

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

TTAB

HASBRO, INC.

Opposer,

v.

CREATIVE ACTION LLC,

Applicant.

Opposition No. 91/166,487

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

ATTN: BOX TTAB - FEE

ANSWER TO COUNTERCLAIMS

Hasbro, Inc. ("Opposer"), through its undersigned counsel, answers the counterclaims of Applicant Creative Action LLC ("Applicant") as follows:

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Admits the allegations in paragraph 21.

22. Admits that Opposer is the owner of Registration No. 2,894,970 in International Class 28 for "card games."



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23. Admits that Opposer is the owner of Registration No. 834,282 in International Class 28 for "equipment comprising cards with many matching pairs of designs for playing a matching card game."

24. Admits that Opposer advertises and sells card games in commerce using the MEMORY® trademark and denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 24 as to what Applicant considers to be "a stylized form of the word MEMORY."

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, except admits that Hasbro's line of MEMORY® card games consists of matching card games in which the players place a number of cards face down and then take turns revealing pairs of cards at a time. If a player reveals a pair of cards that do not have the same design or distinguishing characteristic, that player must place the cards face down in their original position and that player's turn is over. If, however, a player reveals a pair of cards that do have the same design or distinguishing characteristic, that player takes the matching pair out of play, keeps them, and then continues by selecting another pair of face down cards. The process is repeated until all of the cards are taken out of play by the players. The winner is the player who has taken the most matching pairs of cards out of play. The MEMORY® card games are excellent practice for developing concentration and memory skills.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Avers that the allegations in paragraph 28 are legal assertions that need not be admitted or denied, and respectfully refers the Court to the applicable statute and caselaw for a determination of "generic" terms.

29. Avers that the allegations in paragraph 28 are legal assertions that need not be admitted or denied, respectfully refers the Court to the applicable statute and caselaw for a determination of "generic" terms, and otherwise denies the allegations in paragraph 29.

30. Denies the allegations in paragraph 30.

31. Denies the allegations in paragraph 31.

32. Denies the allegations in paragraph 32.

FIRST AFFIRMATIVE DEFENSE

33. Applicant fails to state a counterclaim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

34. The registrations for the MEMORY[®] marks are valid, subsisting, and in full force and effect.

THIRD AFFIRMATIVE DEFENSE

35. Any entitlement to relief for Applicant is barred by the doctrine of waiver, unclean hands, estoppel and acquiescence.

FOURTH AFFIRMATIVE DEFENSE

36. Hasbro hereby gives notice that it intends to rely on such other affirmative defenses as may become available or apparent during the course of the opposition and reserves the right to amend its answer to the counterclaims assert any such defense.

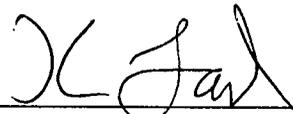
WHEREFORE, Opposer prays that this Opposition be sustained, that Applicant's counterclaims be dismissed, and that registration to Applicant for the "MEMORY MAGIC" trademark in International Class 28 be denied.

Opposer hereby files this Answer to Counterclaims in triplicate. Enclosed herewith is PBW&T Check No. 152646 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: January 17, 2006

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

By  _____

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Carole Diker

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Carole Diker