

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

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CYI, INC.

Opposer,

v.

GARY AHLERT,

Applicant.  
-----X

Serial No. 78/447,127

Filed: 7/7/04

Mark: MEGAZOOKA

Published: 6/14/05

The Empire State Building  
350 Fifth Avenue, Suite 4710  
New York, New York 10118

U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

SIR/MADAM

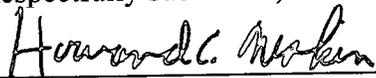
Transmitted herewith for filing are the following document(s).

- (x) Notice of Opposition
- (x) Confirmation Postcard
- (x) Check No. 5469 in the amount of \$300.00

If the enclosed papers are considered incomplete, the Mail room and/or the TTAB is respectfully requested to contact the undersigned collect at (212)268-0900. If there is an additional fee, it may be charged to Account No. 13-3731.

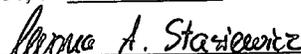
*A duplicate of this sheet is enclosed.*

Respectfully submitted,



Howard C. Miskin  
Stoll, Miskin & Badie  
350 Fifth Avenue, Suite 4710  
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Tel.: (212) 268-0900

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: TTAB, P.O. Box 1451, Alexandria, VA 22313-1451, on October 6, 2005



IWONA A. STASIEWICZ

October 6, 2005

Date

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Opposer,	:	Serial No. 78/447,127
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**NOTICE OF OPPOSITION**

CYI, Inc. ("CYI" or "Opposer") is a corporation organized and existing under the laws of the State of California with its principal business place at 9314 Eton Avenue, Chatsworth, California 91311. Upon information and belief, Gary Ahlert ("Ahlert" or "Applicant") is an individual with an office at 400 Main Street, Suite 210, Stamford, Connecticut 06901. Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 78/447,127 for the mark MEGAZOOKA filed by Applicant, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer adopted and has continuously used the trademark MEGAZOOKA for a line of toys, namely a larger version of a plastic toy gun marketed under the term "AIRZOOKA," which shoots a ball of air when a rubber diaphragm is pulled back ("Opposer's Goods").

2. In connection with the sale and offer for sale of Opposer's Goods, CYI and its sister company, HPI Hong Kong Ltd. ("HPI") has adopted the MEGAZOOKA mark and has continually used such mark in connection with Opposer's Goods since at least as early as April 2004. In addition CYI is the owner of the domain name,

www.megazooka.com, which it acquired on April 16, 2004.

3. Opposer's Goods sold under the MEGAZOOKA mark have been extensively and continuously marketed and promoted throughout the United States and the world. As a result of the quality of Opposer's Goods and the promotion thereof under the MEGAZOOKA mark, the goods have met with great commercial success.

4. CYI and HPI adopted and used the MEGAZOOKA mark prior to the Applicant's application filing date.

5. Applicant seeks to register the mark MEGAZOOKA for "plastic air toy, that shoots a ball of air" in international class 28 ("Applicant's Goods"). Applicant bases its application on intent to use the subject mark on goods identified. Said application was filed on July 14, 2005.

6. Opposer believes that it will be damaged by registration of Serial No. 78/447,127 for the mark MEGAZOOKA and hereby opposes the same under §2(d) of the Lanham Act. Applicant's MEGAZOOKA mark is identical to CYI's MEGAZOOKA mark. Further, Applicant engages (or intends to engage) in providing goods to the public that are identical to those that Opposer is currently providing, i.e. toy air guns. In view of these similarities Applicant's use and registration of MEGAZOOKA for Applicant's Goods is likely to cause confusion, mistake, or to deceive consumers as to the rightful owner of the mark and the ultimate source and controller of the goods thereunder in violation of 15 U.S.C. §1052(d).

7. Applicant is not entitled to registration of the MEGAZOOKA mark because it is not the rightful owner thereof, as Opposer has priority of use.

8. Opposer will be damaged by issuance of registration to Applicant in that

Opposer will thereby be denied its rightful ownership of the MEGAZOOKA mark, as Opposer has priority of use, and the public will be confused as to the ultimate source of the goods. In view of the foregoing, Opposer will be damaged by the registration of Applicant's claimed mark within the meaning of 15 U.S.C. §1063.

9. Applicant, through his intent to use in commerce the mark MEGAZOOKA will cause dilution of the distinctive quality of the MEGAZOOKA mark and thereby infringe upon Opposer's right in violation of 15 U.S.C. §1125(c)(1).

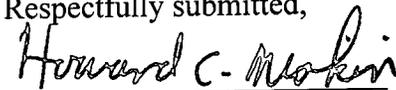
10. Applicant's proposed adoption of the mark MEGAZOOKA will necessarily be with full knowledge of Opposer's rights in the MEGAZOOKA mark, and with the willful intention to trade on Opposer's reputation as embodied in this mark, or to cause dilution of this mark. Thus, Applicant has willfully violated Opposer's rights under 15 U.S.C. §1125(c)(2).

WHEREFORE, CYI prays that this opposition be sustained and that registration be denied to Applicant on its Application serial No. 78/447,127.

In accordance with 37 C.F.R. § 2.101 this Notice of Opposition is being submitted in triplicate. A filing fee for the Notice of Opposition in the amount of \$300 is enclosed herewith. Any additional fees should be charged to Deposit Account No. 13-3731.

Dated: October 6, 2005  
New York, New York

Respectfully submitted,



Howard C. Miskin  
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TTAB

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October 6, 2005

Denise M. DelGizzi  
Paralegal Specialist  
US Patent and Trademark Office Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Ms. DelGizzi:

Re: Judgement by default Opposition No. 91165615; OMS Investment, Inc V. Gavini Vinaya

I request that judgment by default not be entered in the case No. 91165615 on my behalf. The reason for such request is that when the original notice of opposition was sent to me, it was delivered to a wrong office and got to my office very late in August. I was away on a long vacation to China and returned on September 17<sup>th</sup>. I received your letter dated September 26<sup>th</sup>, 2005. I need to consult my Attorney in this matter.

I request you to grant me an extension, so that I would be able to prepare for a response.

Thank you very much

Yours truly,



Vinaya K. Gavini M.D.



10-11-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #34