

ESTTA Tracking number: **ESTTA183152**

Filing date: **12/26/2007**

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	Man & Machine, Inc.		
Entity	Corporation	Citizenship	Maryland
Address	3706 West Street Landover, MD 20785 UNITED STATES		

Attorney information	Sean Ploen, Esq. Boston Law Group, LLP 20 Park Plaza, Suite 637 Boston, MA 02116 UNITED STATES sploen@bostonlawgroup.com Phone:617-426-6809
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Applicant Information

Application No	77224649	Publication date	12/18/2007
Opposition Filing Date	12/26/2007	Opposition Period Ends	01/17/2008
Applicant	CBS Operations Inc. 51 West 52nd Street New York, NY 10019 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2005/08/02 First Use In Commerce: 2005/08/02
All goods and services in the class are opposed, namely: Computer cursor control devices, namely, computer mouse

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77354814	Application Date	12/18/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MIGHTY MOUSE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 009. First use: First Use: 2004/03/16 First Use In Commerce: 2004/03/16 Computer cursor control devices, namely, computer mice

Attachments	77354814#TMSN.jpeg (1 page)(bytes) MIGHT MOUSE Opposition.pdf (6 pages)(59588 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sean Ploen/
Name	Sean Ploen, Esq.
Date	12/26/2007

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

In the Matter of Application Serial No.: 77/224,649

Mark: MIGHTY MOUSE

Published for Opposition in the *Official Gazette*: December 18, 2007

MAN & MACHINE, INC.,)	
)	
Opposer,)	
)	
v.)	OPPOSITION NO. _____
)	
CBS OPERATIONS, INC.,)	
)	
Applicant)	

NOTICE OF OPPOSITION

Man & Machine, Inc., a corporation duly organized and existing under the laws of the State of Maryland, having a principal place of business at 3706 West Street, Landover, Maryland 20785 (“Opposer”), believes it will be damaged by registration of the mark shown in Application Serial No. 77/224,649, filed in the U.S. Patent and Trademark Office by CBS Operations, Inc. (“Applicant”) on March 16, 2006, and hereby opposes registration of same.

The grounds of opposition are as follows:

1. Applicant is not entitled to register as a trademark the designation MIGHTY MOUSE for the goods set forth in Application Serial No. 77/224,649, namely, “Computer cursor control devices, namely, computer mouse.”
2. Applicant is not now and was not entitled to the exclusive use as a trademark of the designation MIGHTY MOUSE either on or about August 2, 2005, the alleged date of first use in commerce of said designation by

Applicant, or on July 9, 2007, the date of filing of Application Serial No. 77/224,649.

OPPOSER'S TRADEMARK

3. Opposer Man & Machine, Inc. is the owner of all right, title and interest to U.S. Application Serial No. 77/354,814 for the trademark MIGHTY MOUSE for use in connection with "Computer cursor control devices, namely, computer mice."
4. Since at least as early as March 16, 2004, Opposer has openly, continuously, and widely used the trademark MIGHTY MOUSE in commerce in connection with computer cursor control devices, namely, computer mice.
5. By virtue of Opposer's efforts, the expenditure of considerable sums for marketing and promotional activities, and the high quality of Opposer's products, Opposer's MIGHTY MOUSE trademark has acquired substantial strength, goodwill, distinctiveness, purchaser recognition, secondary meaning and fame as indicating the source of goods provided by Opposer.

THE OPPOSED APPLICATION

6. On July 9, 2007, Applicant filed Application Serial No. 77/224,649, seeking registration of the trademark MIGHTY MOUSE for use in connection with "Computer cursor control devices, namely, computer mouse."
7. In its application, Applicant alleged a date of first use of the MIGHTY MOUSE designation in connection with the claimed goods which is substantially later than Opposer's date of first use of its MIGHTY MOUSE trademark.
8. Applicant's adoption and use of the MIGHTY MOUSE designation in connection with the claimed goods was without license or permission of Opposer.

