

ESTTA Tracking number: **ESTTA357174**

Filing date: **07/09/2010**

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

Proceeding	91166487
Party	Plaintiff Hasbro, Inc.
Correspondence Address	KIM J. LANDSMAN PATTERSON BELKNAP WEBB & TYLER LLP 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036-6710 UNITED STATES IPDOCKETING@PBWT.COM,kjlandsman@pbwt.com,cfrost@pbwt.com
Submission	Motion for Summary Judgment
Filer's Name	Kim J. Landsman
Filer's e-mail	IPDOCKETING@PBWT.COM, CFROST@PBWT.COM
Signature	/Kim J. Landsman/
Date	07/09/2010
Attachments	Frost Declaration in Support of Amended Cross Motion for SJ.pdf (61 pages) (8105056 bytes)

**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. 91/166,487
	:	
CREATIVE ACTION LLC,	:	
	:	
Applicant.	:	

DECLARATION OF CLAIRE D. FROST

CLAIRE D. FROST, under penalty of perjury, declares as follows:

1. I am an associate at the firm of Patterson Belknap Webb & Tyler LLP, attorneys for Opposer Hasbro, Inc. (“Hasbro”), and am a member of the bar of the State of New York. I submit this declaration based on personal knowledge in support of Opposer’s amended cross motion for summary judgment. Its purpose is to place in the record certain information regarding the parties’ products.

2. Attached as Exhibit 1 are photographs of Applicant’s Memory Magic product, marked as Exhibit C in the Deposition of Dr. Ronni Sterns, and true and correct copies of the instructions and Memory Magic promotional materials contained therein. The photographs

contained in this exhibit were taken by me on June 30, 2010. We can, if the Board wishes, provide a sample but our understanding from Andrew Baxely is that photographs are preferred.

3. Attached as Exhibit 2 is a true and correct copy of the November 3, 2009, Declaration of Peter Kristoffy, Hasbro's Director of Global Brands-Games, which was submitted in opposition to Creative Action's motion to compel and in support of Hasbro's motion to lift the stay in place at that time. Kristoffy's Declaration provides basic information about Hasbro's MEMORY® game and is a matter of record in this proceeding.

4. Attached as Exhibit 3 are true and correct copies of relevant excerpts from the transcript of the October 20, 2009 deposition of Dr. Ronni Sterns.

5. Attached as Exhibit 4 is a true and correct copy of a printout from Creative Action's website, advertising Memory Magic as a therapeutic product.

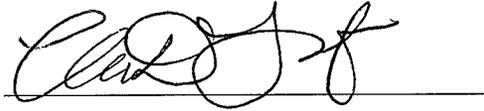
6. Creative Action's website links to a document listing the diagnostic codes for which Memory Magic is reimbursable under Medicare and Medicaid. The link appears under the heading "Therapeutic Benefits & ICD9 Codes for Reimbursement." Attached as Exhibit 5 is a true and correct copy of a printout from Creative Action's website containing this link

7. Attached as Exhibit 6 is a true and correct copy of the document, obtained through the link on Creative Action's website, listing the diagnostic codes for which Memory Magic is reimbursable under Medicare and Medicaid.

8. Attached as Exhibit 7 is a true and correct copy of Creative Action LLC's Response to Opposer's First Set of Interrogatories to Applicant.

I declare under penalty of perjury that the foregoing is true and correct.

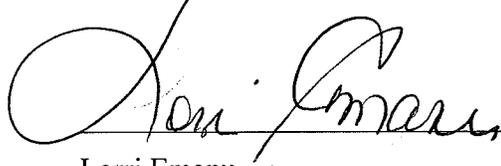
Executed on July 9, 2010, in New York, New York.

A handwritten signature in black ink, appearing to read "Claire D. Frost", is written over a horizontal line. The signature is stylized and cursive.

Claire D. Frost

Electronic Mailing Certificate

I hereby certify that the **Declaration of Claire D. Frost** is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board ("ESTTA") on this 9th day of July, 2010.

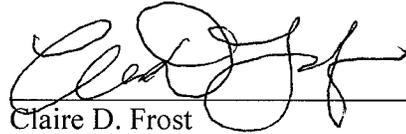
A handwritten signature in black ink, appearing to read "Lorri Emanu", written over a horizontal line.

Lorri Emanu

Certificate of Service

I hereby certify that a copy of the **Declaration of Claire D. Frost** was served by electronic mail on July 9, 2010, on the following counsel for the Applicant:

Wayne D. Porter, Jr., Esq.
Law Offices of Wayne D. Porter, Jr.
1370 Ontario Street, Suite 600
Cleveland, Ohio 44133
porter@porterlaw.com

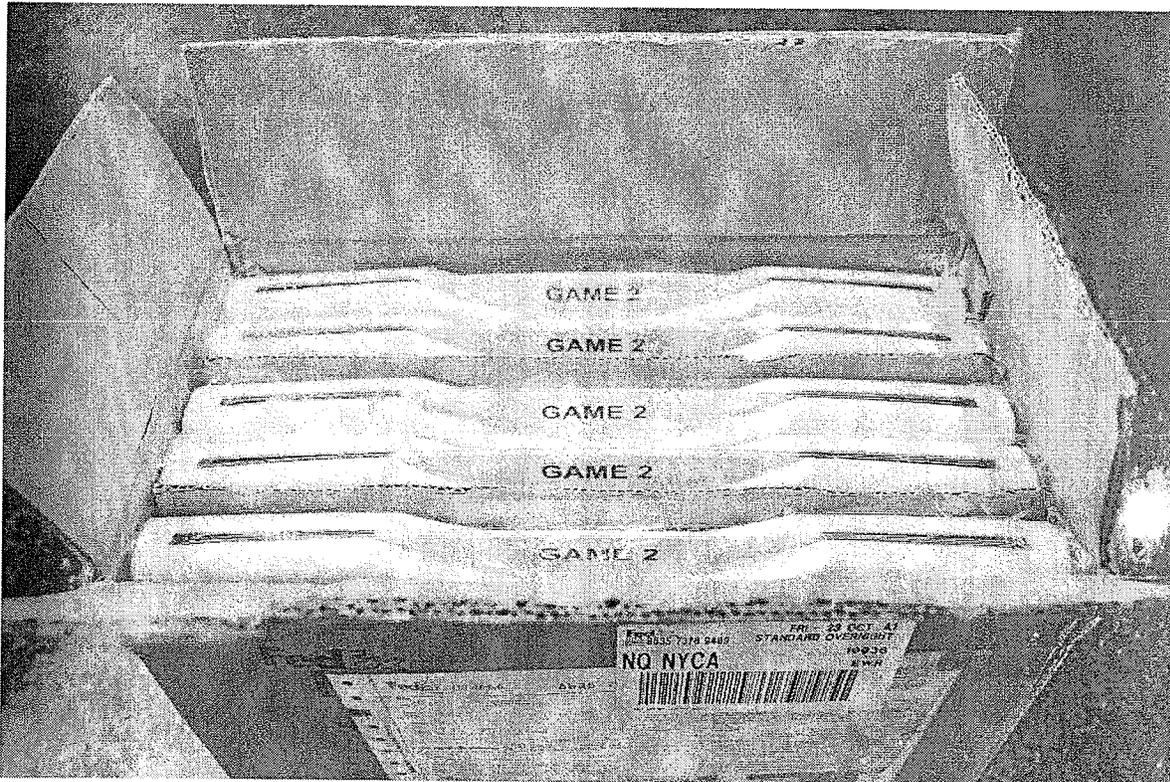
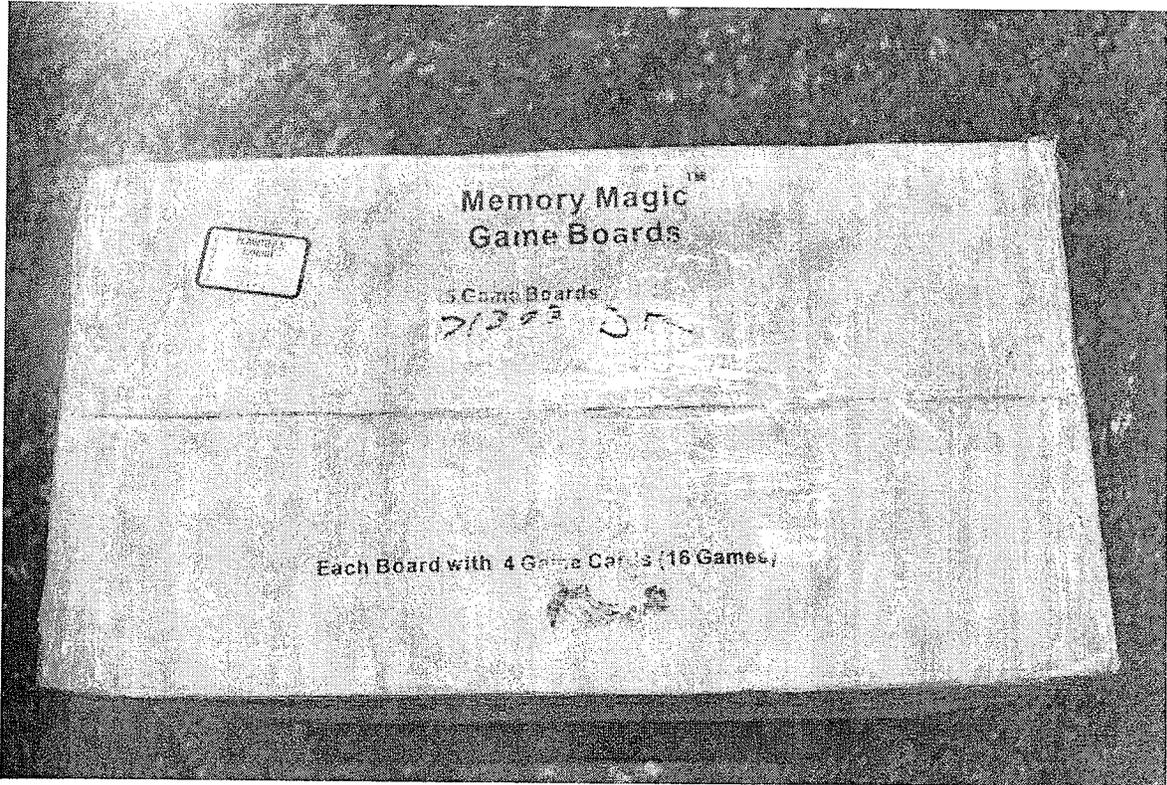


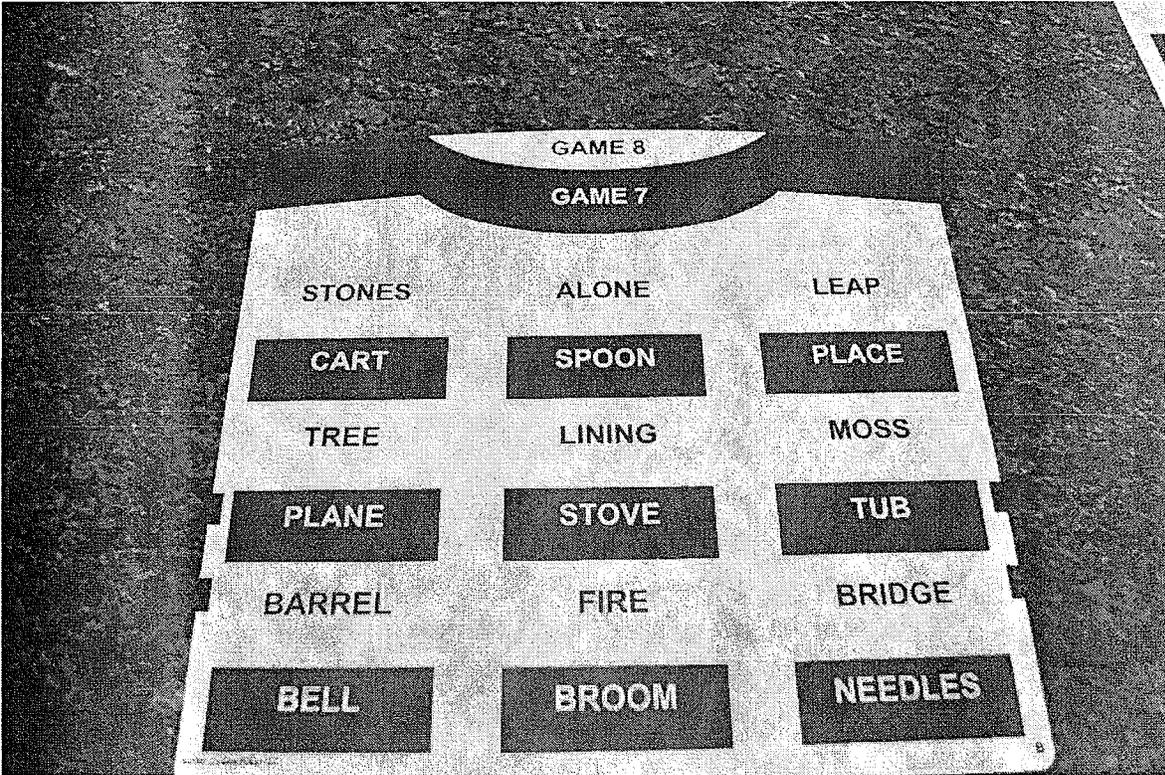
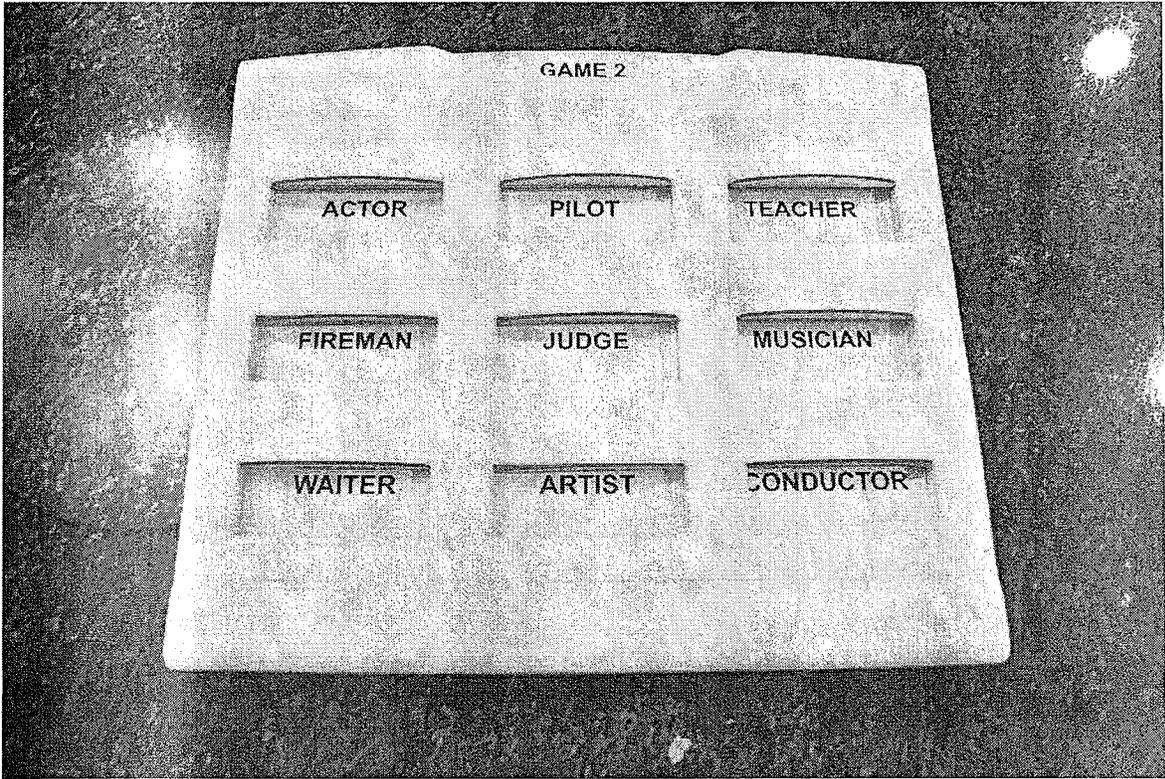
Claire D. Frost

