

Creative Group Marketing LLC

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November 10, 2005

TTAB

United States Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451
Attn: Torri Rodgers

Re: Opposition No. 91167219
Serial # 78447127

Megazooka Trademark Published 6/14/05

Torri Rodgers – Legal Assistant,

Please forgive the informality of my response. However, I am not an attorney, and I am not familiar with what may be a proper format or structure in replying to the attached, "Notice of Opposition", for the trademark known as "Megazooka". Moreover, this is the first notice, other than a postcard, I have ever received regarding this matter. As I address below, you will note that the issues here not only pertain to the Megazooka trademark, but to the Airzooka mark too, as well as patents and other property rights.

I will address and respond to Howard C. Miskin's comments in a correspondingly numbered manner as contained in his Notice Of Opposition.

First, please be advised that Howard C. Miskin is an attorney representing CYI, Inc., or otherwise known as, Can You Imagine Corp. or Inc., in major litigation initiated by my firm, Creative Group Marketing LLC, and, Brian Jordan, the inventor and owner of the Megazooka, the Airzooka and all related products. [04 CV 04696 United States District Court, Southern District of New York.] CYI has had various incarnations over the years, so I am never sure which name the opposing parties chose to use at any given time.

Furthermore, Mr. Miskin is also representing two convicted felons (Steven Zulloff, Barry Benjamin – Securities Fraud and Tax Evasion) who, at various times, represent themselves as working for, Owners of, or consultants to, CYI and Can You Imagine, and they too are part of this litigation.

The suit involves the theft of Mr. Jordan's and Creative's intellectual properties, namely the Megazooka, the Airzooka and Airzooka Key Chain. We are represented by Helen Davis Chaitman, Phillips Nizer LLP, 666 Fifth Ave., New York, NY, telephone 212-977-9700.



11-15-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

There were two License Agreements established which granted certain rights to the Airzooka product to CYI in California, and another company called HPI in Hong Kong. As part of those Agreements all intellectual property rights to the Airzooka, and in the case of the first Agreement, any "Fruit From The Tree" intellectual property rights, were to be filed under and owned by the Inventor and/or the Licensor.

The first Agreement was terminated for cause, as was the second Agreement. Further, upon such terminations all assignments and intellectual property revert to Brian Jordan.

Howard C. Miskin, willfully, with malice and forethought and in complete contravention to the Agreements, illegally and deliberately filed patents and trademarks solely in the name of Steve Zulloff for Jordan's inventions.

The product, Megazooka, was NEVER licensed to CYI/HPI and this is appropriately documented in numerous letters and E-mails which have been made part of the court record. Moreover, I filed for the trademark Megazooka quite some time ago as my client, Brian Jordan, and I, wished to manufacture and sell the product through other means. This filing was done prior to any production and sale by CYI, and they were so informed in writing.

Despite my numerous notifications to Mr. Miskin and CYI/HPI of our position, Mr. Miskin, in concert with CYI/HPI, Steve Zulloff and Barry Benjamin deliberately and unlawfully manufactured and sold the Megazooka product along with the other Airzooka products as well. Not only did they sell the product(s), they put on the packaging - Invented by Brian Jordan and Licensed by Creative Group Marketing. Additionally, Howard C. Miskin, who was representing Jordan with the first patent application, had him sign a power of attorney and assignment and then, he, Miskin, filed a utility patent in Jordan's and Zulloff's names for the Airzooka. (#20040226548) Mr. Jordan was not pleased with the way Miskin had prepared the claims for his invention and wanted additional input into the application. However, Miskin, took it upon himself and filed the application without Mr. Jordan's approval or knowledge.

I would further point out that also unbeknownst to Brian Jordan and Creative, Miskin and Zulloff on behalf of CYI/HPI filed multiple design patents worldwide and in the US (D487293) solely in Zulloff's name and have been deliberately **falsely marking** the Megazooka, Airzooka and Airzooka Keychain packaging with the US Design Patent Number to create the impression to the public that the products and their function/performance were protected by patent. Of course, nothing could be further from the truth.

With respect to Mr. Miskin's Notice of Opposition:

1. The Megazooka and Airzooka are not the "opposer's goods" they have no rights to them whatsoever.
2. The Megazooka product was deliberately, willfully and with malicious intent stolen from the inventor and is being sold and manufactured illegally.
3. The great commercial success to which Mr. Miskin refers was in fact for the Airzooka and was created and paid for by us through publicity, product placement, interviews and our other efforts. Any resultant sales of the Megazooka are a direct benefit of our efforts, and not those of CYI/HPI.
4. This statement is absolutely untrue.
5. All applications and their resultant issuances and/or allowances for patents and/or trademarks are the property of, and should be in the name(s) of Brian Jordan and/or Creative Group Marketing.
6. Again, Miskin engages in outright lies meant to deliberately deceive and mislead the PTO. CYI has no rights to any of the properties which are currently being sold.
7. The applicant is not the rightful owner of the mark
8. 9. 10. The only parties thus far damaged have been the inventor and licensor who by means of Howard C. Miskin's abrogation of his duties as a registered patent attorney, his collusion with Zuloff and Benjamin (It is our belief and understanding that Miskin shares in the profits of CYI products) and his willful and wonton violation and disregard of patent and trademark laws has violated and stolen the property rights of Brian Jordan and Creative Group Marketing.

I respectfully request that any final disposition of the awarding of the Megazooka trademark be delayed until such time as this case is properly adjudicated.

Sincerely yours,



Gary Ahlert
Creative Group Marketing LLC

Cc: Helen Davis Chaitman
Phillips Nizer LLP

Brian Jordan

**United States Patent and Trademark Office
Trademark Trial and Appeal Board**

P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 31, 2005

Opposition No 91167219
Serial No. 78447127

GARY ALHERT
400 MAIN ST STE 210
STAMFORD, CT 06901-3004

CYI, Inc.

v.

Alhert, Gary

Howard C. Miskin
Stoll, Miskin & Badie
The Empire State Building 350 Fifth Avenue, Suite 4710
New York, NY 10118

Torri Rodgers, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: **November 20, 2005**

Discovery period to close: **May 19, 2006**

30-day testimony period for party
in position of plaintiff to close: **August 17, 2006**

30-day testimony period for party
in position of defendant to close: **October 16, 2006**

15-day rebuttal testimony period
for plaintiff to close: **November 30, 2006**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

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).

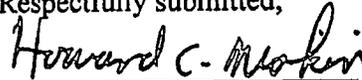
10. Applicant's proposed adoption of the mark MEGAZOOKA will necessarily be with full knowledge of Opposer's rights in the MEGAZOOKA mark, and with the willful intention to trade on Opposer's reputation as embodied in this mark, or to cause dilution of this mark. Thus, Applicant has willfully violated 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 17th. I received your letter dated September 26th, 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/TM Mail Rcpt Dt. #34