

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

In the Matter of Application Serial No. 78/359,895  
Filed: January 30, 2004  
For the Mark: MEMORY MAGIC in International Class 28  
Published in the Official Gazette: May 10, 2005 at TM 330

_____	:	
HASBRO, INC.	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
CREATIVE ACTION LLC,	:	
	:	
Applicant.	:	
_____	:	

Commissioner for Trademarks  
Trademark Assistance Center  
600 Dulany Street  
Alexandria, VA 22313

ATTN.: BOX TTAB - FEE

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NOTICE OF OPPOSITION

Hasbro, Inc. ("Opposer") believes that it will be damaged by the registration of the trademark covered by Application Serial No. 78/359,895 (the "Application") filed on January 30, 2004, by Creative Action LLC (the "Applicant"), and hereby opposes the registration of the trademark.

Opposer is a Rhode Island corporation having its headquarters and its principal place of business at 1027 Newport Avenue, Pawtucket, Rhode Island 02862-1059.

Applicant, upon information and belief, is a Ohio limited liability company having a place of business at 680 North Portage Path, Akron, Ohio 44303.



08-29-2005

Opposer has obtained the necessary extensions of time to file this Notice of Opposition and such Notice is timely made.

As grounds for opposition, it is alleged that:

1. As illustrated in the Official Gazette dated January 30, 2005 at page TM 330, Applicant seeks to register and use the trademark "MEMORY MAGIC" for "card games" in International Class 28, alleging an intent to use.

2. Opposer markets and sells the world-famous MEMORY® card games. Opposer is the owner of certain trademarks in these games that are the subject of the following federal registrations issued on the Principal Register, all of which are in full force and effect, as shown by the records of the U.S. Patent and Trademark Office (collectively, the "Trademarks"), including but not limited to:

A. Registration No. 2,894,970 for MEMORY:

Registered on January 1, 1966, in International Class 28 for "card games"

B. Registration No. 834,282 for MEMORY:

Registered on August 29, 1967 in International Class 28 for "equipment comprising cards with many matching pairs of designs for playing a matching card game."

3. Opposer or its predecessors in interest began using the MEMORY® mark in commerce on January 1, 1966, and has used the Trademark in the United States since then by marketing and selling the world-famous MEMORY® card games and related accessories. In addition to the original MEMORY® card game, Hasbro's line of MEMORY® card games includes themed versions of the famous game.

4. Opposer or its predecessors in interest began selling the MEMORY® card games in commerce in the United States in 1966 and have used the Trademark in United States commerce in substantially identical form in connection with the world-famous MEMORY® card games for nearly 40 years.

5. No issue of priority exists between Opposer's Trademark and the alleged "MEMORY MAGIC" trademark. Opposer's date of adoption and first use precedes Applicant's, as the Applicant has not yet used the mark in commerce, and has sought registration based only on an intent to use.

6. Since adoption and first use of Opposer's Trademark, Opposer has marketed and is presently marketing its MEMORY® card games throughout the United States. Opposer's game is identified as originating from Opposer through the use of the Trademark on the packaging and accessories for the game. The MEMORY® trademark is readily recognizable and closely associated in the mind of the public with MEMORY® card games.

7. Since the adoption and first use of Opposer's MEMORY® card games and Trademark, Opposer has expended and continues to expend substantial time, money, and effort in promoting its Trademark to identify Opposer as the source of the toy displaying this Trademark. Since 1966, Opposer has sold approximately forty million MEMORY® games, and has spent millions of dollars advertising and promoting the MEMORY® brand. As a result, Opposer believes and alleges that the public has come to recognize MEMORY® card games as emanating from a single source.

8. The significant sales of the MEMORY® card games and accessories have been supported by extensive advertising and promotions, all of which typically feature the Trademark. By virtue of its efforts and expenditure of considerable sums for promotional

activities and by virtue of the excellence of its goods, Opposer has gained a valuable reputation for its MEMORY® card games and the related Trademark and has developed valuable goodwill with respect to that Trademark.

