**.

Lorri Emanu

RECYCLED

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

In re Trademark Application Serial No. 76/499,086

Filed: March 20, 2003

Trademark: COBRA DESIGN

05-17-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Published in the *Official Gazette* at TM 345 on November 18, 2003

FORD MOTOR COMPANY	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
HASBRO, INC.	)	
	)	
Applicant.	)	

CERTIFICATION UNDER 37 C.F.R. § 1.10

I hereby certify that this NOTICE OF OPPOSITION and any attachments referred to as attached therein are being deposited on May 17, 2004 under Express Mail Label No. EV 419313298 US with the United States Postal Service in an envelope as "Express Mail Post Office to Addressee" addressed to: Box TTAB- FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Krisanne Schmidt
Print Name of Person Signing

Krisanne Schmidt
Signature

NOTICE OF OPPOSITION

05/19/2004 JBROOKS1 00000082 061510 76499086
01 FC:6402 300.00 DA

BOX TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

FORD MOTOR COMPANY ("FORD"), a Delaware corporation with a place of business at The American Road, Dearborn, Michigan 48121, believes that it is and will continue to be damaged by the Applicant's registration of the mark "COBRA DESIGN" "toy action figures, toy vehicles and accessories for use therewith" in Class 28 and hereby opposes the same.

As grounds for opposition, the Opposer alleges as follows:

1. The Applicant, HASBRO, INC., is seeking to register the mark "COBRA DESIGN" as a trademark for "toy action figures, toy vehicles and accessories for use therewith" in Class 28, as is evidenced by the publication of the mark in the *Official Gazette* at Page TM 345 of the November 18, 2003 issue. This application was filed on March 20, 2003.

2. The Opposer, FORD, designs, develops, manufactures, services, repairs, and sells automobiles and parts therefor and related products and services, and licenses some of its marks for use on toy vehicles.

3. The Opposer has used the mark "COBRA" from a date at least as early as 1962 in connection with its vehicles.

4. The Opposer has used the mark since at least as early as 1968 on toys, including toy vehicles.

5. The Opposer is the owner of U.S. Trademark Registration No. 2,022,759 for the mark "COBRA DESIGN" for toy replicas of historic automobiles and hobby kits for the construction of such replicas in International Class 28. This registration issued January 7, 1997, and is incontestable, valid and subsisting, uncancelled and unrevoked.

6. The Opposer is the owner of U.S. Trademark Registration No. 2,022,758 for the mark "COBRA" for toy replicas of historic automobiles and hobby kits for the construction of such replicas in International Class 28. This registration issued December 17, 1996, and is incontestable, valid and subsisting, uncancelled and unrevoked.

7. The Opposer is the owner of U.S. Trademark Registration No. 2,240,572 for the mark "COBRA DESIGN" for toys, namely, miniature models of vehicles, toy vehicles,

hobby kits for toy vehicles, hobby kits for the construction of toy vehicles, radio controlled toy vehicles, collectable toy cars and Christmas ornaments in International Class 28. This registration issued April 20, 1999, and is valid and subsisting, uncancelled and unrevoked.

8. The Opposer is the owner of U.S. Trademark Registration No. 807,185 for the mark "COBRA" for passenger automobiles and components thereof in International Class 12. This Registration issued April 19, 1986, and is incontestable, valid and subsisting, uncancelled and unrevoked.

9. The Opposer is the owner of U.S. Trademark Registration No. 1,562,071 for the mark "COBRA" for automobile engines and engine parts in International Class 12. This registration issued October 24, 1989, and is incontestable, valid and subsisting, uncancelled and unrevoked.

10. The Opposer owns additional U.S. Trademark Registrations for marks incorporating "COBRA" and/or "COBRA DESIGN" in a number of classes, including 12, 28, 6, 9, 14, 25, 26, and 27.

11. The Opposer has expended considerable effort and expense in promoting its "COBRA" and "COBRA DESIGN" marks and the goods associated with these marks, with the result that the purchasing public has come to know and recognize the products of the Opposer by this mark. The Opposer has an exceedingly valuable good will established in its "COBRA" and "COBRA DESIGN" marks.

12. In 1996, Opposer and Applicant entered into a Trademark Agreement, whereby they consented to certain co-existing registrations. In that Agreement, Applicant agreed not to use "COBRA" standing alone in connection with toy vehicles, and Opposer consented to

Applicant's use and registration of certain specific composite marks which incorporated the term "COBRA," but which did not include the subject of Application Serial No. 76/499,086.

13. There is no issue as to priority. The Opposer used the mark "COBRA" and "COBRA DESIGNS" long prior to the alleged use and filing date of the application Serial No. 76/499,086.

14. The mark for which the Applicant seeks registration, namely "COBRA DESIGN" is confusingly similar to Opposer's "COBRA" and "COBRA DESIGN" marks and both parties' marks are used on toys, namely, toy vehicles.

15. Since the mark and goods as described in the application are closely related to the Opposer's mark and goods/services, confusion and deception as to the origin of the Applicant's goods bearing the mark would occur, all to the damage and detriment of the Opposer. Such use would cause confusion in the trade resulting in damage and injury to the Opposer.

16. The Applicant's use or registration of the mark "COBRA DESIGN" in connection with its designated goods, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the Applicant with the Opposer, or as to the origin, sponsorship or approval of the Applicant's services by the Opposer.

17. If the Applicant were granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use of the "COBRA DESIGN" mark in connection with its products and services. Such registration would be a source of injury and damage to the Opposer.

WHEREFORE, the Opposer, FORD MOTOR COMPANY, prays that Application Serial No. 76/499,086 for the mark "COBRA DESIGN" be rejected, denied and refused.

A duplicate copy of this Notice of Opposition is enclosed pursuant to 37 C.F.R. § 2.104(a). The filing fee of $300 and any additional fees as may be required under 37 C.F.R. § 2.6(a)(17), are to be charged to Ford Motor Company Account No. 06-1510. A third copy of the Notice of Opposition is enclosed for accounting purposes.

Respectfully submitted,

By _____
Elizabeth F. Janda
Robyn S. Lederman
Attorneys/Agents for Applicant

Date: May 17, 2004

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Our File: FMCT 15355 OC

RECYCLED

EXPRESS MAIL LABEL NO. EL 819295975

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Post Office to Addressee, postage prepaid, under 37 CFR 1.10, addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, this 13th day of ~~June~~ SEPTEMBER, 2004.

Paul n. Vanasse
CERTIFIER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

HASBRO, INC.

Serial No: 76/499,086 Examiner: Laura Kovalsky

Filed: March 20, 2003 Law Office: 110

Published: November 18, 2003

TM: MISCELLANEOUS Design

COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

AMENDMENT AFTER PUBLICATION

In connection with the above-identified application, Applicant respectfully requests that the Examiner amend the identification of goods of the subject application to read as follows:

--toy action figures, toy military vehicles and accessories for use therewith.--

REMARKS

As Applicant merely seeks to limit certain goods covered under the subject application, republication of the subject mark is not required. As such, the Examiner is requested to approve this Amendment and corresponding action is courteously solicited.

Ford Motor Company, the Opposer of this application (Opposition number 91160618), consents to this amendment and Applicant submits below the written consent said Opposer.

Respectfully submitted,

HASBRO, INC.

By_____
Kurt R. Benson
Attorney of Record

Dated: June 24, 2004

CONSENT OF OPPOSER

Ford Motor Company, consents to the amendment of the identification of goods of this Application (Serial No. 76/499,086) as referenced above.

FORD MOTOR COMPANY

By_____
Elizabeth F. Janda, Esq.
BROOKS & KUSHMAN P.C.
Attorney for Ford Motor Company

Dated: July 29, 2004

RECYCLED

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

In re Trademark Application Serial No. 76/499,086

Filed: March 20, 2003

Trademark: COBRA DESIGN

Published in the *Official Gazette* at TM 345 on November 18, 2003

FORD MOTOR COMPANY	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91160618
	)	
HASBRO, INC.	)	
	)	
Applicant.	)	

STIPULATED WITHDRAWAL WITHOUT PREJUDICE

BOX TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

The parties hereto stipulate to the withdrawal of this Opposition without prejudice pursuant to 37 C.F.R. § 2.106(c).

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8
I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box TTAB - No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:

September 20, 2004	Elizabeth F. Janda	Elizabeth F. Janda
Date of Deposit	Name of Person Signing	Signature

U.S. SERIAL NO. 76/499,086

TRADEMARK

STIPULATED HERETO:

BROOKS & KUSHMAN P.C.

By _____
Elizabeth F. Janda
Attorneys/Agents for Opposer
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Dated: 9-20-04

HASBRO, INC.

By _____
Kurt R. Benson
Paul N. Vanasse
Attorneys/Agents for Applicant
1027 Newport Avenue
Pawtucket, Rhode Island 02862

Dated: 9-13-2004

Our File: FMCT 15355 OC

RECYCLED

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

lg/dmd

Mailed: September 20, 2004

Opposition No. 91160618

FORD MOTOR COMPANY

v.

HASBRO, INC.

On August 3, 2004, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

By the Trademark Trial and Appeal Board