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

Proceeding	91183623
Party	Defendant AT KidSystems Inc.
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Submission	Answer
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Date	05/28/2008
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the matter of Trademark Application Serial No.: 78/631512**

HEARST COMMUNICATIONS, INC.,

Opposer,

v.

AT KIDSYSTEMS INC.,

Applicant.

Opposition No.: 91183623

Serial No.: 78/631512

**Mark: COSMO'S PLAY
AND LEARN**

ANSWER TO NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

AT KidSystems Inc. (“Applicant”), by their attorney, hereby Answers the Notice of Opposition of Hearst Communications, Inc. (“Opposer”), against the application for registration of Applicant’s trademark for COSMO’S PLAY AND LEARN, Serial No. 78/631512, filed on May 17, 2005 (the “Application”), and admits, denies or alleges the following:

1. In response to the preamble of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.

2. In response to paragraph 1 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
3. In response to paragraph 2 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
4. In response to paragraph 3 of the Notice of Opposition, Applicant admits that Registration No. 630,028 for COSMOPOLITAN was registered on July 3, 1956 in international class 16 for “magazine or periodical published monthly or at other intervals;” however, Applicant lacks sufficient knowledge or information as to the remainder of the allegations of paragraph 3 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.
5. In response to paragraph 4 of the Notice of Opposition, Applicant admits that Registration No. 2,527,954 for COSMO GIRL was registered on January 8, 2002 in international class 16 for “general interest magazine for girls and young women;” however, Applicant lacks sufficient knowledge or information as to the remainder of the allegations of paragraph 4 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.
6. In response to paragraph 5 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.

7. In response to paragraph 6 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
8. In response to paragraph 7 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
9. In response to paragraph 8 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
10. In response to paragraph 9 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
11. In response to paragraph 10 of the Notice of Opposition, Applicant lacks sufficient knowledge or information as to the allegations set forth therein and therefore denies same, leaving Opposer to strict proof thereof.
12. In response to paragraph 11 of the Notice of Opposition, Applicant admits the allegations set forth therein.
13. In response to paragraph 12 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
14. In response to paragraph 13 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
15. In response to paragraph 14 of the Notice of Opposition, Applicant denies the allegations

set forth therein, leaving Opposer to strict proof thereof.

16. In response to paragraph 15 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
17. In response to paragraph 16 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
18. In response to paragraph 17 of the Notice of Opposition, Applicant denies the allegations set forth therein, leaving Opposer to strict proof thereof.
19. In response to the Notice of Opposition, Applicant denies each and every material allegation not heretofore controverted and demands strict proof thereof.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts that:

A. FIRST AFFIRMATIVE DEFENSE:

The Notice of Opposition, in whole or as to specific allegations, without Applicant's admission as to such allegations, fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

B. SECOND AFFIRMATIVE DEFENSE:

Applicant's use of its mark on Applicant's goods predates the Opposer's alleged use of the COSMO mark on any similar or related goods, if any, without Applicant's

admission as to such allegations.

C. THIRD AFFIRMATIVE DEFENSE:

Applicant's use of its mark is not and will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be as use by Opposer or with Opposer's authorization or approval.

D. FOURTH AFFIRMATIVE DEFENSE:

Applicant's mark in its entirety is sufficiently distinctively different from Opposer's marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's goods.

E. FIFTH AFFIRMATIVE DEFENSE:

Applicant's mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer

F. SIXTH AFFIRMATIVE DEFENSE:

The terms COSMOPOLITAN and COSMO are highly diluted as a trademark formative, and hence weak, and Opposer's purported rights extend no further than to the specific marks which Opposer alleges it owns, none of which are the same as or confusingly similar to Applicant's mark in terms of connotation, appearance and/or pronunciation.

G. SEVENTH AFFIRMATIVE DEFENSE:

The Opposer is estopped from objecting to the pending application because of Applicant's and other parties' use of COSMO as a mark or a component of a mark for related or similar goods, and failure on the part of Opposer to object to or oppose such use of the mark.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and that Application Serial No. 78/631512 proceed to registration.

Dated this 28th day of May, 2008.

Respectfully Submitted,

By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being served on May 28, 2008 upon counsel of record for Opposer by deposit of the same in the United States mail, first-class postage prepaid, in an envelope addressed to:

Lauren T. Estrin Esq.
Kilpatrick Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309



Mark M. Brandsdorfer