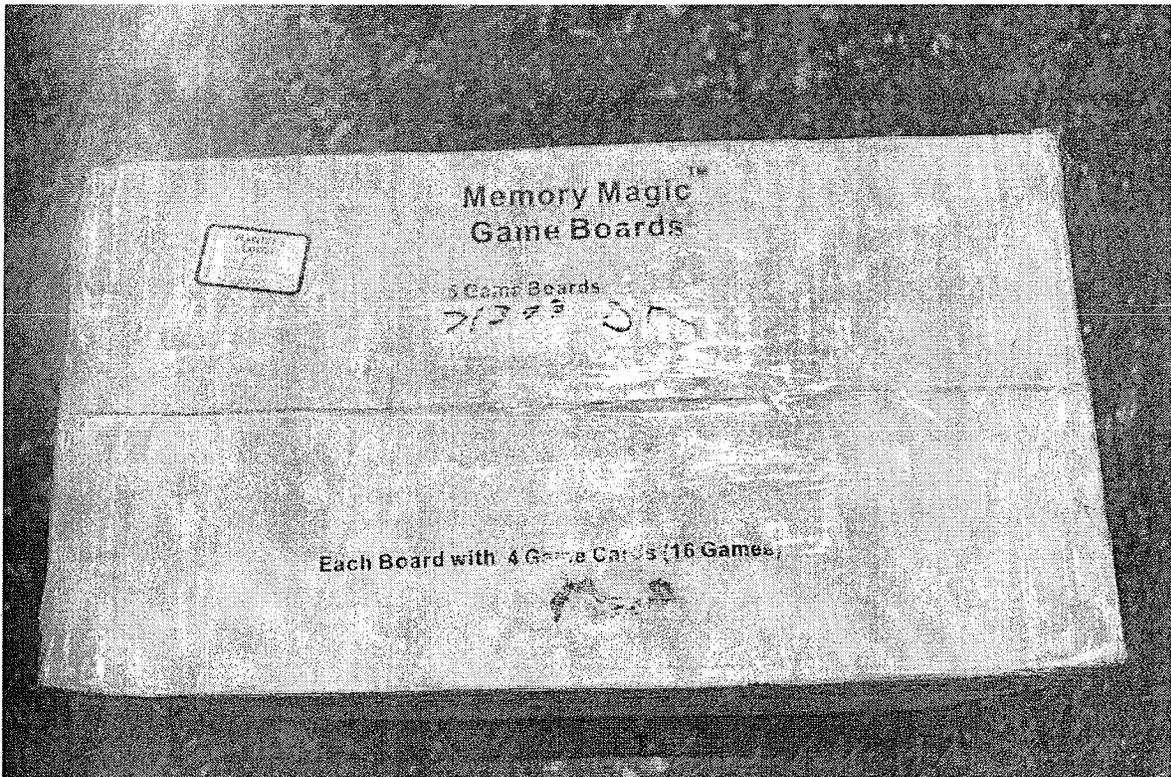
Frost Declaration

Exhibit 1

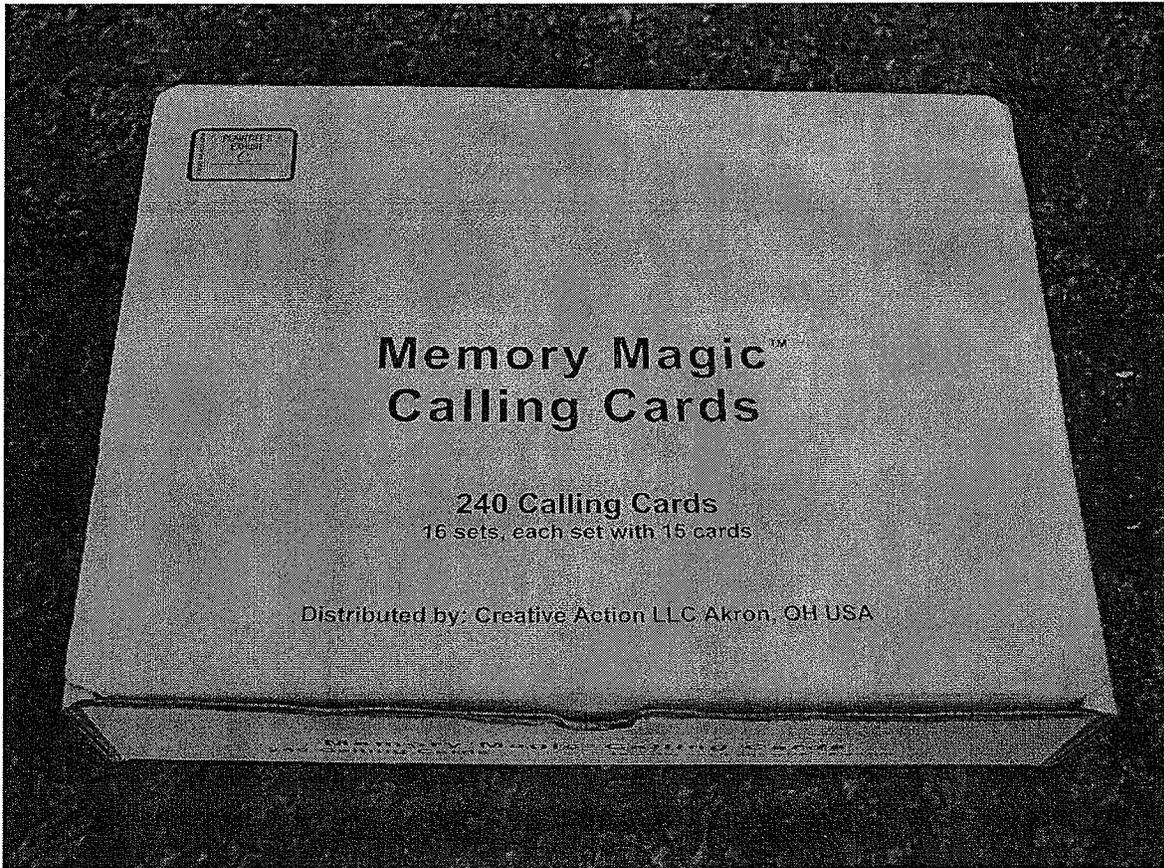












**A PERSON WHO
GROWS CROPS
IS A...**

A PERSON WHO GROWS CROPS IS A

FARMER

GAME 2: ALL IN A DAY'S WORK

RHYME: ARMOR

TALKING POINTS

CAN YOU NAME SOME THINGS FARMERS GROW? (FRUITS, VEGETABLES, NUTS, GRAINS)

CAN YOU NAME SOME ANIMALS THAT LIVE ON FARMS? (COWS, SHEEP, PIGS, CHICKENS)

2-01

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INSTRUCTIONS

Memory Magic™ Activity

Object of the Activity:

The Memory Magic™ Activity is an innovative, therapeutic program that combines trivia with reminiscence. This intervention was developed to provide an interesting and entertaining new activity for persons with memory problems.

Because the activity is based on Montessori educational principles, it compensates for differences in memory ability. For example, the game uses printed clues so players can enjoy a high probability of success.

In addition to providing cognitive stimulation, The Memory Magic™ Activity also provides opportunities for players to work on motor skills when asked to open and close shades and switch from one game to the next.

The object of this activity is to **ENGAGE** the players – to help them share memories with each other and to socialize. The primary idea is to create a “failure-free” experience for the players – **NOT** to “win,” or play the activity “correctly.”

The Memory Magic™ Activity can also be modified to let persons with different levels of memory problems still succeed and enjoy taking part. The activity can be used with an individual or groups of twenty players or more.

About Montessori Based Activities

The Memory Magic™ Activity was created using the Montessori principles of teaching which include the use of everyday materials, structure, demonstration, and self-correction, meaning that the activity gives clues to successful engagement.

Dr. Maria Montessori was the creator of these principles that became known as the “Montessori Method.” Dating back to the early 1900s, Dr. Montessori was determined to help “unteachable” children who lived in the tenements of Rome.

Dr. Montessori believed that these children could truly learn, but just needed a new method of teaching. She developed meaningful activities that built on the abilities that the children had, promoting success, rather than setting these children up for failure.

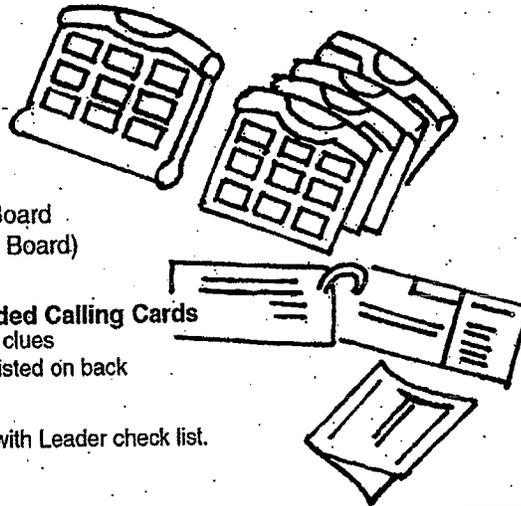
Montessori’s theoretical framework of circumventing deficits can also be applied to older adults with dementia who can still have meaningful experiences.

Montessori-based activities incorporate skills that facilitate Activities of Daily Living, thereby promoting independence. They also focus on breaking tasks down into their simpler, component parts, and building on the remaining strengths that individuals still have.

Please
Check
Package
Items.

SET CONTENTS:

- 10 Game Boards
- 40 Game Cards
Packed 4 per Game Board
(16 Games per Game Board)
- 1 box 240 Double-sided Calling Cards
(15 for each game) with clues
listed on front-answers listed on back
- 1 Instruction Sheet with Leader check list.



NUMBER OF PLAYERS:

With one activity set, up to ten people can play at one time.

The number of players can be increased to 20 or more with the purchase of additional Game Boards/ Game Cards.

(See contact information on back page.)

NUMBER OF ACTIVITY LEADERS:

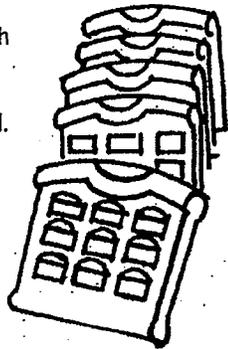
1 to 2 individuals can facilitate the activity.

16 Games: Suggested Games for Levels of Functioning

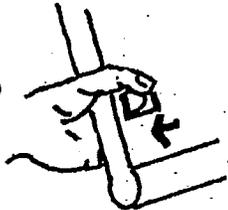
All Levels		Mid-to-High		Low-to-Mid	
Three of a Kind	Game 1	All in a Day's Work	Game 2	Two of a Kind	Game 6
Wisdom of the Ages	Game 3	What's Cooking?	Game 9	Everyday Items	Game 7
Fairy Tales	Game 4	Show Business	Game 10	Opposites	Game 13
Wit and Wisdom	Game 5	Nature's Creatures	Game 15	The Body	Game 16
Words of the Wise	Game 8				
Sing-Along Songs	Game 11				
Pearls of Wisdom	Game 12				
Nursery Rhymes	Game 14				

Preparing the Game Boards

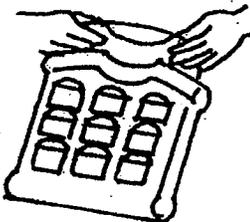
- Each Game Board comes loaded with 4 Game Cards, each printed with 4 games for a total of 16 games. Game numbers are printed at the top center of Game Board as packed. Only the even numbered games are visible.



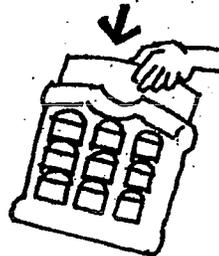
- To select a game not immediately visible, locate the release lever on the back of the Game Board. Slide the lever toward the outside of the Game Board. Then grasping the top of the Game Cards, pull them up together and out of the top slot of the Game Board.



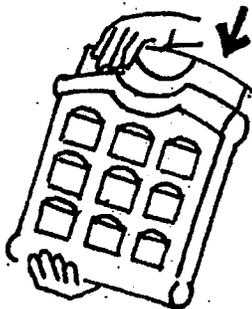
- Place the desired Game Card on top of the other cards. Insert the cards together into the slot located at the top of the Game Board.



- Slide the cards down together until the answers for the desired game are displayed clearly in the Game Board windows.



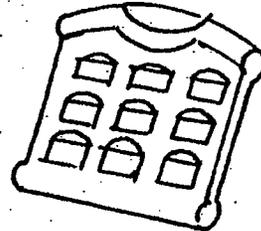
- In order to play 2 consecutive games without staff changing cards, we recommend playing an odd numbered game (1,3,5,etc.) followed by the even numbered game on the same side. Players can easily push down all the cards to bring a new game into view.



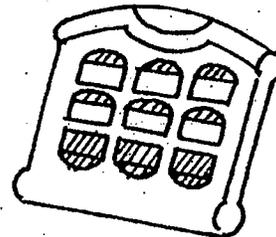
- If you choose to play an even numbered game followed by the odd numbered game on the same side of the card, use the release lever on the back side of the Game Board to pull all the cards up together.



