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

Proceeding	91179000
Party	Plaintiff The Cartoon Network, Inc.
Correspondence Address	James A. Trigg KILPATRICK STOCKTON LLP 1100 Peachtree Street Atlanta, GA 30309-4530 UNITED STATES
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Date	10/12/2007
Attachments	TCN v ACN - Opposer's Brief in Support of Motion to Suspend.pdf (55 pages) (1869110 bytes)

dispose of the issues raised in this opposition, and Cartoon Network therefore seeks suspension of these proceedings.

II. ARGUMENT

The Board has the power to suspend proceedings in favor of a pending civil action pursuant to 37 C.F. R. § 2.117(a), which provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

This Board regularly has exercised this power in the interests of promoting judicial economy and conserving resources. See Vining Indus., Inc. v. Libman Co., 1996 TTAB LEXIS 455, at *6 (T.T.A.B. July 16, 1996) (suspending Board proceedings “in the interest of judicial economy and consistent with [the Board’s] inherent authority to regulate [its] proceedings to avoid duplicating the effort of the court and the possibility of reaching an inconsistent conclusion”); Tokaido v. Honda Assocs., Inc., 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973) (“[N]otwithstanding the fact that the Patent Office proceeding was the first to be filed, it is deemed to be the better policy to suspend proceedings herein until the civil suit has been finally concluded.”); Townley Clothes, Inc. v. Goldring, Inc., 100 U.S.P.Q. 57, 58 (Comm’r Pat. 1953) (“[I]t would not seem to be in the interests of ‘judicial economy’ for the parties to proceed in two forums. . . .”).

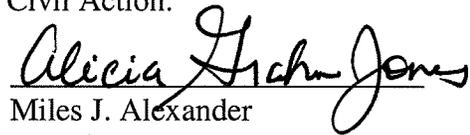
This opposition should be suspended because proceedings in the Civil Action will conclusively determine Applicant’s rights in the ADULT CARTOON NETWORK Mark, and therefore will be dispositive of all issues raised in this proceeding. See Tokaido v. Honda Assocs., Inc., 179 U.S.P.Q. at 862 (“[W]hile a decision of the District Court would be binding upon the Patent Office, a decision by the Trademark Trial and Appeal Board would only be

advisory in respect to the disposition of the case pending in the District Court.”); see also Sam S. Goldstein Indus., Inc. v. Botany Indus., Inc., 301 F. Supp. 728, 731, 163 U.S.P.Q. 442, 443 (S.D.N.Y. 1969) (noting that PTO “findings would not be res judicata in this [civil action]” and denying motion to stay district court proceedings).

III. CONCLUSION

For the foregoing reasons, Cartoon Network respectfully submits that this opposition proceeding should be suspended pending disposition of the Civil Action.

Date: October 12, 2007



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

THE CARTOON NETWORK, INC.,)	
	)	Opposition No. 91179000
Opposer,)	
	)	In the Matter of Application
v.	)	Serial No. 76/638,229
)	
ADULT CARTOON NETWORK INC.,	)	Mark: ADULT CARTOON ADULT
	)	CARTOON NETWORK GET
Applicant.	)	CONNECTED & Design

CERTIFICATE OF SERVICE

This is to certify that on this date, the foregoing **OPPOSER'S BRIEF IN SUPPORT OF MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 C.F.R. § 2.117(a)** was served upon Applicant by depositing a copy thereof with the DHL courier service, addressed as follows:

Clifford W. Vermette
Mark Pospisilik
Vermette & Co.
1177 West Hastings Street, Suite 320
Vancouver V6E 2K3, BC

Date: October 12, 2007


Counsel for Opposer

EXHIBIT A

ORIGINAL FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

OCT 01 2007
By: JAMES N. HATTEN, Clerk
Deputy Clerk

THE CARTOON NETWORK, INC.,)
)
Plaintiff,)
)
v.)
)
ADULT CARTOON NETWORK INC.,)
)
Defendant.)

Civil Action No. _____
1 : 07 - CV - 2415

JEC

COMPLAINT

Plaintiff The Cartoon Network, Inc. ("Plaintiff" or "Cartoon Network"),
states the following for its complaint against Adult Cartoon Network Inc.
("Defendant" or "Adult Cartoon Network").

SUBSTANCE OF THE ACTION

1. This is an action at law and in equity for trademark infringement,
unfair competition, trademark dilution and injury to business reputation, deceptive
trade practices, and fraudulent encroachment arising under the federal Lanham
Act, 15 U.S.C. §§ 1051 *et seq.* (the "Lanham Act"), the Georgia antidilution
statute, O.C.G.A. § 10-3-451, the Georgia Uniform Deceptive Trade Practices Act,
O.C.G.A. §§ 10-1-370 *et seq.*, the applicable antidilution laws of the several states,
and the common law.

2. Defendant Adult Cartoon Network owns and operates a website located at www.adultcartoonnetwork.ca, which offers pornographic animation content under the mark ADULT CARTOON NETWORK. Defendant is willfully and intentionally offering for sale and selling its pornographic animation content under a trademark confusingly similar to Plaintiff Cartoon Network's trademarks. Defendant Adult Cartoon Network's services are not distributed or authorized by, or connected or affiliated with, Plaintiff Cartoon Network in any way. Plaintiff brings this action to stop Defendant from trading on the enormous goodwill associated with Cartoon Network and from passing off Defendant's services as those sold or licensed by Plaintiff. Defendant's misconduct is likely to cause confusion and to deceive consumers and the public and will continue to do so absent relief from this Court.

JURISDICTION AND VENUE

3. The Court has original jurisdiction of the action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121. Further, the Court has supplemental jurisdiction over the state claims alleged herein because the claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy as provided in 28 U.S.C. § 1367.

4. Venue and jurisdiction are proper in this Court pursuant to 28 U.S.C. § 1391 and Fed. R. Civ. P. 4(k)(2).

THE PARTIES

5. Plaintiff The Cartoon Network, Inc. is a corporation organized and existing under the laws of Delaware, having its principal place of business located at 1050 Techwood Drive, NW, Atlanta, Georgia 30318.

6. On information and belief, Defendant Adult Cartoon Network Inc. is a corporation organized and existing under the laws of British Columbia, Canada having its principal place of business at 22661 Kendrick Loop Maple Ridge, British Columbia, Canada V2X 8Y9.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. The Famous Cartoon Network Trademarks.

7. Since at least as early as October 1, 1992, Plaintiff has used the mark CARTOON NETWORK in connection with entertainment and educational services and cable telecasting services primarily marketed toward children. Since that time, the CARTOON NETWORK mark has served as a distinctive indicator of Plaintiff's entertainment services and related merchandise.

8. Plaintiff is the owner of a United States trademark registration for the mark CARTOON NETWORK (Reg. No. 2,554,469), covering "entertainment and education services in the nature of a series of television and cable television

programs directed toward children and young adults, provided through cable television, broadcast television, radio and the global computer information network.” Affidavits have been filed pursuant to Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, and this registration is incontestable. A true and correct copy of the Certificate of Registration for the CARTOON NETWORK mark is attached as **Exhibit 1**.

9. Altogether, Plaintiff owns a family of 22 federal trademark registrations for marks incorporating the phrase CARTOON NETWORK, 11 of which are incontestable. A complete listing of such registrations is attached as **Exhibit 2**. The CARTOON NETWORK marks identified in paragraphs 7-9 are collectively referred to herein as the “CARTOON NETWORK Marks.”

10. Plaintiff has enjoyed great success with the CARTOON NETWORK brand, which receives high ratings in the cable television field, and has enjoyed great critical success. As of October 2006, the CARTOON NETWORK offering was distributed to 91 million homes throughout North America. Along with the Disney Channel and Nickelodeon, it is one of the most widely distributed children’s networks in the United States.

11. In addition, CARTOON NETWORK programming is distributed in approximately 160 countries around the world, and is available in more than 200

million homes worldwide. Plaintiff also owns numerous trademark registrations worldwide incorporating the phrase CARTOON NETWORK.

12. Since July 1998, Plaintiff has operated a website at the domain name <www.cartoonnetwork.com>. It is consistently ranked as one of the top sites in the Family & Lifestyles: Kids, Games, & Toys category. In the last quarter of 2006, the <www.cartoonnetwork.com> site received over 5,400,000 unique visitors per month.

13. Plaintiff has expended many millions of dollars in connection with developing consumer brand recognition for the CARTOON NETWORK Marks.

14. As a result of the foregoing, Plaintiff's CARTOON NETWORK Marks have acquired a high degree of recognition, fame, and distinctiveness, and they symbolize the high quality entertainment content and related merchandise primarily for children offered by Plaintiff.

15. Consumers are familiar with and identify Plaintiff's marks with Plaintiff, and, by reason of this identification, goods and services associated with the CARTOON NETWORK Marks are understood by consumers to be produced, marketed, and distributed under Plaintiff's authority or otherwise derived from Plaintiff.

16. Plaintiff's CARTOON NETWORK Marks are an important factor employed by consumers in identifying the source of Plaintiff's entertainment

services and related goods, and they are distinctive of those goods and services. In particular, consumers recognize the CARTOON NETWORK Marks as symbols of high quality children's and family-oriented programming.

17. As a result of these and other uses, the CARTOON NETWORK Marks are entitled to a broad scope of protection.

18. In addition to its animation properties targeted to children, since at least as early as September 2001 Plaintiff has offered a programming block of animated television programs targeted toward adults under the ADULT SWIM mark on its CARTOON NETWORK channel.

19. Plaintiff owns a United States trademark registration for the ADULT SWIM word mark (Reg. No. 2,825,671) and the stylized [adult swim] mark (Reg. No. 3,120,775), both covering various entertainment services in Class 41. True and correct copies of the Certificates of Registration for the ADULT SWIM marks are attached as **Exhibit 3**.

20. Altogether, Plaintiff owns a family of 16 U.S. trademark registrations which incorporate the phrase ADULT SWIM.

B. Defendant's Unlawful Activities.

21. On information and belief, Defendant owns and operates a website located at the domain name <www.adultcartoonnetwork.ca>, which offers animation content under the mark ADULT CARTOON NETWORK. A true and

correct copy of the homepage of Defendant's website located at www.adultcartoonnetwork.ca is attached as **Exhibit 4**.

22. On May 10, 2005, Defendant filed an application under Sections 1(a) and 44(e) of the Lanham Act to register the mark ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED & Design (Serial No. 76/638,229), depicted below, for "Adult cartoon pay per view Internet transmission; Entertainment communication services, namely, providing access to adult cartoon illustrations, adult flashtoons, adult comics, and adult animated movies over the Internet" in International Class 38, claiming a date of first use of November 15, 2001. A true and correct copy of the U.S. Patent and Trademark Office's electronic record of Defendant's application is attached as **Exhibit 5**.



23. Defendant's trademark application was published for opposition in the *Official Gazette* on July 17, 2007. On August 10, 2007, Plaintiff timely filed its Notice of Opposition (Opposition No. 91/179,000) to oppose the registration of the mark ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED

& Design. A true and correct copy of the Notice of Opposition is attached as **Exhibit 6**.

24. Defendant's ADULT CARTOON NETWORK word mark and its ADULT CARTOON logo incorporate Plaintiff's CARTOON NETWORK mark in addition to the term ADULT. Defendant's mark is therefore similar to Plaintiff's marks with respect to appearance, pronunciation, and commercial impression.

25. Like Plaintiff's CARTOON NETWORK mark, Defendant's ADULT CARTOON NETWORK word mark and logo are used in connection with animation content.

26. Most of Defendant's animation content includes language or images that are offensive or inappropriate and are inconsistent with and tarnish the image of Cartoon Network, its entertainment content and merchandise, its licensees, and/or Cartoon Network's trademarks. Representative examples of Defendant's animation content are attached as **Exhibit 7**.

27. Defendant's services are not licensed, authorized, sponsored, endorsed or approved by Cartoon Network.

28. Plaintiff's CARTOON NETWORK and ADULT SWIM trademarks were used extensively and continuously before Defendant offered for sale or sold Defendant's services.

29. Defendant's services are related to the goods and services sold or licensed by Plaintiff, and are sold through similar channels of trade. Defendant sells its services on the Internet on a website incorporating Plaintiff's CARTOON NETWORK mark.

30. Defendant's services are likely to deceive, confuse, and mislead prospective purchasers and purchasers into believing that Defendant's unlicensed and unauthorized services were licensed by, authorized by or in some manner associated with Plaintiff. The likelihood of confusion, mistake and deception engendered by Defendant's unlicensed and unauthorized services is causing an irreparable harm to Plaintiff.

31. Purchasers and prospective purchasers viewing Defendant's unlicensed and unauthorized animation content and perceiving a defect, lack of quality, or any impropriety are likely to mistakenly attribute them to Cartoon Network. As a result, Defendant is tarnishing Plaintiff's CARTOON NETWORK mark and inflicting irreparable harm to Cartoon Network's goodwill.

32. Defendant's unlicensed and unauthorized animation content offered under the ADULT CARTOON NETWORK word mark and logo are calculated to trade on the valuable goodwill and commercial magnetism of Cartoon Network's reputation and identity in this District and elsewhere. Defendant also is attempting to pass off its animation content as that of Cartoon Network or its licensees.

33. Defendant willfully, intentionally, and maliciously has used Plaintiff's CARTOON NETWORK trademark, or has adopted imitations of the CARTOON NETWORK trademark, and combined said imitations with other material likely to cause and enhance confusion, and has otherwise deliberately attempted to pass off its unlicensed and unauthorized animation content as provided or licensed by Cartoon Network. Exacerbating the likelihood of confusion here is the fact that Plaintiff owns rights in the mark ADULT SWIM, and Defendant's ADULT CARTOON NETWORK word mark and logo incorporate the entirety of the CARTOON NETWORK marks and the "ADULT" element of the ADULT SWIM marks.