9. By virtue of the widespread use by Opposer of the MEMORY® trademark, Opposer is entitled to a broad scope of protection for the mark.

10. Applicant's alleged "MEMORY MAGIC" trademark is confusingly similar to Opposer's famous MEMORY® trademark. Applicant intends to use its alleged "MEMORY MAGIC" trademark for "therapeutic game in the nature of a trivia game and a bingo game for engaging persons with memory loss consisting of game cards that contain answers to questions and calling cards that contain questions and information related thereto" in International Class No. 28. Its "card game" is a similar game in the same class as Opposer's card games.

11. Registration of the alleged "MEMORY MAGIC" trademark will lead the public to incorrectly conclude that Applicant or its services displaying the alleged "MEMORY MAGIC" trademark have been authorized, sponsored or licensed by Opposer. Accordingly, issuance of any Registration to Applicant for the "MEMORY MAGIC" trademark is contrary to the provisions of 15 U.S.C. § 1052(a), and will result in damage to Opposer and the public.

12. The alleged " MEMORY MAGIC " trademark is sufficiently similar to the Opposer's Trademark in the words used and the commercial impression it creates so as to cause confusion, to cause mistake or to deceive the public as to the origin of Applicant's services bearing that trademark. Therefore, registration of said trademark is prohibited by 15 U.S.C. § 1052(d).

13. The alleged "MEMORY MAGIC " trademark is deceptively similar to and likely to dilute the distinctive quality of Opposer's famous mark and hamper its ability to function as a source-identifying trademark. Therefore, registration of said trademark is prohibited by 15 U.S.C. § 1125(c)(1).

14. Registration of the alleged " MEMORY MAGIC " trademark would constitute prima facie evidence of the validity of such Registration, of Applicant's ownership of that trademark, and of Applicant's exclusive right to use said trademark pursuant to the provisions of 15 U.S.C. § 1057(b). Such registration would be a source of damage and injury to the Opposer and to the public and would be contrary to the principles of registration set out in 15 U.S.C. § 1051, et seq.

15. Registration of the alleged " MEMORY MAGIC " trademark would be incorrect and improper in view of the requirements of the Trademark Act of 1946, as amended, including specifically, but not limited to, the provisions of 15 U.S.C. §§ 1051, 1052 and 1127.

WHEREFORE, Opposer prays that this Opposition be sustained, and that registration to Applicant for the "MEMORY MAGIC" trademark in International Class 28 be denied.

Please recognize Kim J. Landsman and Michael D. Sant'Ambrogio, Patterson Belknap Webb & Tyler LLP, 1133 Avenue of the Americas, New York, NY 10036-6710, both members of the Bar of the State of New York, as the attorneys for the Opposer in this proceeding. All communications are to be directed to Michael D. Sant'Ambrogio at the address identified above.

Opposer hereby files this Notice of Opposition in triplicate. Enclosed herewith is PBW&T Check No. 148780 in the amount of \$300.00 to cover the official statutory filing fee. If the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee is due during the prosecution of this opposition, the TTAB and/or PTO is authorized to charge the underpayment to Deposit Account No. 16-0633.

Dated: August 26, 2005

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

By  \_\_\_\_\_

Kim J. Landsman, Esq.

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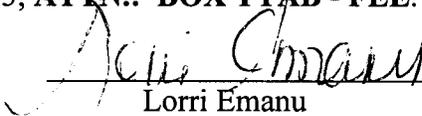
Attorneys for Opposer Hasbro, Inc.

**Certificate of Express Mail Under 37 CFR § 1.10**

Express Mail mailing label number: **EV 560850119 US**

Date of Deposit: August ~~21~~<sup>29</sup>, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, Trademark Assistance Center, 600 Dulany Street, Alexandria, VA 22313, **ATTN.: BOX TTAB - FEE.**

  
Lorri Emanu