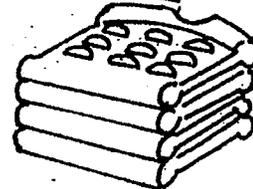
- Make sure all purple shades on each Game Board are raised so that the answers can be clearly seen.



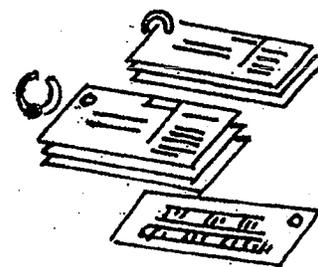
- For lower functioning players, begin the game with 3 or 6 words covered.



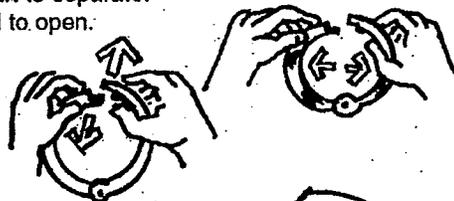
- Distribute a Game Board to each player.



- Select the appropriate set of Calling Cards for the game. Open the ring. Remove cards. Place nearby for use.



- To open ring: Grasp opposite sides. Push apart to separate. Then pull to open.



- Follow the script on page 3.



For best results, **please follow this script every time** when leading the activity.

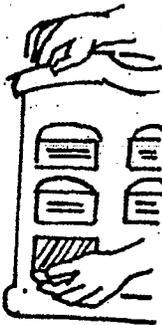
1. Orient players to the game by saying:

"We are going to play a (new) board game today."

"We are going to read a clue. I want you to answer the clue out loud. If one of the words on your Game Board completes the clue, slide the purple shade down to cover that word".

- Demonstrate how to pull the shade down on the Game Board to cover a word then ask:

"Do you have any questions?"

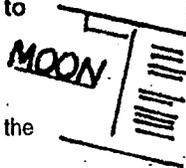


2. Hold up a Calling Card to display the clue printed on the front of the card.

- Read the first clue out loud. Make sure all players understand the game procedure.

- For example, you may say:

"Here is the first clue, Neil Armstrong was the first man to walk on the..."

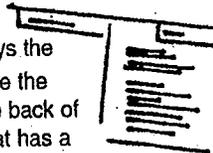


- Be sure to emphasize the fill-in-the-blank nature of the clue by pausing after the last word.

- Encourage players to answer the clue aloud.

3. If no one says the answer aloud, you can read the clue to the players again.

4. If no one still says the answer, you can use the rhyming clue on the back of the Calling Card that has a word that rhymes with the answer.



- So, you next might say:

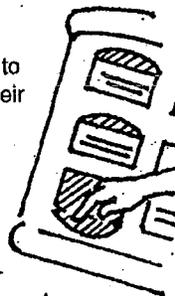
"What rhymes with Noon?"

5. NOW show players the answer to the clue, which is printed on the back of the Calling Card. Read the answer out loud to them.



6. Remind players to slide the purple shade down over the answer if they have it on their Game Board.

- As needed, you may have to prompt players to locate the answer on their Game Board and slide down the shade to cover it.



7. To increase involvement, invite a player to read the next Calling Card clue aloud.

- To ensure that all players heard the clue:

Repeat the clue in a louder voice.

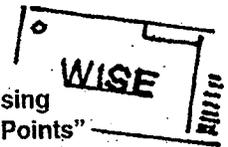
- If necessary, reposition the Calling Card, making sure that all players can see the clue clearly.

8. If no one says the answer out loud:

Go through steps 3, 4 and 5.

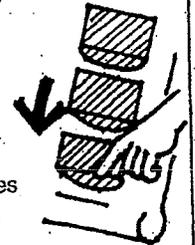
9. After players slide down the appropriate shade to cover the answer:

Encourage discussion using the "Talking Points" listed on the back of the Calling Card.



10. After one or more players have completed a game:

Continue having different players read the remaining Calling Cards and sliding down the shades over the appropriate answers.



11. When a player slides down all the appropriate shades on their Game Board:

Prompt him/her to shout "ALL COVERED!"

12. Game play is complete:

When all players have pulled down all their purple shades.

Checklist for leading the Memory Magic™ Activity

Follow the script on Page 3 every time you play the activity.

1. Hold up the first Calling Card, large print facing the players.
2. Read the first clue aloud, emphasizing the fill-in-the-blank nature of the clue.
3. Allow players to answer the clue.
4. If no one answers, repeat the clue a second time.
5. If still no one answers, use the rhyming clue on the back of the Calling Card.
6. Show players the answer printed on the back of the Calling Card.
7. Instruct players to pull the purple shade down over the answer if they have it on their Game Board.
8. START DISCUSSION USING THE TALKING POINTS ON THE BACK OF THE CALLING CARD ONCE EVERYONE HAS COVERED THE ANSWER.
9. For the remainder of the activity, ALLOW THE PLAYERS TO TAKE TURNS READING THE CLUES ALOUD, and then repeat Steps 3-7.

AT END OF THE ACTIVITY ASK...

“Did you have a good time playing the game?”

“Would you like to play again sometime?”

For in-service training, additional product or customer service please contact:

Creative Action LLC • 680 North Portage Path • Akron, OH 44303
toll-free: 877-281-6336 • tel: 330-867-9978 • fax: 330-867-6899
www.memorymagic.com • www.creativeactionllc.com


Creative Action LLC

© 2005 Creative Action LLC, Akron, OH 44303

The Memory Magic™ Activity was developed by Creative Action LLC in collaboration with the Myers Research Institute of Menorah Park Center for Senior Living. Made possible by Grant # 2R44AG17776 from the National Institutes of Health National Institute on Aging

MMIS01



Look around your facility!

...Uninvolved Residents?

...Frustrated Staff?

...Same Old Programs?

Look what happens with the
Memory Magic™ Program



**Memory
Magic™**
PROGRAM

- Features Montessori Principles
- Intellectually Stimulating
- Person Appropriate
- Meaningful Content

Improving Quality of Life in progressive Care Centers across the U.S.

The Memory Magic™ Program benefits everyone.

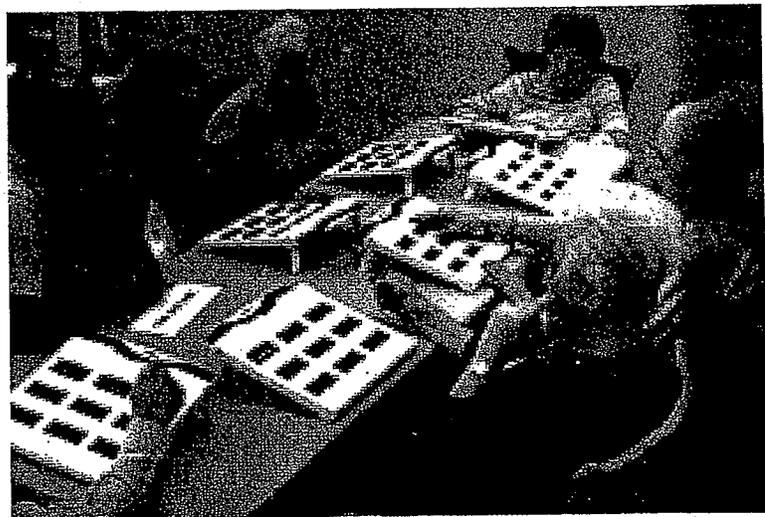
Staff

- Can use with individual or groups of 20
- Only one or two people needed to lead
- Keeps players involved up to one hour
- No pieces to lose
- Quick to set up



Residents

- Promotes use of:
 - Cognitive Abilities
 - Fine and gross motor skills
- Stimulates social interaction
- Reduces disruptive behavior
- Creates failure-free experience



Administrators

- Used for rehabilitation therapy—Increases reimbursement levels
- Achieves quality compliance
- Meets new federal guidelines
- Improves job satisfaction for staff



**For in-service and CEU training,
more product or customer service:**

Toll Free: 1-877-281-6336

Tel: 330-867-9978 | Fax: 330-867-689

www.memorymagic.com


Creative Action LLC
Planning • Development • Research

680 North Portage Path, Akron, Ohio 44303

Creative Action LLC – Home of The Memory Magic™ Program

Made possible by Grant 2R44AG17776 from the National Institutes of Health National Institute on Aging

Frost Declaration

Exhibit 2

**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.

CREATIVE ACTION LLC,

Applicant.

Opposition No. 91/166,487

DECLARATION OF PETER KRISTOFFY

I, Peter Kristoffy declare and state as follows:

1. I am employed by plaintiff Hasbro, Inc. ("Hasbro") as Director of Global Brands-Games. I submit this declaration, based on personal knowledge and on documents kept in the ordinary course of business, in opposition to Creative Action's motion to compel and in support of Hasbro's motion to lift the stay imposed in connection with Applicant's motion. The purpose is to give the Board some basic information about Hasbro's MEMORY[®] line of card matching games.
2. I have responsibility for marketing certain of the Milton Bradley Preschool Games, including Hasbro's MEMORY line of card matching games.

3. Hasbro's predecessor Milton Bradley Company ("Milton Bradley") acquired the United States rights to the MEMORY game from a German company called Otto Maier Verlag Ravensburg (now called Ravensburger A.G.) in 1964. It has been sold continuously since then and has become enormously popular among preschool games.

4. The MEMORY game consists of numerous pairs of matching cards, typically 36 pairs, that feature colorful characters, images, or other artwork on one side. The cards do not have questions or answers and do not use words at all (aside from the trademark on the back of the cards). The players mix the cards up and place them in rows on a flat surface, face down. They then take turns turning any two cards picture-side-up and try to match pairs. If the two cards a player selects are identical, the player has made a match; the player then removes those cards from play and takes another turn. The process is repeated until the players take all of the cards out of play. The player who has taken the most matching pairs of cards out of play is the winner. It is intended to be fun for children, but also competitive.