COUNT 1

FEDERAL TRADEMARK INFRINGEMENT

34. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-33.

35. Defendant is using confusingly similar imitations of Plaintiff's CARTOON NETWORK Marks in connection with unlicensed and unauthorized services. This conduct is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's unlicensed and unauthorized services are distributed by Plaintiff or are associated or connected with Plaintiff, or have the sponsorship, endorsement or approval of Plaintiff.

36. Defendant has used confusingly similar imitations of Cartoon Network's federally registered marks in violation of 15 U.S.C. § 1114, and Defendant's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public and, additionally, injury to Cartoon Network's goodwill and reputation as symbolized by Cartoon Network's federally registered marks, for which Plaintiff has no adequate remedy at law.

37. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Cartoon Network's federally registered marks to Plaintiff's great and irreparable injury.

38. Defendant has caused and is likely to continue causing substantial injury to the public and to Plaintiff, and Plaintiff is entitled to injunctive relief and to recover actual damages, Defendant's profits, enhanced profits and damages, costs and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, 1117.

COUNT 2

FEDERAL UNFAIR COMPETITION

39. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-38.

40. Defendant's unlicensed and unauthorized services have caused and are likely to cause confusion, deception, and mistake by creating the false and

misleading impression that Defendant's services are distributed by Plaintiff or are associated or connected with Plaintiff, or have the sponsorship, endorsement or approval of Plaintiff.

41. Defendant has made false representations, false descriptions, and false designations of origin in violation of 15 U.S.C. §§ 1125(a), including, but not limited to, Defendant's commercial use of Cartoon Network's CARTOON NETWORK Marks, or confusingly similar imitations thereof. Defendant's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public and, additionally, injury to Plaintiff's goodwill and reputation, for which Plaintiff has no adequate remedy at law.

42. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Plaintiff to the great and irreparable injury of Plaintiff.

43. Defendant's conduct has caused, and is likely to continue causing, substantial injury to the public and to Plaintiff, and Plaintiff is entitled to injunctive relief and to recover actual damages, profits, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116 and 1117.

COUNT 3

FEDERAL TRADEMARK DILUTION

44. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-43.

45. Cartoon Network's CARTOON NETWORK Marks are distinctive, strong and famous and became so before Defendant's activities described in this Complaint.

46. Defendant is making unlicensed and unauthorized commercial use in commerce of Cartoon Network's CARTOON NETWORK Marks, and Defendant's activities have caused and are causing dilution of the distinctive quality of Cartoon Network's CARTOON NETWORK Marks. Defendant's conduct erodes the public's exclusive identification of the CARTOON NETWORK Marks with Cartoon Network and tarnishes and degrades the positive associations and prestigious connotations of the marks.

47. Defendant willfully intended to trade on Cartoon Network's reputation and to cause dilution of Cartoon Network's CARTOON NETWORK Marks.

48. Plaintiff therefore is entitled to injunctive relief and to recover actual damages, profits, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(c), 1116, 1117.

COUNT 4

**STATE TRADEMARK DILUTION AND INJURY TO BUSINESS
REPUTATION**

49. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-48.

50. Plaintiff Cartoon Network has extensively and continuously promoted and used the CARTOON NETWORK Marks throughout Georgia and the United States, and the CARTOON NETWORK Marks have thereby become distinctive, well-known symbols of Plaintiff's goods and services.

51. Defendant Adult Cartoon Network's unauthorized use of a confusingly similar word mark and logo dilutes and is likely to dilute the distinctiveness of Cartoon Network's CARTOON NETWORK Marks by eroding the public's exclusive identification of these marks with Plaintiff Cartoon Network and by tarnishing and degrading the positive associations and prestigious connotations of the marks.

52. Defendant Adult Cartoon Network is causing and will continue to cause irreparable injury to Plaintiff Cartoon Network's goodwill and business reputation, and dilution of the distinctiveness of value of the CARTOON NETWORK Marks in violation of O.C.G.A § 10-1-451, as well as the laws of the several states, including, Alabama, ALA. CODE § 8-12-17 (2003); Alaska,

ALASKA STAT. §45.50.180 (Michie 2002); Arizona, ARIZ. REV. STAT. ANN. §44-1448.01 (West 2003); Arkansas, ARK. CODE ANN. § 4-71-213 (2002); California, CAL. BUS. & PROF. CODE § 14330 (West 2003); Connecticut, CONN. GEN. STAT. ANN § 35-11i(c) (West 2003); Delaware, DEL. CODE ANN. tit. 6, § 3313 (2002); Florida, FLA. STAT. ANN. § 495.151 (West 2003); Hawaii, HAW. REV. STAT. ANN. §482-32 (Michie 2003); Idaho, IDAHO CODE § 48-513 (Michie 2002); Illinois, 765 ILL. COMP. STAT. ANN. 1036/65 (2003); Iowa, IOWA CODE ANN. § 548.113 (West 2003); Kansas, KAN. STAT. ANN. § 81-214 (2002); Louisiana, LA. REV. STAT. ANN. § 51:223.1 (West 2003); Maine, ME. REV. STAT. ANN. tit. 10, § 1530 (West 2003); Massachusetts, MASS. GEN. LAWS. ANN. ch. 110B, § 12 (West 2003); Minnesota, MINN. STAT. ANN. § 333.285 (West 2003); Mississippi, MISS. CODE. ANN. § 75-25-25 (2003); Missouri, MO. ANN. STAT. § 417.061(1) (West 2002); Montana, MONT. CODE ANN. § 30-13-334 (2003); Nebraska, NEB. REV. STAT. ANN. §87-140 (Michie 2002); New Hampshire, N.H. REV. STAT. ANN. § 350-A:12 (2003); New Jersey, N.J. STAT. ANN. 56:3- 13.20 (West 2003); New Mexico, N.M. STAT. ANN. § 57-3B-15 (Michie 2002); New York, N.Y. GEN. BUS. Law § 360-1 (2003); Oregon, OR. REV. STAT. § 647.107 (2001); Pennsylvania, 54 PA. CONS. STAT. ANN. § 1124 (West 1996); Rhode Island, R.I. GEN. LAWS § 6-2-12 (1992); South Carolina, S. C. CODE ANN. § 39-15-1165 (2002); Tennessee,

TENN. CODE ANN. § 47-25-513 (2003); Texas, TEX. BUS. & COM. CODE ANN. § 16.29 (Vernon 2003); Utah, UT. CODE ANN. §70-3a-403 (2002); Washington, WASH. REV. CODE ANN. § 19.77.160 (2003); West Virginia, W. VA. CODE ANN. 47-2-13 (Michie 2003); and Wyoming, WYO. STAT. ANN. § 40-1-115 (Michie 2002). Plaintiff Cartoon Network therefore is entitled to injunctive relief, damages and costs, as well as, if appropriate, enhanced damages and reasonable attorneys' fees.

COUNT 5

UNFAIR AND DECEPTIVE TRADE PRACTICES

53. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-52.

