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

Proceeding	91166487
Party	Defendant Creative Action, LLC
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Date	03/03/2011
Attachments	Response to Amended Notice of Opposition 3.3.11.pdf ( 6 pages )(30482 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 30

HASBRO, INC.  Opposer,  v.  CREATIVE ACTION LLC,  Applicant	Opposition No. 91166487
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**CREATIVE ACTION LLC'S RESPONSE TO  
AMENDED NOTICE OF OPPOSITION**

Applicant Creative Action LLC ("Creative Action") hereby responds to the Amended Notice of Opposition. Where appropriate, the numbered paragraphs below correspond to the numbered paragraphs of the Amended Notice of Opposition.

Applicant denies that Opposer will be damaged by registration of the trademark at issue, namely, MEMORY MAGIC.

1. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

2. Applicant admits that it is an Ohio limited liability company having a place of business at 680 North Portage Path, Akron, Ohio 44303.

3 - 4. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

5. Admitted

6. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same, except that Applicant admits that it sought registration based on intent to use.

7. Admitted.

8. No response required.

9-12. Denied.

13. No response required.

14-15. Denied.

#### AFFIRMATIVE DEFENSES

16. There would be no likelihood of confusion with respect to Opposer's alleged marks exemplified by Registration Nos. 2,894,970 and 834,282 if Applicant's mark MEMORY MAGIC were to be registered and used by Applicant.

17. Opposer's alleged marks MEMORY and a stylized form of the word MEMORY, Registration Nos. 2,894,970 and 834,282, respectively, are the generic name of the goods set forth in the registrations in question.

18. Opposer's alleged marks MEMORY and a stylized form of the word MEMORY, Registration Nos. 2,894,970 and 834,282, respectively, are merely descriptive when used in conjunction with the goods set forth in the registrations in question.

19. Opposer has abandoned the word MEMORY and a stylized form thereof as trademarks.

## COUNTERCLAIMS

In its Response to Notice of Opposition served and filed on December 13, 2005, Applicant pleaded counterclaims that sought the cancellation of the registrations asserted by Opposer. Those counterclaims have not been adjudicated and remain pending. In order to confirm that Applicant continues to assert its counterclaims, Applicant reproduces the counterclaims here. While Applicant reproduces its counterclaims in this paper, Applicant believes that it does not need to pay a filing fee for the reasserted counterclaims since Applicant paid the requisite filing fee at the time the counterclaims were filed and the counterclaims have not been adjudicated and remain pending.

20. Applicant, Creative Action LLC, is an Ohio limited liability company having an office and principal place of business at 680 North Portage Path, Akron, Ohio 44303.

21. On information and belief, Opposer, Hasbro, Inc., is a Rhode Island corporation having an office and principal place of business at 1027 Newport Avenue, Pawtucket, Rhode Island 02862-1059.

22. On information and belief, Opposer is the owner of Registration No. 2,894,970 for the alleged mark MEMORY for card matching games.

23. On information and belief, Opposer is the owner of Registration No. 834,282 for a stylized form of the word MEMORY for equipment comprising cards with many matching pairs of designs for playing a matching card game.

24. On information and belief, Opposer advertises and sells card matching games in commerce under a stylized form of the word MEMORY.

25. Opposer has advertised its MEMORY card matching games as “recall games.” Opposer’s MEMORY recall games involve participants overturning face-down cards in an attempt to match pictures or designs on the faces of the cards. Successful and intended play of Opposer’s MEMORY recall games requires that the participants use their memory to recall the location of matching cards.

26. “Memory” is defined as “the power of retaining and recalling past experience.” 2003 WordNet 2.0 Dictionary, Princeton University. “Memory” also is defined as “a particular act of recall or recollection.” 1998 Webster’s Ninth New Collegiate Dictionary.

27. In the context of card matching games, the words “memory” and “recall” are synonymous.

28. Generic terms are terms that the relevant purchasing public understands primarily as the common or class name for the goods or services. Adjectives that refer to a genus, species, category or class of goods or services are generic.

29. When used in conjunction with matching or recall card games, the word “memory” is the common or class name for such goods and refers to a genus, species, category or class of such goods. As a consequence, the word “memory” when used in conjunction with matching or recall card games is generic.

30. Registration Nos. 2,894,970 and 834,282 should be cancelled because the registered marks are incapable of functioning as trademarks for matching (or recall) card games in violation of 15 U.S.C. §§ 1051 and 1127.

31. Registration Nos. 2,894,970 and 834,282 should be cancelled because the registered marks are generic in violation of 15 U.S.C. §§ 1052(e)(1) and 1064(3).

32. Registration Nos. 2,894,970 and 834,282 should be cancelled because the registered marks do not have significance as trademarks and therefore have been abandoned as provided in 15 U.S.C. §§ 1064(3) and 1127.

WHEREFORE, Applicant prays that the Amended Notice of Opposition be dismissed, that Registration Nos. 2,894,970 and 834,282 be cancelled, and that registration to Applicant for the mark MEMORY MAGIC in International Class 28 for the goods identified in its application be permitted.

Dated: March 3, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2011 a true and correct copy of the foregoing *CREATIVE ACTION LLC'S RESPONSE TO AMENDED NOTICE OF OPPOSITION* was served electronically on Kim, J. Landsman, Esq., counsel for Hasbro, Inc.

/Wayne D. Porter, Jr./  
Wayne D. Porter, Jr.