

ESTTA Tracking number: **ESTTA81969**

Filing date: **05/23/2006**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Bob's Space Racers, Inc.		
Entity	Corporation	Citizenship	Florida
Address	427 15th Street Daytona Beach, FL 32117 UNITED STATES		

Attorney information	Jeffrey S. Standley Standley Law Group LLP 495 Metro Place South Suite 210 Dublin, OH 43017-5319 UNITED STATES jstandley@standleyllp.com, cscotney@standleyllp.com, sgrant@standleyllp.com, standleydocketing@standleyllp.com Phone:614-792-5555
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**Applicant Information**

Application No	78684355	Publication date	04/25/2006
Opposition Filing Date	05/23/2006	Opposition Period Ends	05/25/2006
Applicant	THE CARTOON NETWORK LP, LLLP C/O TURNER BROADCASTING SYSTEM, INC. 13 NORTH, ONE CNN CENTER ATLANTA, GA 303032762 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 041. All goods and services in the class are opposed, namely: Entertainment and education services in the nature of a continuing comedy, drama, action, adventure and/or animation program series, provided through television, radio, and the global computer information network; motion picture film production; providing on-line interactive games played via global computer networks, and global communications networks
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Related Proceedings	91169371
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Attachments	Notice of Opposition.pdf ( 15 pages )(505907 bytes )
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Signature	/Cheryl S. Scotney/
Name	Cheryl S. Scotney
Date	05/23/2006

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

IN THE MATTER OF APPLICATION

SERIAL NO.: 78/684,355

MARK: WELCOME TO WACKAMO

PUBLISHED IN THE OFFICIAL GAZETTE  
ON April 25, 2006

BOB'S SPACE RACERS, INC.  
Opposer,

v.

**OPPOSITION NO.** \_\_\_\_\_

THE CARTOON NETWORK LP, LLLP  
Applicant.

**NOTICE OF OPPOSITION**

Bob's Space Racers, Inc. ("Opposer"), a Florida corporation, having its principal place of business at 427 15<sup>th</sup> Street, Daytona Beach, Florida 32117, believes that it will be damaged by the registration of the mark shown in U.S. Application Serial No. 78/684,355 ("the '355 application"), and hereby opposes the same. As grounds for opposition, Opposer alleges:

**OPPOSER'S TRADEMARK RIGHTS**

1. Opposer filed US Trademark Application Ser. No. 74/097,672 ("the '672 application") on September 17, 1990, to register the mark "WHAC-A-MOLE" in International Class 28 for the goods "arcade, carnival and amusement type activity games."
2. The '672 application was based on use in commerce in association with the goods at least as early as April 24, 1977.

3. The United States Trademark Office duly registered the '672 application as US Trademark Registration No. 1,675,229 ("the '229 registration") on February 11, 1992.

4. The '229 registration is an incontestable mark in good standing that has been renewed, owned by Opposer (attached as Exhibit A).

5. Opposer filed US Trademark Application Ser. No. 78/038,470 ("the '470 application") on December 8, 2000, to register the mark "WHAC-A-MOLE" in International Class 28 for the goods "hand-held units for playing electronic games and board games."

6. The '470 application was based on use in commerce in association with the goods at least as early as December 25, 1999.

7. The United States Trademark Office duly registered the '470 application as US Trademark Registration No. 2,536,814 ("the '814 registration") on February 5, 2002.

8. The '814 registration is in good standing and owned by Opposer (attached as Exhibit B).

9. Opposer filed US Trademark Application Ser. No. 78/038,473 ("the '473 application") on December 8, 2000, to register the mark "WHAC-A-MOLE and design" in International Class 28 for the goods "hand held units for playing electronic games, board games, arcade, carnival and amusement type activity games and accessories therefor."

10. The '473 application was based on use in commerce in association with the goods at least as early as December 25, 1999.

11. The United States Trademark Office duly registered the '473 application as US Trademark Registration No. 2,561,937 ("the '937 registration") on April 16, 2002.