54. Defendant Adult Cartoon Network has engaged in deceptive trade practices within the meaning of the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. §§ 10-1-370 *et seq.* by: (1) passing off its services as those of Plaintiff Cartoon Network; (2) causing a likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective goods and services; (3) causing a likelihood of confusion or of misunderstanding as to the affiliation, connection, or association of Defendant Adult Cartoon Network or its services with Plaintiff Cartoon Network or its goods and services; (4) using deceptive representations or designations of origin in connection with

Defendant Adult Cartoon Network's services; (5) representing that Defendant Adult Cartoon Network's services have the sponsorship or approval of Plaintiff Cartoon Network, which they do not have; and (6) engaging in other conduct that similarly creates a likelihood of confusion or of misunderstanding to consumers, potential consumers, and the public.

55. Defendant Adult Cartoon Network's conduct in passing off its services as those of Plaintiff Cartoon Network, causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, or approval of Defendant Adult Cartoon Network's services, causing a likelihood of confusion as to Defendant Adult Cartoon Network's affiliation, connection, or association with another, and otherwise damaging the public also constitutes unfair and deceptive acts or practices in the course of a business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of other states, including Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West 1996 and Supp. 1998); Delaware, DEL. CODE ANN. tit. 6, §§ 2531 to 2536 (1993 & Supp. 1998); Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5 (1993); Illinois, 815 ILL. COMP. STAT. ANN. 510/1 to 510/7 (1993); Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216 (West 1996); Minnesota, MINN. STAT. ANN. § 325D.43 to .48 (West 1995); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306 (1995); New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie 1995); New York, N.Y. GEN.

BUS. Law § 349 (McKinney 1988); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (West 1995); Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West 1995 & Supp. 1998); Oregon, O.R.S. §§ 646.605 to 646.656 (2003); and Pennsylvania, 73 PA. CONS. STAT. ANN. §§ 201-1 to 201-9.3 (West 2005).

56. Defendant Adult Cartoon Network's unauthorized use of confusingly similar trademark designations is causing and is likely to cause substantial injury to the public and to Plaintiff Cartoon Network, and Plaintiff Cartoon Network is entitled to injunctive relief and to recover its costs and reasonable attorneys' fees.

COUNT 6

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

57. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-56.

58. Defendant Adult Cartoon Network's acts constitute common law trademark infringement and unfair competition, and have created and will continue to create a likelihood of confusion to the irreparable injury of Plaintiff Cartoon Network unless restrained by this Court. Plaintiff Cartoon Network has no adequate remedy at law for this injury.

59. On information and belief, Defendant Adult Cartoon Network acted with full knowledge of Plaintiff Cartoon Network's use of, and statutory and

common law rights to, the CARTOON NETWORK Marks and without regard to the likelihood of confusion to customers, potential customers, and the public created by those activities.

60. Defendant Adult Cartoon Network's actions demonstrate a willful intent to trade on the goodwill associated with the CARTOON NETWORK Marks to the great and irreparable injury of Plaintiff Cartoon Network.

61. As a result of Defendant Adult Cartoon Network's acts, Plaintiff Cartoon Network has been damaged in an amount not as yet determined or ascertainable. At a minimum, however, Plaintiff Cartoon Network is entitled to injunctive relief, to an award of Defendant Adult Cartoon Network's profits, and to actual damages under O.C.G.A. § 51-1-6. In light of the willful and intentional use of the CARTOON NETWORK Marks, and the need to deter Defendant Adult Cartoon Network from similar conduct, Plaintiff Cartoon Network additionally is entitled to punitive damages under O.C.G.A. § 51-12-5.1.

WHEREFORE, Plaintiff Cartoon Network prays that:

1. Plaintiff Cartoon Network's claims against Defendant Adult Cartoon Network be tried by jury;
2. Defendant Adult Cartoon Network and all agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for,

with, by, through, or under authority from Defendant Adult Cartoon Network, or in concert or participation with Defendant Adult Cartoon Network, and each of them, be enjoined, preliminarily and permanently, from:

- a. using marks confusingly similar to the CARTOON NETWORK and ADULT SWIM marks in connection with Defendant Adult Cartoon Network's goods or services;
- b. using any trademark, service mark, name, logo, design, domain name, or source designation of any kind on or in connection with Defendant Adult Cartoon Network's goods or services that is a copy, reproduction, colorable imitation, or simulation of or confusingly similar to, or in any way similar to the trademarks, service marks, names, or logos of Plaintiff Cartoon Network;
- c. using any trademark, service mark, name, logo, design, domain name, or source designation of any kind on or in connection with Defendant Adult Cartoon Network's goods or services that is likely to cause confusion, mistake, deception, or public misunderstanding that Defendant Adult Cartoon Network's goods or services

are produced or provided by Plaintiff Cartoon Network,
or are sponsored or authorized by or in any way
connected or related to Plaintiff Cartoon Network;

- d. using any trademark, service mark, name, logo, design, domain name, or source designation of any kind on or in connection with Defendant Adult Cartoon Network's goods or services that dilutes or is likely to dilute the distinctiveness of the trademarks, service marks, names, or logos of Plaintiff Cartoon Network by eroding their exclusive identification with Plaintiff Cartoon Network or tarnishing their positive associations;
- e. passing off, palming off, or assisting in passing off or palming off, Defendant Adult Cartoon Network's goods or services as those of Plaintiff Cartoon Network, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint; and
- f. using as an electronic address any URL designation or domain name, including but not limited to <www.adultcartoonnetwork.ca> or <www.adultcartoonnetworkinc.com>, that is confusingly

similar to, or dilutive of, any of the trademarks, service marks, names, or logos of Plaintiff Cartoon Network.

3. Defendant Adult Cartoon Network be compelled to account to Plaintiff Cartoon Network for any and all profits derived by Defendant Adult Cartoon Network, and for all damages caused to Plaintiff Cartoon Network under 15 U.S.C. § 1117, O.C.G.A. § 51-1-6, and the common law;

4. Based on Defendant Adult Cartoon Network's willful and intentional use of marks known to be infringing, Plaintiff Cartoon Network be awarded treble damages, as provided for by 15 U.S.C. § 1117(a);

5. Defendant Adult Cartoon Network be required to pay to Plaintiff Cartoon Network the costs of this action and its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and (b), and O.C.G.A. § 10-1-373(b);

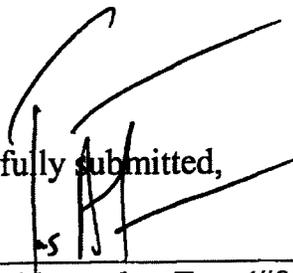
6. Defendant Adult Cartoon Network be required to pay prejudgment interest dating from service of this Complaint on any profits, damages, and attorneys' fees awarded as provided for in 15 U.S.C. § 1117;

7. Based on Defendant Adult Cartoon Network's willful and intentional use of Plaintiff Cartoon Network's marks, and to deter such conduct, Plaintiff Cartoon Network be awarded punitive damages pursuant to O.C.G.A. § 51-12-5.1; and

8. Plaintiff Cartoon Network has such other and further relief as the Court may deem just.

Dated: October 1, 2007

Respectfully submitted,

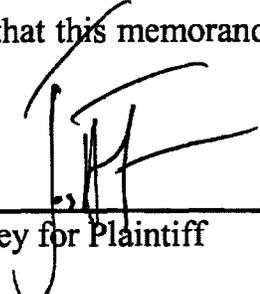


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Attorneys for Plaintiff

Local Rule 7.1 Certification

Pursuant to Local Rule 7.1, I hereby certify that this memorandum has been prepared in Times New Roman 14 point font.