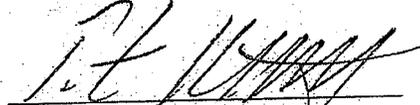
5. Hasbro's MEMORY game is targeted to preschool children, ages 3 to 6, most of whom do not read or do not read well. That is one of the reasons why the cards have no text. The packaging for Hasbro's MEMORY game incorporates bright colors and graphics so that it will appeal to preschool children.

6. Hasbro's MEMORY game is sold through primarily through major chain retailers such as Wal-Mart, Kmart, Target, and Toys 'R Us. It is an inexpensive product, with a suggested retail price of \$6.99.

7. Hasbro's MEMORY game is generally purchased for preschool-age children by parents, caretakers, or relatives.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2009, in East Longmeadow, Massachusetts.



Peter Kristoffy

Frost Declaration

Exhibit 3

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

HASBRO, INC.,)	
)	
Opposer,)	Opposition No.
)	91166487
vs.)	THIS TRANSCRIPT
)	CONTAINS CONFIDENTIAL
CREATIVE ACTION LLC,)	INFORMATION.
)	
Applicant.)	

- - - - -

DEPOSITION OF RONNI STERNS, Ph.D.
Tuesday, October 20, 2009

- - - - -

Deposition of RONNI STERNS, Ph.D., called by the
Opposer for examination, taken before me, the
undersigned, Rebecca L. Brown, Registered
Professional Reporter, a Notary Public in and for
the State of Ohio, at the Law Offices of Wayne D.
Porter, Jr., 1370 Ontario Street, Suite 600,
Cleveland, Ohio 44113, commencing at 9:20 a.m.
the day and date above set forth.

- - - - -

APPEARANCES:

On Behalf of the Opposer:

Claire Frost, Esq.
Patterson, Belknap, Webb & Tyler LLP
1133 Avenues of the Americas
New York, NY 10036
212-336-2000
cfrost@pbwt.com

On Behalf of the Applicant:

Wayne D. Porter, Jr., Esq.
Law Offices of Wayne D. Porter, Jr.
1370 Ontario Street, Suite 600
Cleveland, OH 44113
216-373-5545
porter@porterpatentlaw.com

- - - - -

1 Q And who is responsible for product development?

2 A Depends upon the product. And in any case, it's
3 always been a committee.

4 Q When you say it's always been a committee, who
5 would that committee consist of?

6 A It consists of whoever is on the grant for that
7 product.

8 Q Who is responsible for packaging design?

9 A No one person.

10 Q Who shares the responsibility?

11 A Nobody shares it. It depends upon the product.
12 So we have virtually no packaging on anything we do.
13 This is the package.

14 Do you see the package? Would you call that
15 package design?

16 MS. FROST: For the record,
17 the witness is gesturing at --

18 A Plain cardboard box.

19 MS. FROST: -- the product
20 Memory Magic.

21 A But actually that was by design. We wanted to
22 make it therapeutic and non-toy like. We didn't want
23 anyone -- people with dementia getting confused by a
24 lot of colors, so that was really -- I was laughing,
25 but that is by design. And we didn't want staff to be

1 confused by colors either.

2 Q So when you say that the packaging was by design,
3 that was based on your decision?

4 A Yes.

5 Q Okay. Did you discuss it with anyone else within
6 Creative Action?

7 A Yeah. We probably had a meeting and said what
8 should we do, and our research showed that people with
9 dementia are confused by color.

10 Q So you decided not to use color in the
11 packaging.

12 A And didn't make a red box to attract staff who
13 might be attracted by a red box. But, no, we kept it
14 very plain and simple and antiseptic, so to speak, for
15 the setting in which it was designed, which was
16 long-term care facilities.

17 Q How would you describe Memory Magic?

18 A It's a comprehensive therapeutic intervention for
19 groups of people with cognitive impairments which
20 includes dementia, stroke, head trauma, and behavior
21 problems. It lets people use their remaining
22 abilities, which is why it's successful.

23 MS. FROST: I'd like to enter
24 a unit of Memory Magic into evidence
25 as Plaintiff's Exhibit C.

1 lower functioning people. But it could be a staff
2 person, it could be a family member when they come to
3 visit their loved one in the facility, it could a
4 volunteer.

5 Q How many people play at a time?

6 A Well, we have it in sets of 10. So it sort of
7 works like this. It's reimbursable in therapy from
8 one to four people, but activities really needs 10 or
9 more because in activities there are many people at
10 different levels of cognitive functioning that come
11 together, and it's very difficult to provide a program
12 for them and keep them happily engaged and staying
13 with you, not getting up and leaving, not falling
14 asleep, not wandering, not anxious and calling out,
15 asking repetitive questions. So that's what this was
16 designed to overcome and it does.

17 Q What would you describe is the goal of the game?

18 A That is the goal of the game, to -- well, I'd say
19 there's another goal, but the original goal in our
20 grant was to develop a program that would happily
21 engage large groups of people with dementia for an
22 hour at a time and lessen behavior problems so staff
23 could get a respite and be happy as well.

24 What I believe we have, but we haven't shown yet,
25 is a program that keeps people with dementia at the

1 same level of dementia longer because it uses aspects
2 of memory that they have remaining, which is not
3 short-term memory. They don't have short-term
4 memory. That's the problem with dementia. It's a
5 loss of, among other things, short-term memory. You
6 lose other things, too.

7 Q On the printout of your website that's marked as
8 Exhibit A --

9 A Yes. I have Exhibit B.

10 Q Pardon me. Exhibit B.

11 A Okay.

12 Q Four pages from the end, there's a page entitled,
13 "Memory Magic Game." It says there that the game has
14 proven to be effective for engaging people with
15 cognitive disabilities. It sounds like that -- is
16 that what you were describing when you talk about the
17 goal of the game?

18 A Absolutely.

19 Q What proof have you developed regarding the
20 efficacy of the game?

21 A Well, we had a million and a half dollars in your
22 tax money and mine to develop it. So every single
23 feature was ergonomically tested for one with
24 residents and staff. We held focus groups with staff,
25 and we tested it in nine different locations, three

1 the game is to bring out long-term memories for the
2 players or participants?

3 A That's an objective, yes.

4 Q And to enable failure free social interaction and
5 enjoyment?

6 A Yes.

7 Q Is there a winner --

8 A No.

9 Q -- to this game?

10 A Absolutely not. There's no winner. None. That
11 is a major point. What happens with winning and
12 losing, it generates negative emotions and you get
13 people getting very upset, and that's not good for the
14 residents, for the other residents, or for staff.
15 That's why it has to be win-win, which is a major
16 departure from most games.

17 Q And does it also increase self-esteem?

18 A Yes. Exactly. Because it's failure free.

19 Whatever level of dementia you're at -- I can't say
20 about very late stages and people who are curled up
21 and are just not responsive, but outside of that,
22 whatever level you're at, it lets you do whatever you
23 can do so you feel good about it, and you don't feel
24 as though you're in competition with the next person.
25 And the higher functioning people don't get mad at the

1 MR. PORTER: You're referring
2 to Memory Magic.

3 A Memory Magic involves reading. People read --
4 people with dementia read until end stage dementia,
5 and they get confused often, people with dementia, by
6 pictures. So even InterpreCare has no pictures
7 because it's confusing, especially to people in
8 different cultures.

9 I'm trying to think in ways in which it's
10 similar, but I cannot.

11 Q So those are all ways clearly in which it is
12 dissimilar.

13 A Wait. Also what is dissimilar is this is
14 win-lose, and Memory Magic is win-win.

15 Q Are there any other dissimilarities that you can
16 see between them in addition to the ones you've
17 already described?

18 A Well, there's social interaction involved with
19 Memory Magic based upon the calling card.

20 MR. PORTER: If you're going
21 to look at them, you might as well
22 look at all of the game if you're
23 going to talk about dissimilarities.

24 A Yes. So Memory Magic has a rhyme attached to
25 it. We definitely have long-term memory as being part

1 low levels of dementia. I don't see -- this just says
2 3 plus, so I don't know -- I mean, would an
3 eight-year-old want to play it? Maybe. I don't know.

4 Q When you mentioned a staff person or family
5 member utilizing the cards, would it be fair to say
6 that Memory Magic requires a moderator to be played?

7 A Absolutely. Yes, it does.

8 Q When the Memory Magic product was being
9 developed, was any thought given to the potential
10 market?

11 A It had to be targeted to older adults. The grant
12 came from the National Institute on Aging. National
13 Institute of Health, National Institute on Aging. So
14 that being the case, it was targeted toward older
15 adults in long-term care settings with dementia, and
16 staff people who are caregivers in those facilities.
17 That was clearly what the grant stated.

18 Q When the product was being developed, was any
19 consideration given to what its competition might be?

20 MR. PORTER: Assumes that
21 there would be competition.

22 MS. FROST: Assumes that the
23 question was asked whether or not
24 there would be.

25 MR. PORTER: In other words,

1 A I don't know that.

2 Q But it does utilize, as you said, long-term
3 memory.

4 A It does, with cueing and repetition.

5 Q If you were to tell someone unfamiliar with the
6 product that it was a game and its name was Memory
7 Magic, do you think that they would immediately know
8 what the game is --

9 A We no longer call it a game.

10 Q -- what the product is?

11 A If I told someone unfamiliar with it would they
12 know what it is?

13 Q Based on the name.

14 A I have no idea.

15 Q Does the name "Memory" immediately convey to you
16 what Hasbro's game is?

17 A No.

18 MR. PORTER: Say that again.

19 What was that question?

20 Q The question was does the name "Memory"
21 immediately convey to you what Hasbro's game is?

22 A Not to me, no. Because when I saw it, I thought
23 oh, Memory. I wonder how that's played?

24 Q Does it tell you anything about the game?

25 A What?

1 Q Did you discuss with any others at Creative
2 Action whether or not Memory Magic was a good name for
3 the product?

4 A Yeah, I'm sure.

5 Q Did everyone agree that it was?

6 A Yeah.

7 Q Did anyone express any reservations?

8 A Absolutely not.

9 Q Did anyone propose any alternative names?

10 A No.

11 Q In discussing the name for the product, did
12 anyone else mention other products with memory in the
13 name?

14 A No. Because it's more than one word.

15 Q So who was the target consumer for Memory Magic?

16 MR. PORTER: I think that's
17 been asked and answered.

18 Q Would it be fair to say long-term care
19 facilities?

20 A Yes.

21 Q Do you believe that Memory Magic and Hasbro's
22 Memory product compete?

23 A No.

24 Q Do you believe that there's any overlap of
25 potential customers?

1 A No. It couldn't possibly be because there's a
2 requirement in long-term care to have age appropriate
3 products, and products that are for three- and
4 four-year-olds and are very colorful like that are no
5 longer deemed appropriate, and the state surveyors may
6 come in and give the facility big problems.