12. The '937 registration is in good standing and owned by Opposer (attached as Exhibit C).

13. Opposer filed U.S. Trademark Application Ser. No. 78/690,606 (“the ‘606 application”) on August 11, 2005, to register the mark “WHAC-A-MOLE” in International Class 9 for the goods “computer game cartridges; computer game discs; computer game software; downloadable ring tones, graphics and music via a global computer network and wireless devices; electronic game programs; electronic game software for cellular telephones; interactive video game programs; video game cartridges; video game discs; video game software; in International Class 20 for “non-metal and non-leather key chains; non-metal clips for back packs; and in International Class 28 for “card games; lottery cards; playing cards; puzzles; and trading card games.”

14. The ‘606 application was filed based on intent to use.

15. The ‘229 registration, the ‘814 registration, the ‘937 registration, and the ‘606 application both individually and collectively (referred to collectively as “WHAC-A-MOLE”), and the use of the Opposer’s WHAC-A-MOLE marks in commerce have resulted in the WHAC-A-MOLE marks becoming well known to the public. By virtue of the use and registration of Opposer’s WHAC-A-MOLE marks, Opposer has established valuable goodwill in the marks. The public has come to associate WHAC-A-MOLE marks with Opposer and to know WHAC-A-MOLE as a source indicator for numerous products emanating from Opposer.

20. In addition to direct sales, Opposer has been engaged continuously for an extensive period of time in the licensing of its WHAC-A-MOLE marks for the goods associated with the Opposer’s WHAC-A-MOLE marks.

21. Opposer’s licensees are now and have been using the WHAC-A-MOLE marks in connection with the goods associated with the Opposer’s WHAC-A-MOLE marks.

22. Many of the goods sold by the Opposer and/or the Opposer's licensees under the Opposer's WHAC-A-MOLE marks are directed at children.

APPLICANT

23. On information and belief, The Cartoon Network LP, LLLP ("Applicant") is a Delaware limited liability limited partnership with a place of business located at 13 North, One CNN Center, Atlanta, Georgia 30303.

24. On information and belief, Applicant filed the '355 application on August 3, 2005 for the mark "WELCOME TO WACKAMO," based upon intent to use the mark in association with "entertainment and education services in the nature of a continuing comedy, drama, action, adventure and/or animation program series, provided through television, radio, and the global computer information network; motion picture film production; providing on-line interactive games played via global computer networks, and global communications networks" in International Class 41.

25. On information and belief, the '355 application was published for opposition in the Official Gazette of April 25, 2006.

26. The dominant portion of mark represented in the '355 application is the word "WACKAMO."

27. The mark represented by the '355 application and the marks represented by the Opposer's WHAC-A-MOLE marks are similar as to appearance, sound, connotation and commercial impression.

28. The goods identified in the '355 application are similar to the goods associated with the goods sold and/or licensed by Opposer under the marks represented by the Opposer's WHAC-A-MOLE marks.

29. The goods identified in the '355 application travel in the established, likely to continue, trade channels in which the goods associated with the Opposer's WHAC-A-MOLE marks travel.

30. Opposer's WHAC-A-MOLE marks have been in use in commerce long before the Applicant's filing date, which will represent an effective use date for the Applicant only if the '355 application is registered.

31. The Applicant has neither sought, nor has the Opposer given, any consent as to the Applicant's proposed use of the mark represented by the '355 application.

32. Upon information and belief, Applicant's primary target audience is children.

33. Registration of the '355 application to Applicant and use of a mark substantially similar to Applicant's mark is likely to cause confusion, or to cause mistake, or to deceive, particularly as to the source or origin of the goods with which Applicant uses its mark, to induce purchasers to believe that the goods of Applicant are those of Opposer and/or Opposer's licensees, or are endorsed by, or are in some way affiliated or associated with Opposer.

34. Registration of the '355 application to Applicant would presumptively entitle Applicant to prima facie exclusive ownership and rights to the mark represented by the '355 application and would cause confusion among consumers of the relevant goods as to the source of the goods.

WHEREFORE, Opposer prays that this Opposition be sustained and that the Applicant be denied registration of Application Serial No. 78/684,355 for "WELCOME TO WACKAMO".

The Commissioner is also authorized to charge any fees which may be required to Deposit Account 19-4076.

Respectfully submitted,

BOB'S SPACE RACERS, INC.