Attorney for Plaintiff

EXHIBIT 1

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,554,469

Registered Apr. 2, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

CARTOON NETWORK

CARTOON NETWORK LP, LLLP, THE (GEORGIA LIMITED PARTNERSHIP)
1030 TECHWOOD DRIVE
ATLANTA, GA 30318 , BY CHANGE OF NAME
CARTOON NETWORK, THE (GEORGIA CORPORATION) ATLANTA, GA 303485366

FOR: ENTERTAINMENT AND EDUCATION SERVICES IN THE NATURE OF A SERIES OF TELEVISION AND CABLE TELEVISION PROGRAMS DIRECTED TOWARD CHILDREN AND YOUNG ADULTS, PROVIDED THROUGH CABLE TELEVISION, BROADCAST TELEVISION, RADIO AND THE GLOBAL COMPUTER INFORMATION NETWORK, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-1-1992; IN COMMERCE 10-1-1992.

OWNER OF U.S. REG. NOS. 1,789,899, 2,087,389 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CARTOON", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-433,184, FILED 2-12-1998.

HENRY S. ZAK, EXAMINING ATTORNEY

EXHIBIT 2

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
CARTOON NETWORK	2,554,469 (Mark is incontestable)	Entertainment and education services in the nature of a series of television and cable television programs directed toward children and young adults, provided through cable television, broadcast television, radio and the global computer information network	April 2, 2002	October 1, 1992
CARTOON NETWORK & Design	1,798,899 (Mark is incontestable)	Cable telecasting services featuring cartoons	October 12, 1993	October 1, 1992
CARTOON NETWORK & Design	1,819,542 (Mark is incontestable)	Cable telecasting services	February 1, 1994	October 1, 1992
CARTOON NETWORK & Design	1,877,681 (Mark is incontestable)	Clothing; namely, T-shirts, sweatshirts, sweatpants, shirts, shorts, pajamas, play sets comprising tops and bottoms, hats, scarves, jackets, socks and boxer shorts	February 7, 1995	October 1, 1992
CARTOON NETWORK & Design	2,087,389 (Mark is incontestable)	Paper goods and printed matter, namely, stickers, calendars, trading cards, posters, paint sets for children, pens, pencils, children's books, comic books, coloring books, post cards, greeting cards; paper party goods, namely, hats, streamers, blowers, tablecloths, napkins, gift wrap, banners, door signs, tags, party decorations, lunch bags; bank checks, aquariums and indoor terrariums for plant cultivation	August 12, 1997	October 1, 1992
CARTOON NETWORK WACKY RACING	2,128,259 (Mark is incontestable)	Clothing, namely, straight neckties and bow ties, T-shirts, sweatshirts, crew shirts, polo shirts, turtle neck shirts, sweaters, jackets, shorts, boxer shorts, beach wear, sweatpants, playsuits, underwear, bathing suits, hats, pajamas, socks, slippers, sneakers, boots, shoes and Halloween costumes	January 13, 1998	February 1996
CARTOON NETWORK & Design	2,131,857 (Mark is incontestable)	Toys and sporting goods, namely, plush dolls, vinyl dolls, rag dolls, action figures and accessories therefor, play kitchen and cookware, wind-up, pull back and friction powered PVC figurines, plastic toy vehicles, kites, playground and sports balls, baseball bats, golf clubs, fishing rods and reels, pails, ring toss,	January 27, 1998	October 1, 1992

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
		horse shoes for recreational purposes, paddle ball, badminton sets, play bowling sets, rid-on-toys, pedal cars, swim rings, inflatable and play swimming pools for recreational use, surf boards, play houses, bop bags, board games, skin diving masks and swim fins, floating action skills games for use in water, floating action target games for use in water, jigsaw puzzles, video game cartridges, chess sets, hand-held electronic games, throw target games, children's three-dimensional viewers and projectors and Christmas tree ornaments		
CARTOON NETWORK & Design	2,176,023 (Mark is incontestable)	Education and entertainment services in the nature of a continuing comedy program series targeted towards children and young adults provided through cable television, broadcast television, broadcast radio and the global computer information network	July 28, 1998	October 1992
CARTOON NETWORK & Design	2,239,225 (Mark is incontestable)	Cookies, cakes, candy, frozen confections, chewing gum, bubble gum, breakfast cereals, breads, tea and coffee	April 13, 1999	August 15, 1998
CARTOON NETWORK & Design	2,322,672 (Mark is incontestable)	Pre-recorded audio and video cassettes, featuring cartoons and young adult entertainment, multimedia software recorded on CD-ROM featuring cartoons and family entertainment programming, video game software, sunglasses and decorative refrigerator magnets	February 29, 2000	January 1996
CARTOON NETWORK & Design	2,330,594 (Mark is incontestable)	Promoting the sale of goods and services of others through printed materials, advertising and promotions	March 21, 2000	October 1, 1992
CARTOON NETWORK & Design	2,479,616	Jewelry, namely, tie fasteners made of precious metals, pins, bracelets, rings, pendants, earrings, charms, lapel pins, costume jewelry, decorative boxes made of precious metal, necklaces, watches, watch bands, clocks	August 21, 2001	July 1, 1998
CARTOON NETWORK	2,581,434	Drinking straws, picture frames, sleeping bags, plastic cake	June 18, 2002	April 1, 1998

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
& Design		decorations, plastic figurines, plastic novelty license plates and plastic key chain tags		
CARTOON NETWORK'S LAST BELL	2,881,756	Entertainment services in the nature of continuing live action and animated program series provided through cable television, broadcast television, broadcast radio and the global computer information network; motion picture film production; and educational services in the nature of a continuing program series in the field of general interest news, entertainment and educational information via cable television, broadcast television, broadcast radio and the global computer information network	September 7, 2004	August 29, 2003
CARTOON NETWORK HOOP HOP	2,887,670	Entertainment services, namely exhibitions composed of interactive game displays, celebrity appearances, participatory activities, contests and competitions centered around sporting and entertainment events	September 21, 2004	February 13, 2004
CARTOON NETWORK HOOP HOP	2,981,742	Promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with athletes, sporting and/or entertainment events, and television personalities or character images; promoting sports competitions and/or entertainment events of others; and arranging and conducting trade show exhibitions in the field of sports and entertainment	August 2, 2005	February 1, 2003
CN CARTOON NETWORK & Design	3,080,718	Trunks, suitcases and traveling bags; goods made from leather and imitations of leather, namely athletic bags, baby backpacks, backpacks, beach bags, book bags, diaper bags, duffel bags, gym bags, tote bags, fanny packs, knapsacks, waist packs, shopping bags, pocketbooks, handbags, shoulder bags, cosmetic bags sold empty, attaché cases, brief-cases, brief-case type portfolios, wallets, billfolds, key cases, coin cases, sport bags; umbrellas, sun umbrellas, parasols, small leather and plastic goods, namely, credit card cases, passport cases, vanity cases	April 11, 2006	July 1, 2005