7 Q Is there any reason to believe that children
8 would play Memory Magic?

9 A Not three- and four-year-olds, no.

10 Q Is there some reason to believe that other
11 children would?

12 A Older children who can read. You have to be able
13 to read it.

14 Q Are any sales directed at children?

15 A No.

16 Q You briefly mentioned that Denise Tomkin is a
17 salesperson for Creative Action; is that correct?

18 A Um-hmm.

19 Q What activities does she undertake to sell the
20 product?

21 A She goes through the list. She makes phone calls
22 to long-term care facilities.

23 Q What is the list that you're referring to?

24 A The list in FileMaker that comes from the trade
25 shows we go to. We go to a trade show, we get a list

- 1 Q You can answer.
- 2 A I think it was in 2007 just before we moved.
- 3 Q Was anyone working for Creative Action as a
4 salesperson prior to that time?
- 5 A There was a woman named Ramona. Ramona. I don't
6 remember her last name. I'm sure it will come to me.
- 7 Q When did she start working with Creative Action?
- 8 A Probably 2006. She worked with us for 18 months.
- 9 Q And prior to her was there another salesperson?
- 10 A No.
- 11 Q Who was responsible for sales before her hire?
- 12 A I was.
- 13 Q Has this product, to the best of your knowledge,
14 been sold to anyone other than long-term care
15 facilities?
- 16 A Adult day care centers, but -- adult day care
17 centers. And nobody mentioned also having children.
18 Nobody. You know, an intergenerational program,
19 nobody's ever told us that.
- 20 Q No other type of entity?
- 21 A Huh-huh.
- 22 Q Have any --
- 23 A Oh, occasional individuals have purchased it. We
24 have sold one or two boards and the cards for use at
25 home with an elderly parent who has dementia. We sold

1 very few of them. Maybe count them on one hand. And
2 that's because they call and ask, and we feel sorry
3 for them.

4 Q Does Creative Action sell Memory Magic by any
5 means other than the direct sales that you described?

6 A No.

7 Q What is the unit price?

8 A \$399.

9 Q Is the product sold to the people who play the
10 game or the staff at nursing homes or facilities?

11 A It's sold to a facility. It's generally not the
12 staff person who buys it themselves, although an
13 occasional staff person does, and then they keep it
14 and take it with them when they leave, but generally
15 it's the facility or a chain, the corporate office
16 that purchases it.

17 Q Has it ever been purchased directly by the
18 players of the game?

19 A The people with dementia who live in long-term
20 care or the people at home with dementia? No.

21 Q Do you sell any services in conjunction with
22 Memory Magic?

23 A We do have training.

24 Q And what is the price of the training?

25 A Well, sometimes it's free. It's now \$500 for an

1 gone over this. Okay. I'm sorry.

2 Answer the question.

3 There's been a whole lot of
4 testimony about the differences
5 between these games.

6 Q You can answer.

7 A There are very strong differences. One is
8 targeted to children and looks like it's for children,
9 and clearly -- that clearly deals with memory -- the
10 Original Memory Game clearly deals with short-term
11 memory, and it has "memory" in the title.

12 This is Memory Magic which clearly is -- I don't
13 know if it's clearly, actually, but we made it look
14 like perhaps for people with dementia and long-term
15 care facilities. And no one has ever confused it.

16 Q No one has ever contacted Creative Action asking
17 about the source of Memory Magic?

18 A No. Other than where can we get it? Can we get
19 it from you?

20 Q Has anyone ever contacted Creative Action asking
21 about the source of Hasbro's Memory Game?

22 A Absolutely not.

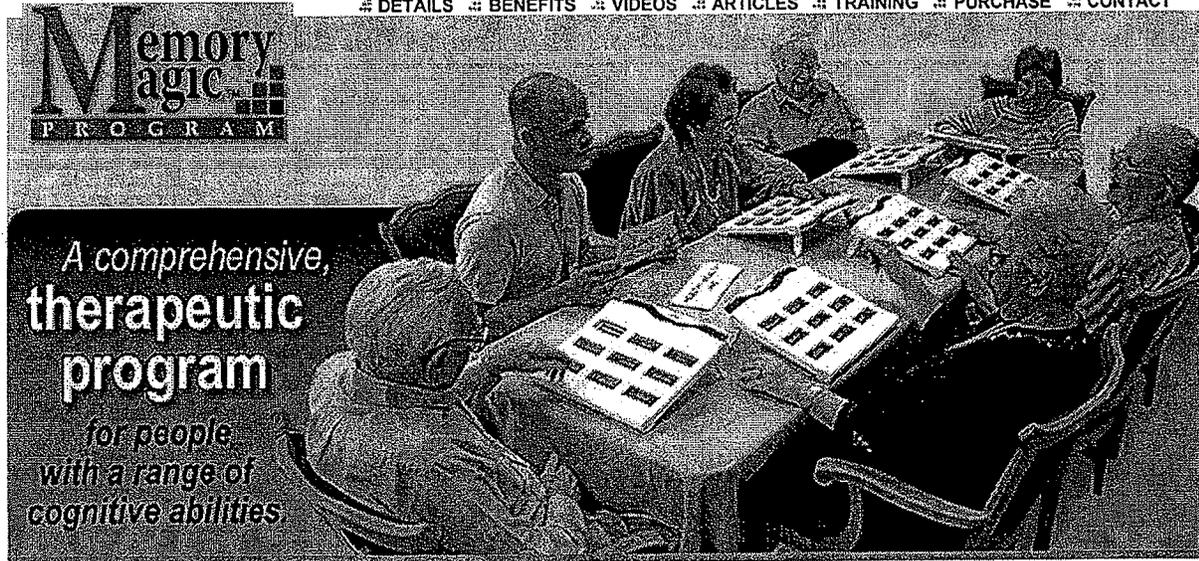
23 Q Has anybody expressed any confusion to Creative
24 Action about the source of these two products?

25 A No.

Frost Declaration

Exhibit 4

⚡ DETAILS ⚡ BENEFITS ⚡ VIDEOS ⚡ ARTICLES ⚡ TRAINING ⚡ PURCHASE ⚡ CONTACT

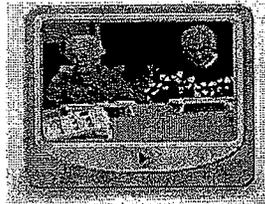


New Game Card Sets Now Available! Fun with Animals, Old Testament, and Christmas, Sets with 4 Games Each! Check out the Purchase Page or call for details.



The Memory Magic™ Program, a comprehensive therapeutic intervention, uses Montessori principles with a person-centered approach. Engages individuals, small or large groups with a broad range of cognitive abilities for 60-minutes with one leader.

[more benefits...](#)



Watch the level of social interaction, positive feelings, and demonstrated ability of participants when provided with these scientifically developed and researched therapeutic tools.

[play videos...](#)



Now in use by over 1000 facilities including many of the nations largest chains, read what actual administrators, professionals, and staff are saying about their experiences with residents with dementia and other cognitive impairments.

[testimonials & customer list...](#)



Creative Action is a world-class leader in research, development and marketing of products and services to improve lives and to meet social and health needs. Products and services emphasize enhancing function and quality of life for older adults, the disabled, consumers, workers, families and communities.

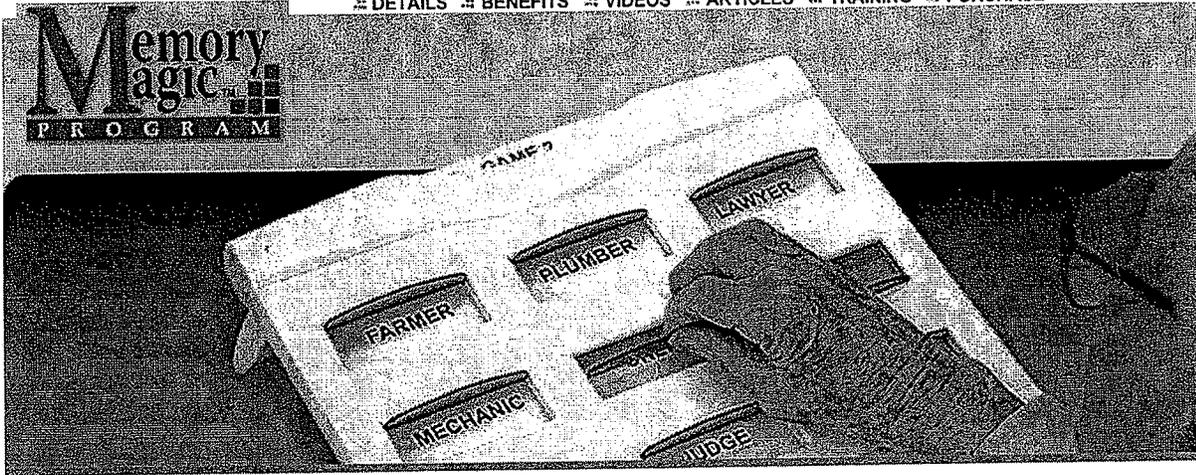
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Frost Declaration

Exhibit 5

⚙️ DETAILS ⚙️ BENEFITS ⚙️ VIDEOS ⚙️ ARTICLES ⚙️ TRAINING ⚙️ PURCHASE ⚙️ CONTACT



FEATURED TESTIMONIALS

Hearth & Home Our residents play [The Memory Magic™ Program] longer - for at least 45 minutes. The residents actually enjoy it. It is less frustrating for people in certain stages. Most of our individuals are in early to mid stages. One person who is younger, in their late 50's with early onset, it is one of the few activities she will do. And that is true of a number of our other residents.

Mary Eskridge, Adult Day Care Health and Home Manassas, VA

more testimonials...

FEATURED CLIENTS



Hearth and Home customer list...

Memory Magic PDF Articles

Gerontechnology: Proceedings of the International Gerontechnology Society, Nagoya, Japan

May 2005, *Anthony Sterns, Ronni Sterns, Harvey Sterns, and Vincent Antenucci*

A low-tech intervention and therapy for large groups of persons with dementia

The Memory Magic concept (copyrighted, patent pending) is an innovative, engaging activity for an individual or a group of 10 to 20 or more persons with cognitive disabilities in both institutional and home care settings. A single activity staffer can run the activity leaving other staff to complete other tasks. One hundred persons with dementia were observed in 3 states and in each of 3 different care settings; skilled nursing (including general populations and memory care units), adult day care, and assisted living. At least three observations playing Memory Magic and three observations playing a comparable activity were completed for each participant. MMSE and WRAT-3 scores were also collected. Engagement was measured using the Menorah Park Engagement Scale (Camp, 2002). The game was shown to be significantly more effective for constructively engaging people with dementia in all three settings.

PDF Article: [Gerontechnology: Proceedings of the IGS, Nagoya, Japan]

Creative Forecasting

February 2006, *Pegi Schils, CTRS, ACC*

Resource Spotlight: The Memory Magic™ Program

Memory Magic™ Program is an innovative, therapeutic program that combines trivia with reminiscence. This product was developed to provide an interesting and entertaining activity for people with memory problems. Memory Magic™ Program is a game that is played by an individual or a group of up to 20 people. An activity professional can engage a group for up to 60 minutes. Memory Magic™ Program is a well-designed product that can be used easily by staff and volunteers. It is versatile and a successful activity for people with memory problems that will get a lot of use. It is well constructed that will ensure use for many years.

email this page to a friend

PDF Article: [Creative Forcasting Vol. 18 No. 2]

Akron Beacon Journal - "Mind Games"

Tue, Sep. 21, 2004, *By Cheryl Powell*

'Bingo with words' game developed in Akron tested nationwide as aid to Alzheimer's patients

Beacon Journal medical writer Cheryl Powell reports: Alzheimer's disease is a cruel intruder that unrelentingly takes over a person's brain and steals memories and skills, bit by agonizing bit. Routine daily activities become struggles. Loved ones turn into strangers. But a local company has developed a program to let people with Alzheimer's and related forms of dementia use and enjoy the skills they have left in a social setting.

PDF Article: [Akron Beacon Journal Article]

Advance for LPN

March 26, 2007, *Nick Schaefer*

Beyond Bingo, residents at some LTC facilities are playing "Mind Games" to improve their cognitive ability.

While some facility administrators are turning to technology to help improve their residents' cognitive health, others are sticking to a more traditional activity to meet this goal. Janet Mullen, Division Director of Quality of Life of Golden Living (formerly Beverly) is working to implement The Memory Magic Program across the country. "The game is a great activity for residents of all cognitive abilities. Residents with dementia often have problematic behavior such as wandering and agitation because they are bored," Mullen explained. "Memory Magic gives patients who are prone to these behaviors something to do to keep them busy while also helping to improve their memory."

PDF Article: [Advance for LPN Vol. 7 No. 3]

Gerontechnology: Proceedings of the International Gerontechnology Society, Pisa, Italy

June 2008, *Anthony Sterns, Harvey Sterns, and Ronni Sterns*

Human factors design of a group activity for people with dementia

Memory Magic™ was developed as a group activity for persons with dementia. Using Montessori principles and human factors research, we designed the activity to successfully engage individuals with varying levels of cognitive and physical ability. The design process began with testing of a number of design parameters to determine which design structure was most ergonomically sound and would best accommodate visual and perceptual deficits common to aging and dementia. As a result of the pilot testing, a prototype design for the activity was developed and 15 models were constructed. The models were then tested in long term care, adult day care, and assisted living settings. Results indicate that Memory Magic™ elicited more positive engagement, improved affect, and a reduction of negative behaviors in 24 participants.

PDF Article: [Gerontechnology: Proceedings of the IGS, Pisa, Italy]

McKnight's Long-Term Care News

April 2008, *McKnight's*

Memory enhancement

The Memory Magic Program is a therapeutic, Montessori-based memory game that engages people with a wide range of cognitive abilities. It uses lifelong habits and skills to promote long-term memory, reading, social interaction, positive emotions and motor skills. It also has been shown to help reduce disruptive behavior.

PDF Article: [McKnight's Vol. 29 No. 4]

Resident Care Products Magazine

March/April 2008, *RCP Magazine*

Group activity program

Creative Action's Memory Magic therapeutic program uses life-long habits and skills to promote long-term memory, reading, speaking, social interaction, positive emotions, and fine and gross motor skills. The program can reduce disruptive behavior while engaging groups of 10 to 20 residents for up to one hour. Each Memory Magic set includes 10 therapy boards, 40 card inserts, and 240 calling cards for the activity leader, all of which can be sanitized.

PDF Article: [Resident Care Products Vol. 2 No. 2]

Press Release

February 14, 2006, *Vice Pres. of Marketing, Creative Action LLC*

National Institute on Aging study finds unique therapeutic activity produces dramatic results for people with dementia.

- Study shows Memory Magic™ Activity stimulates elderly in nursing homes and adult day care centers to socialize, share memories, and smile- and it's also the highest rated activity of caregivers.
- Results prompt nation's largest long-term care provider, Beverly Healthcare, to initiate implementation of the activity nation-wide.

PDF Article: [FOR IMMEDIATE RELEASE]

Ontario Long Term Care Association Newsletter

04/02/2009, *Deron Hamel*

Providing residents with social and emotional benefits

The Ontario Long Term Care Association reports that the Memory Magic Program is providing residents with social and emotional benefits. The program promotes all-around success for residents, says therapist Gail Jones of Alexander Place. She is using the Memory Magic™ Program as a key element in their Cognitive Retention Therapy.

PDF Article: [OLTCA Article]

Therapeutic Benefits & ICD9 Codes for Reimbursement Sheet

8/1/2009.

Provides an overview of benefits to residents and their families, staff, administrators and managers, and therapy staff. We provide a comprehensive list of ICD9 codes that allow reimbursement when providing therapies for residents with a wide variety of diagnoses. PDF Article: [Reimbursement Codes]



Creative Action is a world-class leader in research, development and marketing of products and services to improve lives and to meet social and health needs. Products and services emphasize enhancing function and quality of life for older adults, the disabled, consumers, workers, families and communities.

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Exhibit 6

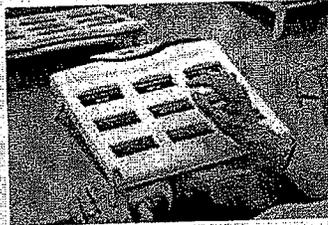
Memory Magic™

PROGRAM

Comprehensive Therapeutic Intervention

Residents & their families

- Person-centered
- Promotes use of cognitive abilities
- Promotes the use of fine and gross motor skills
- Stimulates social interaction
- Increases levels of engagement
- Increases positive emotions
- Reduces disruptive behavior
- Family members and volunteers easily connect or reminisce



Staff

- Improves job satisfaction
- Enhances efficiency
- Reduces staff care demand load
- Can be used with one resident or groups of 20+
- No pieces to lose or hoard
- Quick setup time
- Sanitizable
- Keeps participants involved for one hour or more



Administrators & Managers

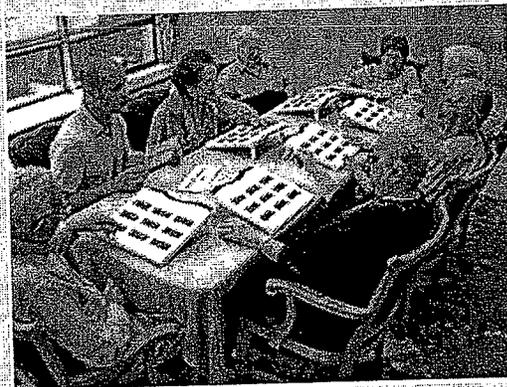
- Can be used successfully in a range of healthcare settings or throughout the facility
- Meets new Federal Guidelines for F-TAGs 248 & 249 activities & programming
- Achieves quality compliance
- Increases Medicare & Medicaid reimbursement levels
 - With RAI Manual Restorative Nursing Communication Codes
 - Using ICD-9 Codes for ST & OT Rehabilitation Therapy

Speech

- Symbolic Dysfunction
- Cognitive Impairment
- Dementia
- Expressive Aphasia
- Speech & Hearing Training
- Psychosocial - social deficits, depression
- Recall ability