Date: May 23, 2006

By: Cheryl S. Scotney

Jeffrey S. Standley

Cheryl S. Scotney

Stephen L. Grant

STANDLEY LAW GROUP LLP

Attorneys for Opposer

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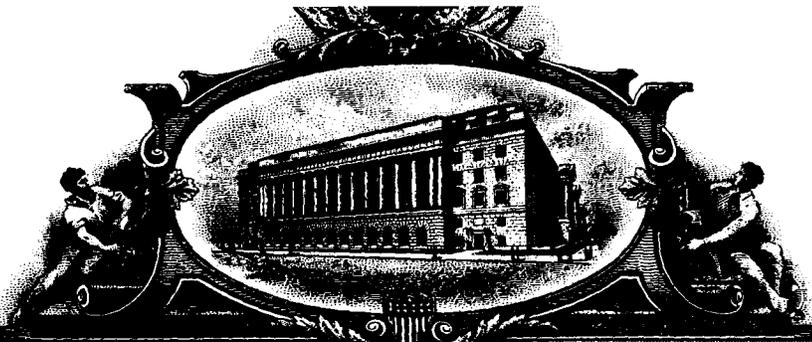
E-mail: [cscotney@standleyllp.com](mailto:cscotney@standleyllp.com)

E-mail: [sgrant@standleyllp.com](mailto:sgrant@standleyllp.com)

Atty Docket No. BSR1338-151

## **EXHIBIT A**

1447187



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

March 30, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,675,229 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

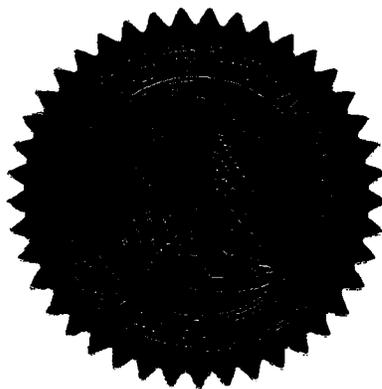
REGISTERED FOR A TERM OF 10 YEARS FROM *February 11, 1992*  
*1st* RENEWAL FOR A TERM OF 10 YEARS FROM *February 11, 2002*  
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

*Registrant*

By Authority of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office

E. BORNETT  
Certifying Officer



Int. Cl.: 28

Prior U.S. Cl.: 22

**United States Patent and Trademark Office** **Reg. No. 1,675,229**  
**Registered Feb. 11, 1992**

**TRADEMARK  
PRINCIPAL REGISTER**

**WHAC-A-MOLE**

**BOB'S SPACE RACERS, INC. (FLORIDA COR-  
PORATION)  
427 15TH STREET  
DAYTONA BEACH, FL 32117**

**FOR: ARCADE, CARNIVAL AND AMUSE-  
MENT TYPE ACTIVITY GAME, IN CLASS 28  
(U.S. CL. 22).**

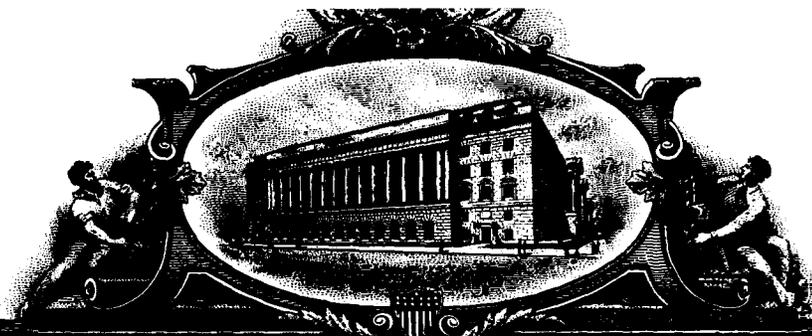
**FIRST USE 4-24-1977; IN COMMERCE  
4-24-1977.**