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
		sold empty and walking sticks		
CN CARTOON NETWORK & Design	3,080,719	Glass, ceramic and earthenware goods, namely, beverage glassware, coffee mugs, mugs, jugs, bowls, plates, coasters, coffee cups and cups; demitasse sets consisting of cups and saucers; sugar and creamer sets; infant cups; cookie jars; ceramic, glass and china figurines; non-electric coffee pots not of precious metal; wastepaper baskets; ice buckets; plastic buckets; shower caddies; tea caddies; cake molds; scrapers, and cake servers; canteens; champagne buckets; plastic coasters, cocktail shakers; thermal insulated containers for food or beverages; cookie cutters, cork screws; corn cob holders; plastic water bottles sold empty; vacuum bottles; decanters; drinking flasks; gardening gloves; rubber household gloves; dinnerware; namely paper plates and paper cups; brushes, namely, hair brushes, tooth brushes, clothes brushes; kitchen utensils, namely rolling pins, spatulas, turners, whisks, and kitchen containers, soap containers, food containers and lunch boxes; plastic cups, plates and coasters	April 11, 2006	July 1, 2005
CN CARTOON NETWORK & Design	3,080,720	Clothing for men, women and children - namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, skirts, blouses, dresses, suspenders, sweaters, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sunvisors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, booties, slipper socks, swimwear and masquerade and Halloween costumes and masks sold in connection therewith	April 11, 2006	June 1, 2005
CN CARTOON NETWORK & Design	3,080,721	Toys and sporting goods including games and playthings, namely, action figures and accessories therefor, plush toys, balloons, bathtub toys, ride-on toys, equipment sold as a unit for playing card games, toy vehicles, dolls, flying discs, electronic hand-held game unit, game equipment sold	April 11, 2006	August 18, 2005

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
		as a unit for playing a board game, a manipulative game, a parlor game and an action type target game, stand alone video output game machines, jigsaw and manipulative puzzles, paper face masks, skateboards, ice skates, water squirting toys, balls, namely, playground balls, soccer balls, baseballs, basketballs, baseball gloves, swimming floats for recreational use, kick board flotation devices for recreational use, surfboards, swim boards for recreational use, swim fins, toy bakeware and toy cookware, toy banks, and Christmas tree ornaments		
CN CARTOON NETWORK & Design	3,080,722	Foods and beverages, namely, coffee, tea, cocoa, sugar, rice, tapioca, artificial coffee, flour and preparations made from cereals, namely, breakfast cereals, ready-to-eat cereal derived food bars, cereal-based snack foods, pastries and confectioneries in the nature of candies, gum, bubble gum, flavored ices, honey, baking powder, salt, mustard, vinegar, sauces except salad dressings, spices and ice	April 11, 2006	June 28, 2005
CN CARTOON NETWORK & Design	3,124,575	Motion picture films featuring comedy, drama, action, adventure and/or animation, and motion picture films for broadcast on television featuring comedy, drama, action, adventure and/or animation; pre-recorded vinyl records, audio tapes, audio-video tapes, audio-video cassettes, audio-video discs, and digital versatile discs featuring music, comedy, drama, action, adventure, and/or animation; stereo headphones; batteries; cordless telephones; hand-held calculators; audio cassette and CD players; CD roms containing computer game programs; hand-held karaoke players, telephone and/or radio pagers; pre-recorded, short motion picture film cassettes featuring comedy, drama, action, adventure and/or animation to be used with hand-held viewers or projectors; video cassette recorders and players; compact disc players,	August 1, 2006	February 21, 2006

Mark	Registration Number	Goods/Services	Registration Date	Date of First Use
		digital audio tape recorders and players, electronic diaries; radios; mouse pads; eyeglasses, sunglasses and cases therefor; pre-recorded audio tapes and booklets sold together as a unit in the field of comedy, drama, action, adventure, and/or animation; computer programs, namely, software linking digitized video and audio media to a global computer information network; computer game equipment containing memory devices namely, discs, sold as a unit for playing a parlor-type computer game; video and computer game programs; video game programs; video game cartridges and cassettes; encoded magnetic cards, namely, key cards, phone cards, credit cards, debit cards, cash cards and decorative magnets		

EXHIBIT 3

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

Reg. No. 2,825,671

United States Patent and Trademark Office

Registered Mar. 23, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

ADULT SWIM

CARTOON NETWORK LP, LLLP, THE
C/O TURNER BROADCASTING SYSTEM, INC.
ONE CNN CENTER, BOX 105573
ATLANTA, GA 303485573

FOR: ENTERTAINMENT SERVICES IN THE
NATURE OF CONTINUING LIVE ACTION AND
ANIMATED PROGRAM SERIES PROVIDED
THROUGH CABLE TELEVISION, BROADCAST
TELEVISION, BROADCAST RADIO AND THE GLO-
BAL COMPUTER INFORMATION NETWORK; MO-
TION PICTURE FILM PRODUCTION; AND
EDUCATIONAL SERVICES IN THE NATURE OF A

CONTINUING PROGRAM SERIES IN THE FIELD
OF GENERAL INTEREST NEWS, ENTERTAIN-
MENT AND EDUCATIONAL INFORMATION VIA
CABLE TELEVISION, BROADCAST TELEVISION,
BROADCAST RADIO AND THE GLOBAL COMPU-
TER INFORMATION NETWORK, IN CLASS 41 (U.S.
CLS. 100, 101 AND 107).

FIRST USE 4-30-2002; IN COMMERCE 4-30-2002.

SN 76-256,102, FILED 5-11-2001.

JOHN DALIER, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,120,775

United States Patent and Trademark Office

Registered July 25, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

[adult swim]

THE CARTOON NETWORK LP, LLLP (DELA-
WARE LIMITED LIABILITY LIMITED PART-
NERSHIP)
13 NORTH
C/O TURNER BROADCASTING SYSTEM, INC. ONE
CNN CENTER
ATLANTA, GA 30303

FOR: ENTERTAINMENT AND EDUCATION
SERVICES IN THE NATURE OF A CONTINUING
COMEDY, DRAMA, ACTION, ADVENTURE AND/
OR ANIMATION PROGRAM SERIES AND MOTION
PICTURE FILM PRODUCTION, PROVIDED
THROUGH TELEVISION, RADIO AND THE GLO-
BAL COMPUTER INFORMATION NETWORK;

PROVIDING ON-LINE INTERACTIVE GAMES
PLAYED VIA GLOBAL COMPUTER NETWORKS
OR GLOBAL COMMUNICATIONS NETWORKS, IN
CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-2-2001; IN COMMERCE 9-2-2001.