APPLICANT'S MISSTATEMENTS

9. In the opposed application, Applicant stated to the Patent and Trademark Office that "The mark has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for related goods or services of U.S. Registration No.(s) 1533890."
10. Contrary to Applicant's claim, U.S. Registration No. 1533890 is not "for the same mark"; rather, the mark shown in U.S. Registration No. 1533890 consists wholly and exclusively of a design element, whereas the trademark in the opposed application, MIGHTY MOUSE, consists only of standard text characters.
11. In further contradiction of Applicant's claim, U.S. Registration No. 1533890 does not cover "related goods or services": in fact, at the time of Applicant's declaration, the goods covered by Registration No. 1533890 were as follows: "Film series of animated cartoons for motion pictures and television; sunglasses," in Class 9; "Watches," in Class 14; and "Tee shirts, sweatshirts," in Class 25.

LIMITS OF APPLICANT'S RIGHTS

12. In an earlier, unrelated proceeding in which Applicant's predecessor-in-interest unsuccessfully opposed registration of a mark incorporating the term MY-T-MOUSE, the Board determined that, as used by Applicant, "MIGHTY MOUSE is not a famous mark in the legal sense that other marks have been found to be famous," and concluded that whatever recognition Applicant's MIGHTY MOUSE designation enjoyed was only "as a cartoon character of the 1940s, '50s and early '60s." Viacom International, Inc. v. Komm, et al., 1998 WL 44,545 (TTAB Feb. 3, 1998) (Opp. No. 98,994).

REGISTRATION OF APPLICANT'S MARK WOULD CAUSE HARM TO CONSUMERS AND TO OPPOSER

13. Applicant's MIGHTY MOUSE designation is likely to cause confusion with Opposer's MIGHTY MOUSE trademark because the trademarks

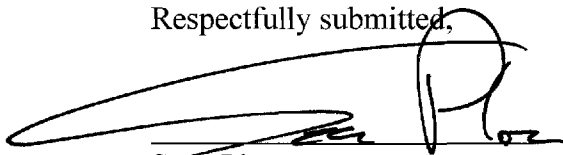
themselves are identical, because Applicant's goods are essentially identical in nature to those of Opposer, and because the parties' goods are likely to be promoted through similar media, are likely to be sold and distributed through similar channels of commerce, and are likely to be directed to similar classes of purchasers.

14. Thus, as applied to Applicant's goods, Applicant's MIGHTY MOUSE designation is likely to cause confusion or mistake or to deceive persons by creating the false impression that Applicant's goods originate with or come from the same source as Opposer's goods, or are endorsed by, or are sponsored by, or are connected in some way with Opposer, thereby resulting in a likelihood of confusion in violation of the Lanham Act.
15. Applicant's use and registration of the designation MIGHTY MOUSE is also likely to dilute the distinctive quality of Opposer's famous MIGHTY MOUSE trademark, in violation of the Lanham Act.
16. Opposer will be seriously damaged by the granting of registration to Applicant's designation MIGHTY MOUSE because this designation is an imitation of and causes a dilution of Opposer's MIGHTY MOUSE trademark and is confusingly similar thereto in sound, appearance and connotation. Any defect or fault in Applicant's goods offered under the MIGHTY MOUSE designation is likely to reflect poorly upon and injure the reputation which Opposer has established for its high-quality goods marketed under the trademark MIGHTY MOUSE.
17. Applicant's exercise of statutory rights under a U.S. trademark registration also would seriously lessen the value of Opposer's rights in and to the MIGHTY MOUSE trademark, to Opposer's great loss and detriment.

THEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of the mark in Application Serial No. 77/224,649 be refused.

Respectfully submitted,

Date: December 26, 2007

A handwritten signature in black ink, appearing to read 'Sean Ploen', written over a horizontal line.

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Attorney for Opposer Man & Machine, Inc.


Certificate of Service

The undersigned hereby certifies that he has this day served a true and correct copy of this Notice of Opposition, along with any exhibits thereto, upon the Applicant's attorney of record, as listed below, by mailing the same via first-class mail, postage prepaid, to:

Mallory Levitt, Esq.
CBS Law
51 West 52nd Street
New York, NY 10019-6119

SIGNED under the pains and penalties of perjury.

Dated: December 26, 2007


Sean Ploen