Occupational

- Dexterity
- Hand Eye Coordination



Reimbursable when providing therapies for residents with these diagnoses

Symbolic dysfunction	784.6
Mild cognitive impairment	331.83
Altered mental status	780.97
Cerebral degeneration	331.0-331.9
Change in mental status	780.97
Cognitive deficits following (late effects of) cerebral hemorrhage or infarction	438.0
Cognitive impairment due to intracranial or head injury	850-854, 959.01
Cognitive impairment due to late effect of intracranial injury	907.0
Dementia	290.0-290.43, 294.8
Mild memory disturbance	310.8
Neurologic neglect syndrome	781.8
Personality change, nonpsychotic	310.1
Alcohol-induced persisting dementia	291.2
Presenile dementia	290.1
Vascular dementia with delirium	290.41
Senile dementia with delirium	290.3
Vascular dementia with delusions	290.42
Other frontotemporal dementia	331.19
Dementia with Lewy bodies	331.82
Vascular dementia	290.4
Presenile dementia with delirium	290.11
Presenile dementia with delusional features	290.12
Presenile dementia with depressive features	290.13
Vascular dementia	290.40
Vascular dementia with depressed mood	290.43
Other persistent mental disorders due to conditions classified elsewhere	294.8
Senile dementia with delusional features	290.20
Dementia in conditions classified elsewhere without behavioral disturbance	294.10
Transient mental disorders due to conditions classified elsewhere	293
Frontotemporal dementia	331.1
Senile dementia with depressive features	290.21
Drug-induced persisting dementia	292.82
Parkinson's disease	332
General paresis	094.1
Dementia in conditions classified elsewhere with behavioral disturbance	294.11
Other cerebral degenerations	331
Expressive aphasia	438.11
Expressive language disorder	315.31
Aphasia	784.3
Aphasia	438.11
Mixed receptive-expressive language disorder	315.32
Other speech disturbance	784.5
Speech therapy	V57.3
Speech and language deficits	438.1
Other speech and language deficits	438.19
Social maladjustment	V62.4
Transient ischemic attack	V12.54
Late effects of cerebrovascular disease	438

Frost Declaration

Exhibit 7

**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 30

HASBRO, INC. Opposer, v. CREATIVE ACTION LLC, Applicant	Opposition No. 91166487
---	-------------------------

**CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES TO APPLICANT**

Creative Action LLC ("Applicant") hereby responds to Hasbro, Inc.'s ("Opposer's") first set of interrogatories to Applicant.

RESPONSE TO INTERROGATORIES

1. Identify separately for each category listed below the persons, including without limitation Applicant, Applicant's agents, businesses, partnerships, employees and those of Applicant's advisors, consultants, advertising agencies, public relations firms and marketing consultants, most knowledgeable about:

- a. the date and circumstances of Applicant's intended or actual first use of the MEMORY MAGIC mark, both generally and in the commerce of the United States;

ANSWER:

Creative Action staff: Ronni Sterns

Advisory Board members: Terry Berman, Cliff Isroff, Marty Oppenheimer, Ira

Kaplan, Gary Salhany

- b. the decision to adopt, use register, or not register the MEMORY MAGIC mark in the United States;

ANSWER:

Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

- c. Applicants's actual or intended use of the MEMORY MAGIC mark, including but not limited to, the nature of goods or services that the MEMORY MAGIC mark is used in connection with or intended to be used in connection with by Applicant;

ANSWER:

Creative Action staff: Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne, Charles Nelson.

Advisory Board members: Cliff Isroff, Mary Oppenheimer, Gary Salhany.

- d. any actual confusion or likelihood of confusion between Applicant's MEMORY MAGIC mark and Opposer's MEMORY® mark;

ANSWER:

No such person exists.

- e. the channels of trade for Applicant's actual or intended services bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns

Consultant; Monica Mason

- f. the demographics of clients or consumers for actual or intended services in the United States bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne,

Consultant; Monica Mason

National Institute on Aging, HCR Manor Care, and Beverly Enterprises.

- g. the actual or anticipated revenues, sales, client or consumer relations, public relations, marketing, advertising and promotion in connection with Applicant's actual or intended services bearing the MEMORY MAGIC mark;

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

Consultant; Monica Mason

- h. and the printed books, magazines, journals, newsletters, computer software, business papers, brochures, seminar, workshop and conference-related materials, business, marketing or media plans and any and all other materials used in connection with Applicant's actual or intended services bearing, using, adopting or affiliated with the MEMORY MAGIC mark.

ANSWER:

Creative Action staff; Ronni Sterns, Tony Sterns, Harvey Sterns, Jim Kilcoyne.

Advisory Board member: Gary Salhany

Consultant; Monica Mason

2. Identify all actual or intended goods or services to be provided, marketed or sold in the United States that the MEMORY MAGIC mark has been used or is intended to be used in connection therewith, and for each such good or service identified:

ANSWER:

MEMORY MAGIC activity/program for groups and for people with dementia, head trauma or stroke living in long term care facilities or attending adult day care centers and older adults with these cognitive impairments living at home and staff training programs related to the MEMORY MAGIC activity.

- a. identify the date and circumstances of actual or intended first use and, if different, the date and circumstance of first use in commerce in the United States;

ANSWER:

First used on or about August 5, 2004. Ronni Sterns had worked with HCR Manor Care to carry out an NIH NIA research project. The director of dementia services asked Ronni Sterns to introduce the MEMORY MAGIC activity at a training session for northeast Ohio HCR Manor Care activity professionals on Montessori-based activities for people with dementia. Those activity professionals who wanted an in-service for the

activity gave R. Sterns their names. Bainbridge Manor Care was the first in-service and the first long-term facility that purchased the MEMORY MAGIC activity

- b. state Applicant's total annual revenues for such good or service by gross revenue, net revenue and revenue for each year the good or service was provided, or projections of total annual revenue for each year the good or service is intended to be provided;

ANSWER:

Information needed to answer this interrogatory is not available yet.

- c. identify the geographic area(s) in which the good or service has been or is intended to be provided;

ANSWER:

The entire United States.

- d. identify the channels of trade through which the good or service has been or will be provided and identify any corporations, businesses, partnerships, persons or third-parties that are affiliated with or facilitate the good or service provided by Applicant;

ANSWER:

Trade show exhibits, direct marketing, and distributors of products to the health and long term care industries.

- e. identify the actual or intended class of clients or consumers to which the good or service has been or is intended to be provided;

ANSWER:

Long-term care facilities, adult day care centers, home health care agencies, psychiatric hospitals and units, and care givers of older adults with dementia, head trauma or stroke who live at home.

- f. identify all media by either name of network or television station, radio station magazine, publication, newsletter, website(s) or newspaper in which advertising or marketing has occurred for the good or service;

ANSWER:

Akron Beacon Journal and Creative Action LLC website.

- g. state separately for each calendar year the actual or intended expenditures or value of advertising, promotion, marketing, client or consumer relations, and public relations related to the good or service;

ANSWER:

Actual or intended expenditures exist for 2005 and 2006 only and have not been identified yet.

- h. identify any actual or intended licensing arrangement concerning the good or service between the Applicant and any person;

ANSWER:

None.

- i. identify any mention by the media of the good or service;

ANSWER:

Akron Beacon Journal and Creative Forecasting.

- j. and identify all partnerships, persons, businesses, and their respective owners, agents and employees that (1) use, adopt, are affiliated with, or license the mark MEMORY MAGIC, or (2) are affiliated with any other partnerships, persons, or businesses using, adopting or licensing the mark MEMORY MAGIC.

ANSWER:

None.

3. Identify the persons principally involved in the conception, selection, development, use and adoption of the MEMORY MAGIC mark used in connection with Applicant's actual or intended good(s) or service(s) in every country throughout the world and, with respect to each person so identified, identify what role each played in conceiving, selecting, developing, using and adopting the mark.

ANSWER:

Ronni Sterns conceived of the mark. Jim Kilcoyne, Tony Sterns and Harvey Sterns helped with the development of an initial flyer and Monica Mason changed the appearance of the mark to that in the brochure.

4. State whether Applicant received an opinion concerning the availability for use, risk of liability arising out of use or intended use, and registrability of the MEMORY MAGIC mark in the United States and, if so, identify: (a) the date on which the opinion was rendered; (b) the person rendering the opinion; (c) the person receiving such opinion; and (d) all documents reflecting or referring to such opinion.

ANSWER:

Yes. An opinion was rendered by attorney Carl Rankin in a letter dated April 28, 1999 to Ronni Sterns.

5. State: (a) the date when Applicant first acquired knowledge of Opposer's MEMORY® mark; (b) how such knowledge was acquired; and (c) the identity of the person who first acquired such knowledge.

ANSWER:

Opposer's alleged MEMORY mark was contained in a trademark search conducted in 1999. However, Applicant was not actually aware of the existence of Opposer's alleged MEMORY mark until the present opposition proceeding was instituted.

6. Identify each person who has inquired about, commented upon, or contacted Applicant regarding the source or sponsorship of any service bearing the MEMORY MAGIC mark or Opposer's MEMORY® mark.

ANSWER:

None.

7. Identify each person who has conducted a survey, market research study, poll, or investigation concerning confusion or potential confusion or likelihood of confusion between Applicant's good(s) or service(s) bearing the MEMORY MAGIC mark and Opposer's products bearing Opposer's MEMORY® mark.

ANSWER:

None.

8. Identify, by registration number or application serial number, each foreign or United States federal or state registration or application for trademark registration filed by or issued in the name of Applicant, or assigned or licensed to Applicant, for the MEMORY MAGIC mark.

ANSWER:

U.S. Serial No. 75/818,625, filed October 8, 1999.

U.S. Serial No. 78/359,895, filed January 20, 2004.

Canadian Serial No. 1,224,229, filed July 20, 2004.

VERIFICATION

I declare under penalty of perjury that the answers to the foregoing interrogatories are true and correct. Executed on April 13, 2006.



Ronni Sterns, Member
Creative Action LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2006 a true and correct copy of the foregoing
CREATIVE ACTION LLC'S RESPONSE TO OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANT was served on counsel for Hasbro, Inc.
electronically and by mailing a copy via first class mail, postage pre-paid, to:

Kim J. Landsman, Esq.
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710


Wayne D. Porter, Jr.