**SER. NO. 74-097,672, FILED 9-17-1990.**

**AMY C. BIXLER, EXAMINING ATTORNEY**

## **EXHIBIT B**

1447185



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

March 30, 2006

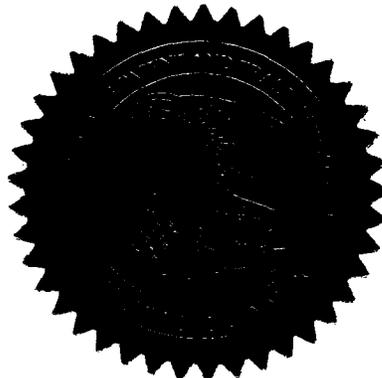
THE ATTACHED U.S. TRADEMARK REGISTRATION 2,536,814 IS  
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY  
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH  
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *February 05, 2002*  
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office

A handwritten signature in black ink, appearing to read "E. Bornett". The signature is fluid and cursive.

E. BORNETT  
Certifying Officer



**Int. Cl.: 28**

**Prior U.S. Cls.: 22, 23, 38 and 50**

**Reg. No. 2,536,814**

**United States Patent and Trademark Office**

**Registered Feb. 5, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**WHAC-A-MOLE**

**BOB'S SPACE RACERS, INC. (FLORIDA COR-  
PORATION)  
427 15TH STREET  
DAYTONA BEACH, FL 32117**

**FIRST USE 12-25-1999; IN COMMERCE 12-25-1999.**

**OWNER OF U.S. REG. NO. 1,675,229.**

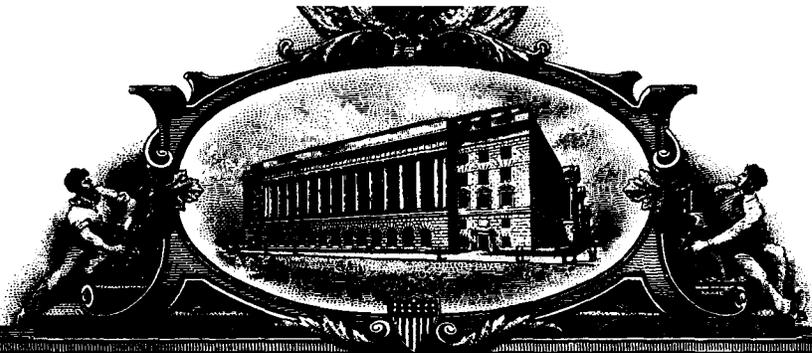
**FOR: GAMES, NAMELY, HAND HELD UNIT  
FOR PLAYING ELECTRONIC GAMES, AND  
BOARD GAMES, IN CLASS 28 (U.S. CLS. 22, 23, 38  
AND 50).**

**SER. NO. 78-038,470, FILED 12-8-2000.**

**MELISSA SHELLA, EXAMINING ATTORNEY**

## **EXHIBIT C**

7009581



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

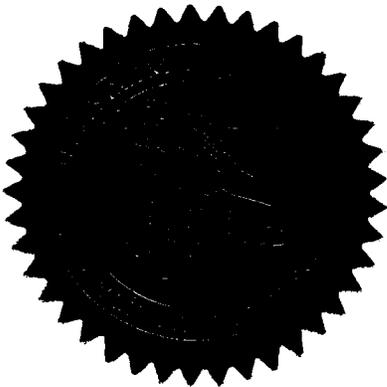
May 01, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,561,937 IS  
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY  
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH  
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *April 16, 2002*  
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office

  
M. K. CARTER  
Certifying Officer



Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

**United States Patent and Trademark Office**

**Reg. No. 2,561,937**

Registered Apr. 16, 2002

**TRADEMARK  
PRINCIPAL REGISTER**



BOB'S SPACE RACERS, INC. (FLORIDA CORPORATION)  
427 15TH STREET  
DAYTONA BEACH, FL 32117

FOR: GAMES, NAMELY, HAND HELD UNIT FOR PLAYING ELECTRONIC GAMES, BOARD GAMES, ARCADE, CARNIVAL AND AMUSEMENT TYPE ACTIVITY GAMES AND ACCESSORIES THEREFOR, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 12-25-1999; IN COMMERCE 12-25-1999.

OWNER OF U.S. REG. NO. 1,675,229.

SER. NO. 78-038,473, FILED 12-8-2000.

EDD VASQUEZ, EXAMINING ATTORNEY