OWNER OF U.S. REG. NOS. 2,696,459, 2,825,671
AND OTHERS.

SER. NO. 78-713,389, FILED 9-15-2005.

JASON ROTH, EXAMINING ATTORNEY

EXHIBIT 4

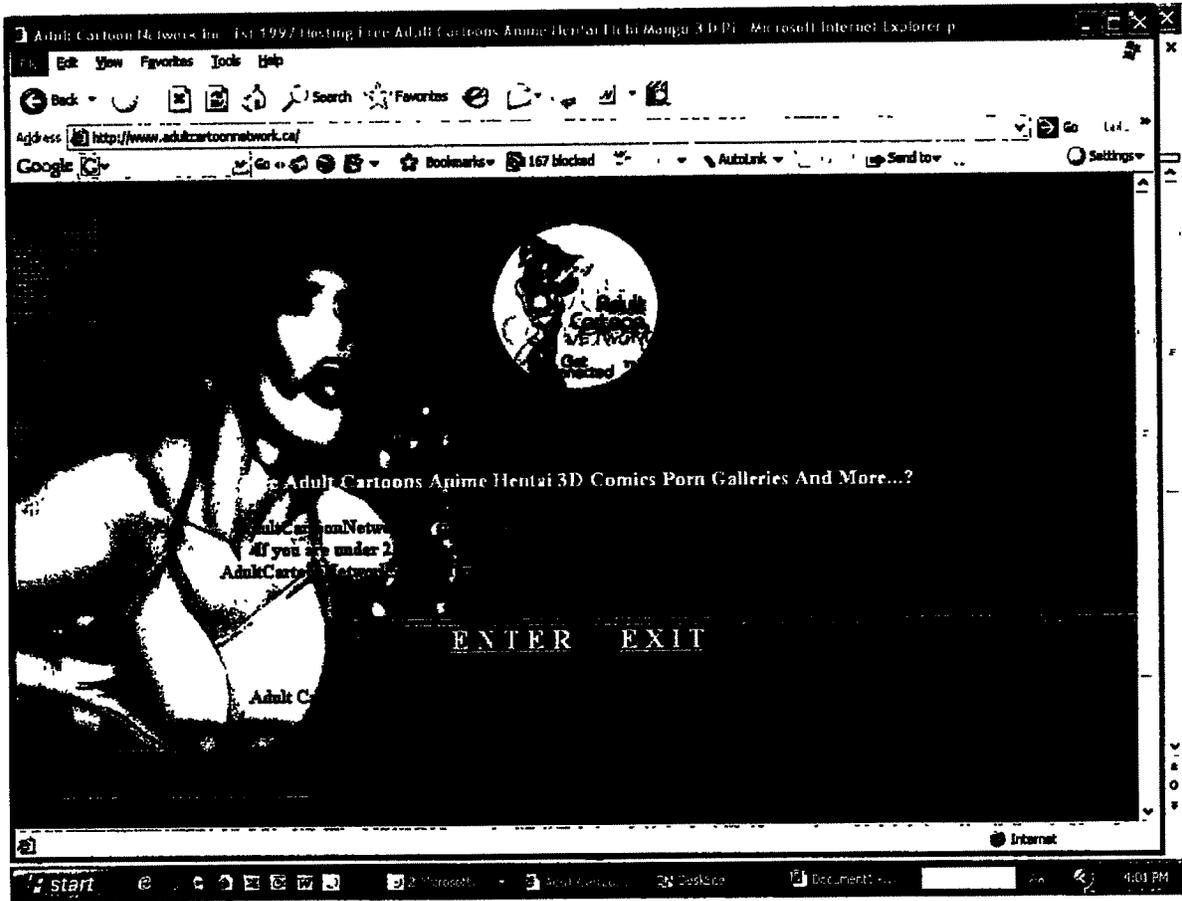


EXHIBIT 5



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Sep 25 04:07:23 EDT 2007

TESS HOME NEW USER STRUCTURED FREE FORM [Back to List](#) SEARCH LOG BOTTOM HELP

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TARR Status ASSIGN Status TDR TTAR Status (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED

Goods and Services IC 038. US 100 101 104. G & S: Adult cartoon pay per view Internet transmission; Entertainment communication services, namely, providing access to adult cartoon illustrations, adult flashtoons, adult comics, and adult animated movies over the Internet. FIRST USE: 20011115. FIRST USE IN COMMERCE: 20011115

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.03.19 - Bathing suits (women wearing); Lingerie (women wearing); Nude women, women wearing underclothes, bathing suits or brief attire; Underclothes (women wearing); Underwear (women wearing)
02.03.26 - Grotesque women formed by letters, numbers, punctuation or geometric shapes
26.01.01 - Circles as carriers or as single line borders

Serial Number 76638229

Filing Date May 10, 2005

Current Filing Basis 1A;44E

Original Filing Basis 1A;44E

Published for Opposition July 17, 2007

Owner (APPLICANT) Adult Cartoon Network Inc. CORPORATION CANADA 22661 Kendrick Loop Maple Ridge, British Columbia CANADA V2X 8Y9

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Clifford W. Vermette

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE ADULT CARTOON AND ADULT

Type of Mark CARTOON NETWORK APART FROM THE MARK AS SHOWN
Register SERVICE MARK
Live/Dead Indicator PRINCIPAL
Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE BY CLASS](#) [SEARCH LOG](#) [TOP](#) [HELP](#)

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EXHIBIT 6

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

THE CARTOON NETWORK, INC.,)	
	)	Opposition No. _____
Opposer,)	
	)	In the Matter of Application
v.	)	Serial No. 76/638,229
)	
ADULT CARTOON NETWORK INC.,	)	Mark: ADULT CARTOON ADULT
	)	CARTOON NETWORK GET
Applicant.	)	CONNECTED & Design

NOTICE OF OPPOSITION

Opposer, The Cartoon Network, Inc. ("Opposer"), a Delaware corporation located at 1050 Techwood Drive, NW, Atlanta, Georgia 30318, will be damaged by registration of Applicant's ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED & Design mark (Serial No. 76/638,229) and opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104(a). The grounds for opposition are as follows:

1. Applicant Adult Cartoon Network Inc. ("Applicant") filed an application under Sections 1(a) and 44(e) of the Lanham Act to register the mark ADULT CARTOON ADULT CARTOON NETWORK GET CONNECTED & Design (the "ADULT CARTOON NETWORK Mark") for "Adult cartoon pay per view Internet transmission; Entertainment communication services, namely, providing access to adult cartoon illustrations, adult flashtoons, adult comics, and adult animated movies over the Internet" in International Class 38, claiming a date of first use of November 15, 2001. Applicant's trademark application was published for opposition in the *Official Gazette* on July 17, 2007.

2. Since at least as early as October 1, 1992, Opposer has used the mark **CARTOON NETWORK** in connection with entertainment and educational services and cable telecasting services primarily marketed toward children. Since that time, the **CARTOON NETWORK** mark has served as a distinctive indicator of Opposer's entertainment services and related merchandise. Opposer is the owner of an incontestable federal trademark registration for the mark **CARTOON NETWORK** (Reg. No. 2,554,469), covering "entertainment and education services in the nature of a series of television and cable television programs directed toward children and young adults, provided through cable television, broadcast television, radio and the global computer information network." Altogether, Opposer owns a family of 22 federal trademark registrations for marks incorporating the phrase **CARTOON NETWORK**, 11 of which are incontestable. A complete listing of such registrations is set forth at Exhibit A hereto.

3. Opposer has enjoyed great success with the **CARTOON NETWORK** brand, which receives high ratings in the cable television field, and has enjoyed great critical success. As of October 2006, the **CARTOON NETWORK** offering enjoyed distribution in 91 million homes throughout North America. Along with the Disney Channel and Nickelodeon, it is one of the most widely distributed children's networks in the United States.

4. In addition, **CARTOON NETWORK** programming is distributed in approximately 160 countries around the world, and is available in more than 200 million homes worldwide. Opposer also owns numerous trademark registrations worldwide incorporating the phrase **CARTOON NETWORK**.

5. Since July 1998, Opposer has operated a website at the domain name **<cartoonnetwork.com>**. It is consistently ranked as one of the top sites in the Family &

Lifestyles: Kids, Games, & Toys category. In the last quarter of 2006, the <cartoonnetwork.com> site received over 5,400,000 unique visitors per month.

6. Opposer has expended many millions of dollars in connection with developing consumer brand recognition for the CARTOON NETWORK mark.

7. As a result of the foregoing, Opposer's CARTOON NETWORK mark has acquired a high degree of recognition, fame, and distinctiveness as a symbol of the high quality entertainment content and related merchandise primarily for children offered by Opposer prior to Applicant's adoption of the ADULT CARTOON NETWORK Mark. Consumers are familiar with and identify Opposer's mark with Opposer, and, by reason of this identification, goods and services associated with the CARTOON NETWORK mark are understood by consumers to be produced, marketed, and distributed under Opposer's authority or otherwise derived from Opposer.

8. Opposer's CARTOON NETWORK mark is an important factor employed by consumers in identifying the source of Opposer's entertainment services and related goods, and is distinctive of those goods and services. In particular, consumers recognize the CARTOON NETWORK mark as a symbol of high quality children's and family-oriented programming.

9. As a result of these and other uses, the CARTOON NETWORK mark is entitled to a broad scope of protection.

10. In addition to its animation properties targeted to children, since at least as early as September 2001, Opposer has offered a programming block of animated television programs targeted toward adults under the ADULT SWIM mark on its CARTOON NETWORK channel. Opposer owns a federal trademark registration for the ADULT SWIM word mark (Reg. No. 2,825,671) and the stylized [adult swim] mark (Reg. No. 3,120,775), both covering various

entertainment services in Class 41. These registrations are part of a family of 16 federal trademark registrations owned by Opposer which incorporate the phrase ADULT SWIM.

11. On or about May 10, 2005, Applicant filed an application to register the ADULT CARTOON NETWORK Mark on the Principal Register. This application was assigned Serial No. 76/638,229. On information and belief, Applicant is offering its cartoon and animation content in the United States where Opposer's entertainment services are sold.

12. Applicant's mark incorporates Opposer's CARTOON NETWORK mark in addition to the term ADULT. Applicant's mark is therefore similar to Opposer's mark with respect to appearance, pronunciation, and commercial impression. Like Opposer's CARTOON NETWORK mark, Applicant's proposed mark is used in connection with animation content.

13. Consumers are likely to be confused into believing that Applicant's cartoon and animation content offered under the ADULT CARTOON NETWORK Mark emanates from Opposer, or is authorized, licensed, endorsed, or sponsored by Opposer. Registration of Applicant's mark on the Principal Register thus would be inconsistent with Opposer's prior rights in its well-known CARTOON NETWORK mark.

14. Opposer will be damaged by registration of Applicant's ADULT CARTOON NETWORK Mark because it so resembles Opposer's previously used, federally registered, and well-known CARTOON NETWORK mark as to be likely, when used on or in connection with cartoon and animation content in application Serial No. 76/638,229, to cause confusion, or to cause mistake, or to deceive in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052.

15. Opposer will be damaged by registration of Applicant's ADULT CARTOON NETWORK Mark because the mark dilutes and is likely to dilute the distinctiveness of Opposer's famous CARTOON NETWORK mark by tarnishing and degrading the positive

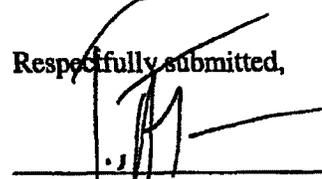
associations and prestigious connotations of the famous CARTOON NETWORK mark and/or by eroding consumers' exclusive identification of this mark with Opposer in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). A printout of the home page of Applicant's ADULT CARTOON NETWORK website is attached hereto as Exhibit B.

WHEREFORE, Opposer requests that registration of the mark that is the subject of application Serial No. 76/638,229 be refused and this Notice of Opposition be sustained in favor of Opposer.

Date:

8/10/07

Respectfully submitted,



Miles J. Alexander
Laurel J. Lucey
James A. Trigg
Alicia Grahn Jones
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Atlanta, Georgia 30309-4530
Tel: 404-815-6500
Fax: 404-815-6555
Attorneys for Opposer

Certificate of Mailing

I hereby certify that on August 13, 2007 this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

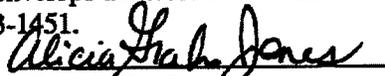

Alicia Grahn Jones

EXHIBIT 7

SEALED

EXHIBIT

Jones, Alicia

From: ganddb_efile_notice@gand.uscourts.gov

Sent: Wednesday, October 03, 2007 9:43 AM

To: CourtMail@gand.uscourts.gov

Subject: Activity in Case 1:07-cv-02415-JEC The Cartoon Network, Inc. v. Adult Cartoon Network Inc. Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Northern District of Georgia

Notice of Electronic Filing

The following transaction was entered on 10/3/2007 at 9:43 AM EDT and filed on 10/2/2007

Case Name: The Cartoon Network, Inc. v. Adult Cartoon Network Inc.

Case Number: 1:07-cv-2415

Filer:

Document Number: No document attached

Docket Text:

ORAL ORDER that Exhibit 7 to [1] Complaint shall not be uploaded to the Courts Electronic database. Signed by Judge Charles A. Pannell Jr. on 10/2/07. (epm)

1:07-cv-2415 Notice has been electronically mailed to:

Miles J. Alexander malexander@kilpatrickstockton.com

Alicia Grahn Jones aljones@kilpatrickstockton.com

James A. Trigg jtrigg@kilpatrickstockton.com

1:07-cv-2415 Notice has been delivered by other means to:

10/12/2007