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

Proceeding	91185393
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77112745 for the mark VUDU, filed on February 21, 2007, and published in the Official Gazette on March 25, 2008.

HEWLETT-PACKARD DEVELOPMENT  
COMPANY, L.P.

Opposer,

v.

VUDU, INC.,

Applicant.

Opposition No. 91185393

**APPLICANT'S OPPOSITION TO  
OPPOSER'S MOTION FOR  
SUMMARY JUDGMENT**

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## I. INTRODUCTION

In its motion for summary judgment, Opposer Hewlett-Packard Development Company, L.P. (“Opposer” or “HP”) seeks an order refusing registration of Applicant VUDU Inc.’s (“VUDU” or “Applicant”) Application Serial No. 77112745 for the mark VUDU. Specifically, HP asserts that its registration for the mark VOODOO for “personal and gaming computers” and related services prevents Applicant from registering VUDU for “set-top boxes” and related services that stream video content from the internet to consumers’ televisions. The parties’ markedly dissimilar goods and services, let alone the significant differences between the appearances of the marks, require denial of HP’s motion.

This is especially true at this early stage of the proceedings where HP has not responded to VUDU’s discovery requests, which it propounded in December 2008. After HP requested an additional thirty days to respond to VUDU’s requests— a request that VUDU granted—HP instead used that time to draft this motion. In the interim, VUDU responded to HP’s discovery requests. HP has since told VUDU that it will not be responding to VUDU’s requests pending the Board’s consideration of this motion.

In light of the significant differences between the parties’ marks and their respective goods and services—as well as HP’s dubious unwillingness to participate in the discovery process—VUDU respectfully urges the Board to deny HP’s motion.

## II. STATEMENT OF FACTS

### A. Opposer

VoodooPC (“Voodoo”), founded in 1991, is a Canadian manufacturer of gaming and other high-performance personal computers. Declaration of Edward Lichty (“Lichty Decl.”), ¶ 7. In 2006, Voodoo was acquired by HP, a major manufacturer of printers, personal computers, and related technology. *Id.* A handful of personal computers continue to be sold by HP under the VOODOO brand. Voodoo’s personal computers are not your ordinary desktops and laptops. They are custom-built, ultra-luxury, highly expensive personal computers. *Id.* at ¶¶7-8.

For example, the “Voodoo Omen” personal desktop computer is Voodoo’s flagship model. It is built “using a personalized, co-creation process” so that “every owner of a Voodoo Omen becomes an architect and a designer.” Lichty Decl. ¶7. Consumers can select wood, leather, or glass exterior panels to personalize their computer. Id. The Voodoo Omen is priced starting at \$7,000, although the top-of-the-line configuration sells for approximately \$20,000. Id. It was initially available to consumers by invitation only. Id. The “Voodoo Envy 133” is Voodoo’s customizable notebook computer, priced starting at \$2,099. Id. Also affiliated with the VOODOO brand is the “HP Firebird” desktop personal computer (with “Voodoo DNA”), starting at \$1,799. Id.

By contrast, personal computers offered under more mainstream brands are priced substantially below VOODOO-brand computers. Lichty Decl. ¶8. For example, desktop computers sold under the HP brand are priced in approximately the \$299-599 range, while HP-brand laptops are priced in the \$449-1199 range. Id.

B. Applicant

VUDU is a technology company founded in 2004. Lichty Decl. ¶2. Id. VUDU’s products allow consumers to stream high quality video content to their televisions. Id. This is possible with the “VUDU Box,” a set-top box that receives video content from the internet and transmits it to a user’s home television. The VUDU Box potentially replaces a user’s DVD player. The VUDU Box and related backend internet functionality allow users to rent or purchase movies and television shows directly from their homes, without a trip to the video rental store. The first VUDU Box was available for purchase in October 2007. Id.

VUDU offers two models of set-top boxes. Lichty Decl. ¶4. The basic VUDU Box, which comprises approximately 80% of VUDU’s total box sales, retails for \$149. Id. The more advanced VUDU XL box retails for \$499. Id. VUDU primarily sells its set-top boxes through

major electronics retailers, such as Best Buy, although VUDU's basic box is also available for purchase at VUDU's website. *Id.* at ¶5.

VUDU rents standard definition movies to consumers for \$0.99-\$3.99 per title. Lichy Decl. ¶4. High definition movies are rented for \$3.99-\$5.99 per title. *Id.* Television episodes may be purchased for \$1.99. *Id.* VUDU does not require a monthly subscription or contract. *Id.*

### C. Procedural History

On February 21, 2007, VUDU filed Application Serial No. 77112745 for the mark VUDU. Declaration of Matthew A. Stratton ("Stratton Decl."), ¶2. The USPTO published the mark in the Official Gazette on March 25, 2008. *Id.* On July 23, 2008, HP filed its Notice of Opposition to the registration of the VUDU mark. *Id.*

On December 22, 2008, VUDU propounded discovery requests to HP. Stratton Decl., ¶3. On January 13, 2009, HP propounded its discovery requests to VUDU. *Id.* On January 14, 2009, HP requested an additional month to complete its responses. *Id.* VUDU granted HP's request, extending the deadline to February 25, 2009. *Id.* On February 12, 2009, VUDU responded to HP's discovery requests. *Id.*

Rather than respond to VUDU's discovery requests, however, HP instead used its extension of time to prepare this motion for summary judgment. Stratton Decl., ¶4. On February 24, 2009, attorneys for HP took the position that its pending motion stayed HP's obligation to respond to VUDU's discovery requests and notified counsel for VUDU that HP would not be responding. *Id.*

## III. ARGUMENT

### A. Opposer's Burden on Summary Judgment

HP bears the burden of proving a likelihood of confusion by a preponderance of the evidence. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943-44 (Fed. Cir. 2000). To succeed on its motion for summary judgment, HP must provide sufficient evidence to establish that there is no

genuine issue of material fact and that HP is entitled to judgment as a matter of law on the issue of likelihood of confusion. *See* Fed. R. Civ. Pro. 56 (2008). This is a daunting standard. By contrast, to defeat HP’s motion for summary judgment, VUDU need only show a genuine issue of material fact sufficient to allow a reasonable trier of fact to decide the issue of likelihood of confusion in VUDU’s favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Opryland USA Inc. v. The Great Am. Music Show*, 970 F.2d 847, 849-50 (Fed. Cir. 1992).

When analyzing the facts submitted on this motion, the Board must view all evidence in the light most favorable to VUDU and must draw all reasonable inferences in VUDU’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Opryland*, 970 F.2d at 850; *Cognis Corp. v. DBC LLC*, 73 U.S.P.Q.2d 1766 (T.T.A.B. 2004) (“The evidence must be viewed in the light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant’s favor.”); *The Sports Authority, Inc. v. Prime Hospitality Corp.*, 89 F.3d 955 (2d Cir. 1996) (reversing district court’s entry of summary judgment where material issues of fact existed with respect to some of the relevant du Pont factors). Here, numerous disputed facts exist, requiring the dismissal of HP’s motion.

B. Opposer Has Not Shown, and Cannot Show, Likely Confusion

(1) **Standard**

In determining whether a likelihood of confusion exists sufficient to prevent registration, the Board considers the relevant factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973)), specifically:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.

- (4) The conditions under which and buyers to whom sales are made, i.e. “impulse” vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, “family” mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark [...].
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, i.e., whether de minimis or substantial.
- (13) Any other established fact probative of the effect of use.

*Id.* at 1361. While no precise formula for determining confusion exists, courts have held that even a single factor may tip the scales in favor of finding no likelihood of confusion. *See Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998).

In its motion, HP tacitly concedes that the majority of the applicable *du Pont* factors favor a finding of no likelihood of confusion. It focuses instead on only three of the thirteen factors to assert the absence of any genuine issue of material fact. HP’s Motion for Summary Judgment (“HP MSJ”) at 5-9. These factors are the similarity of the marks, the nature of the goods and services, and the trade channels. *Id.* As shown below, HP’s arguments fall far short of the necessary standard.

## **(2) The Marks Are Not Sufficiently Similar**

The likelihood of confusion analysis begins with a review of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, and meaning. *In re Bed & Breakfast Registry*, 791 F.2d 157, 159 (Fed. Cir. 1986). Marks that are identical in sound or appearance used

on even related goods may create different commercial impressions so that no likelihood of confusion exists. See e.g., *In re Sears, Roebuck and Co.*, 2 U.S.P.Q.2d 1312 (T.T.A.B. 1987); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854 (T.T.A.B. 1984); *In re Sydel Lingerie Co., Inc.*, 197 U.S.P.Q. 629 (T.T.A.B. 1977). The mere fact that the marks at issue share elements, even dominant elements, does not compel a conclusion of likely confusion. *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (8th Cir. 1987) (“OATMEAL RAISIN CRISP” not confusingly similar to “APPLE RAISIN CRISP”).

While VUDU and VOODOO may sound the same, the similarities end there. HP’s VOODOO is the standard spelling of the African religion “voodoo,” while VUDU’s spelling is unique and non-standard. The commercial effect is that HP’s mark directly recalls the mysterious religion, while VUDU’s mark merely suggests it. Another effect is that the two marks share only two letters, the “v” and the “d.” The VUDU mark is visually more compact, with only four letters compared to VOODOO’s six. Further, when the marks appear in non-stylized type, VUDU is always displayed with all capital letters (i.e., “VUDU”), while Opposer’s mark is always displayed with only a capital “v” (i.e., “Voodoo”). Lichy Decl. ¶¶6,8. The result is a different commercial impression. Further, the differences are even more pronounced when the marks are displayed in stylized type:



HP’s trade dress, which is dramatically different from VUDU’s, confirms that the commercial impressions of the parties’ marks are disparate. “Ordinarily, for a word mark we do not look to the trade dress [to determine the commercial impression of the trademark], which can be changed at any time. But the trade dress may nevertheless provide evidence of whether the word mark projects a confusingly similar commercial impression.” *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 674 (Fed. Cir. 1984) (citing *Vornado, Inc. v. Breuer Electric Mfg.*

*Co.*, 390 F.2d 724 (1968)). Here, HP’s VOODOO word mark constitutes a limited part of the company’s overall dark trade dress, dominated by the company’s primal, tattoo-laden image of a menacing face.

For example, of the two computers presently displayed at [www.voodopc.com](http://www.voodopc.com), the “Voodoo Envy 133” laptop, displays only the primal face at the center of the laptop’s lid, unaccompanied by words. Only after opening the laptop will the user find the word “Voodoo.” Similarly, the “HP Firebird” desktop is merely labeled on one side of its housing with the phrase “Voodoo DNA”—and otherwise dominated by a dark and highly-stylized images of a firebird. Images of the Voodoo Omen are no longer displayed on the website. Given the apparent limited use of the word “voodoo” on computers affiliated with that brand, it appears that the commercial importance of the word is diminishing. By contrast, VUDU’s uses its stylized “VUDU” mark throughout its products and website, the mark itself suggesting a less dark and more magical tone than the ominous VOODOO. When considering HP’s trade dress and pattern of use of VOODOO, consumers are especially unlikely to confuse the source of such personal computers with set-top boxes that bear the VUDU mark.

Given that the evidence must be viewed in the light most favorable to VUDU, the Board should find that this factor favors Applicant. At the very least, the Board should find that genuine issues of material fact exist regarding this factor, such as whether “Voodoo” is substantially similar in appearance to “VUDU” or whether the marks, as used, create confusingly similar commercial impressions. *Cognis*, at 1768 (“At a minimum, there exists a genuine issue of material fact with regard to the similarity or dissimilarity between the parties’ marks.”)

### **(3) The Goods Are Not the Same, Nor Are They Sufficiently Related**

Conceding that the parties’ respective goods are not the same, HP argues that the goods described in VUDU’s application “overlap” and “are related” to HP’s. HP MSJ at 8. In fact, personal computers—let alone the ultra-luxury computers sold under the VOODOO mark—are unrelated to set-top boxes, and HP’s allegation of “overlap” is impossibly strained.

Initially, HP argues that, based on an expansive and technical definition of “set top box” proffered by [www.wikipedia.com](http://www.wikipedia.com), a personal computer can be a set-top box because both provide “a signal permitting the display of content on a television.” HP MSJ at 7-8. Following this logic, many different types of consumer electronics would similarly be “set-top boxes.” These would include DVD players, video game consoles, and even remote control devices. HP’s argument ignores the fact that the ordinary, reasonable consumer does not think in such theoretical abstracts. *See In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987). Clearly, an ordinary consumer does not think a remote control (or personal computer) is a set-top box.

HP also notes that some personal computer can, with the proper cables, be connected to a television. HP MSJ at 8. And, because a personal computer can display content, therefore HP’s VOODOO computers must be similar to the VUDU Box because, with the correct cables, they too can display content on a television. *Id.* Again, such logic is highly strained. Under HP’s definition, a digital camera is similar to the VUDU Box because both—with the correct auxiliary cables—can be connected to a television to display content.

Instead, consumers realize that a personal computer is uniquely capable of many different functions. Consumers purchase personal computers for word processing, exploring the internet, organizing and storing electronic files, playing video games, viewing/listening to media, etc. For this reason, the price of a personal computer is many times more than lesser devices capable of only one or two of those functions, such as DVD players, personal digital assistants (PDAs), portable music players (i.e., iPods), video game console—and the VUDU Box. In the case of personal computers sold under the VOODOO mark, the difference could be thousands of dollars. By contrast, the VUDU Box is designed around one simple function: to deliver video and audio content (often movies) from the internet to the user’s television. Accordingly, the basic VUDU Box is priced at \$149. It simply defies reason that a consumer would mistakenly associate a high-performance, luxury personal computer, potentially sold for \$20,000, with a set-top box that streams movies for a mere \$149.

Currently, HP only uses its mark in connection with a single product: luxury personal computers. Further, HP's motion cites no evidence that HP intends to expand the use of its mark into other types of goods or services, such as movie-streaming set-top boxes or video-on-demand devices. *See Machine Head v. Dewey Global Holdings Inc.*, 61 U.S.P.Q.2d 1313 (W.D. Pa. 2001) (granting summary judgment finding no likelihood of confusion for senior user's expansion of MACHINE HEAD from sound effects generation services to MACHINE HEAD rock music group's album); (*McGregor-Doniger, Inc. v. Drizzle, Inc.*, 599 F.2d 1126, 1139 (2d Cir. 1979)) (finding it unlikely that maker of golf jackets would expand into women's coats); *Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 408 F. Supp. 1219, 1225 (D. Colo. 1976) (upholding jury verdict rejecting the expansion of car tires to snowmobile tires even though defendant had made token use of snowmobile tires). Similarly, VUDU has no plans to manufacture or sell personal computers. Lichty Decl. at ¶11.

Even if evidence did exist that HP intended to enter the commercial space occupied by VUDU, it would not necessarily allow HP to extend its trademark rights over those of VUDU. Trademark rights do not extend to every possible use of the underlying good. *See Victor Comptometer Corp. v. Shakespeare Co.*, 184 U.S.P.Q. 634 (T.T.A.B. 1974) ("A prior user in a particular segment of a broad merchandise field should not be permitted to extend the use of the same or similar mark to goods distinctly different from those with which he entered the market if the result could be a conflict with the valuable intervening rights established by another through extensive use and/or registration of the same or similar mark for like or similar goods.").

Accordingly, viewing the evidence in the light most favorable to VUDU, the Board should find that this factor favors VUDU. At the very least, genuine issues of material fact—such as whether luxury personal computers are similar to media-streaming set-top boxes—preclude summary judgment. *See Carnival Brand Seafood Co. v. Carnival Brands, Inc.*, 51 U.S.P.Q.2d 1929 (11th Cir. 1999) (finding that genuine issue of material facts exist concerning the zone of expansion of shrimp products).

**(4) The Marks Appear in Different Channels of Distribution**

In three sentences, HP states that because both the VUDU Box and HP's VOODOO-brand computers are available on the internet, the goods travel in the "same" channels of trade. HP MSJ at 8-9. Given that nearly anything and everything is available for purchase on the internet, HP's argument is meaningless. HP might as well argued that the goods at issue are both sold at "stores," and therefore travel in the same channels of trade.

Given that HP has offered no credible evidence suggesting the parties' respective goods travel in similar channels of trade, the Board must find that this factor favors VUDU, and no likelihood of confusion.

HP offers no evidence, or makes further arguments, under the remaining *du Pont* factors. Therefore, each must be presumed to favor VUDU and require the denial of HP's motion. Still, several remaining *du Pont* factors further highlight the lack of likelihood of confusion between the parties' marks and are reviewed below:

**(5) The Parties' Goods Are Not Bought on "Impulse"**

This factor "recognizes that the likelihood of confusion between the products at issue depends in part on the sophistication of the relevant purchasers." *Arrow Fastener Co., Inc. v. Stanley Works*, 59 F.3d 384, 399 (2d Cir. 1995). Due to the cost of the parties' goods—and HP's VOODOO-brand, luxury computers in particular—consumers are unlikely to make "impulse" purchases that risk source confusion.

Consumers of expensive goods are presumed to make more careful, sophisticated purchase decisions than consumers of expensive "impulse" goods. *See In re General Motors Corporation*, 23 U.S.P.Q.2D (BNA) 1465 \*9 ("in view of the substantial cost of a new automobile, the consumer typically makes a purchasing decision based on style, performance and price rather than on impulse or whim..."). Here, HP's VOODOO-brand of personal computers is presumed to appeal to a discerning set, given the great expense of these machines. This is especially true of the Voodoo Omen desktop computer, priced at some \$7,000-20,000 and initially available by invitation only. A more mainstream desktop computer retails for \$299-599, with no invitation necessary. Presumably,

a rational consumer would conduct significant research before purchasing such an extravagant personal computer. Only the wealthiest consumers could afford to buy such an item on a whim.

The basic VUDU Box, though a small fraction of the cost of a VOODOO-brand computer, still retails for \$149—itself a respectable sum and worthy of research before purchase.

In either case, consumers of these products are unlikely to purchase them on impulse and therefore this factor favors a finding of no likelihood of confusion.

**(6) HP’s VOODOO Mark Is Not Famous**

HP does not assert that its VOODOO mark is famous. Nor could it, given the proliferation of the many VOODOO and VOODOO-formative marks in use. A search on the USPTO’s Trademark Electronic Search System (TESS) returned 23 registered or applied-for VOODOO marks and 123 records of registered or applied-for VOODOO-formative marks. Stratton Decl. ¶5.

Accordingly, the Board should find that this factor favors VUDU.

**(7) HP Has Shown No Actual Confusion**

HP’s VOODOO mark has coexisted with the VUDU mark for nearly two years. Lichty Decl. ¶2. Despite this coexistence, HP is unable to show even one instance of consumer confusion. This suggests no likelihood of confusion exists between the two marks:

The presence or absence of actual confusion can be highly effective in showing a high, or a low, likelihood of confusion if there has been ample opportunity for consumer confusion. If consumers have been exposed to two allegedly similar marks in the marketplace for an adequate period of time and no actual confusion is detected either by survey or in actual reported instances of confusion, that can be powerful indication that the junior trademark does not cause a meaningful likelihood of confusion.

*Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208 (2d Cir. 2000). This factor strongly favors VUDU.

**IV. CONCLUSION**

HP fails to meet its substantial burden. Many material facts remain in dispute, including whether (i) “Voodoo” is substantially similar in appearance and commercial impression to “VUDU,” (ii) expensive, luxury personal computers are similar to relatively inexpensive media-streaming, set-top boxes, and (iii) goods sold over the internet are sold through the “same”

channels of trade. Further, HP's arguments asserting a likelihood of confusion are strained and implausible. Given the early stage of the proceedings—HP still has not responded to VUDU's discovery requests—summary judgment is wholly inappropriate. HP's motion must be denied.

Dated: March 25, 2009

Respectfully submitted,

HARVEY SISKIND LLP  
D. PETER HARVEY  
MATTHEW A. STRATTON

By /s/ Matthew A. Stratton  
Matthew A. Stratton

Attorneys for Applicant VUDU, Inc.

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this **OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF EDWARD LICHTY IN SUPPORT OF APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT;** and **DECLARATION OF MATTHEW A. STRATTON IN SUPPORT OF APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT,** Opposition No. 91185393), dated March 25, 2009, is being electronically transmitted to the Trademark Trial and Appeal Board on March 25, 2009.

/s/ Matthew A. Stratton

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Matthew A. Stratton

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the attached **OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF EDWARD LICHTY IN SUPPORT OF APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT; and DECLARATION OF MATTHEW A. STRATTON IN SUPPORT OF APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**, dated March 25, 2009 (Opposition No. 91185393), was served on Opposer by sending a copy thereof via U.S. Mail, postage prepaid, addressed Jeffrey E. Faucette, Howard, Rice, Nemerovski, Canady, Falk & Rabkin, 3 Embarcadero Center, 7<sup>th</sup> Floor, San Francisco, CA 94111, on March 25, 2009.

*/s/ Cynthia Lee*

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Cynthia Lee

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

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HEWLETT-PACKARD DEVELOPMENT  
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**DECLARATION OF EDWARD  
LICHTY IN SUPPORT OF  
APPLICANT'S OPPOSITION TO  
OPPOSER'S MOTION FOR  
SUMMARY JUDGMENT**

Attached please find the declaration of Edward Lichty.

## DECLARATION OF EDWARD LICHTY

I, EDWARD LICHTY, declare as follows:

1. I am the Executive Vice President for Strategy and Content at VUDU, Inc. (“VUDU”) and have held that position since 2008. In that capacity, I am familiar with the history and use of the VUDU trademark and the goods and services sold therewith. I am specifically responsible for managing VUDU's content service, including content acquisition, on-box promotions and marketing, and content operations. I have worked at VUDU for approximately three years. Prior to joining VUDU, I spent eight years in various roles at TiVo Inc. I make this declaration freely and of my own personal knowledge, and if called as a witness I would and could competently testify to the matters set forth.

2. VUDU is a technology company founded in 2004 under a predecessor name. The VUDU brand was first made public in April 2007. The first VUDU Box was available for purchase in October 2007. VUDU's products allow consumers to stream high quality video content to their televisions. VUDU primarily does this by selling its “VUDU Box,” a set-top box that receives video content from the internet and transmits it to a user's home television. The VUDU Box plugs directly into the user's television and internet connection, potentially replacing a user's DVD player. The VUDU Box and related backend internet server allow users to rent or purchase movies and television shows directly from their homes, without a trip to the video rental store.

3. VUDU also operates an internet site at [www.vudu.com](http://www.vudu.com), from which consumers can browse the movies available to rent or purchase with their VUDU Box. The site also provides customer support and general information about the company and its products.

4. VUDU offers two models of set-top boxes. The basic VUDU Box, which comprises approximately 80% of VUDU's total box units sold, retails for \$149. The more

advanced VUDU XL box retails for \$499. VUDU rents standard definition movies to consumers for \$0.99-\$3.99 per title. High definition movies are rented for \$3.99-\$5.99 per title. Television episodes may be purchased for \$1.99. VUDU does not require a monthly subscription or contract.

5. VUDU sells approximately 80% of its set-top boxes through Best Buy, the consumer electronics retailer. The remaining sales are made through other home theater and consumer electronics retailers and the VUDU website.

6. VUDU offers its products and services under the VUDU trademark. When the company uses the mark in non-stylized type, it always displays it in all-capital letters (i.e., “VUDU”).

7. I have reviewed the website for Hewlett Packard’s (“HP”) Voodoo brand, at [www.voodoo pc.com](http://www.voodoo pc.com), and as a result have some knowledge of the company and its products. The website indicates that Voodoo was founded in 1991 and acquired by HP in 2006. According to the website, Voodoo markets and sells customized, ultra-luxury personal computers. For example, an HP press release issued on June 10, 2008 (attached hereto as Exhibit A) states that the “Voodoo Omen” personal desktop computer is built “using a personalized, co-creation process” so that “every owner of a Voodoo Omen becomes an architect and a designer.” Consumers can select wood, leather, or glass exterior panels to personalize their computer. The Voodoo Omen’s price starts at \$7,000. The Voodoo Omen and is initially made available to consumers by invitation only. A June 2008 article I found at [www.gizmodo.com](http://www.gizmodo.com) reviewing the Voodoo Omen (attached hereto as Exhibit B) states that the top-of-the-line configuration is priced at approximately \$20,000. The “Voodoo Envy 133” is a customizable notebook computer

that starts at \$2,099. The “HP Firebird” desktop personal computer, with “Voodoo DNA,” starts at \$1,799.

8. Personal computers sold in conjunction with the VOODOO brand cost substantially more than those offered by more mainstream brands. After reviewing personal computers sold under the HP brand at [www.shopping.hp.com](http://www.shopping.hp.com), I see that HP desktop computers are priced at approximately \$299-599, while such HP laptops range in price from \$449 to \$1199. Printouts reflecting these prices are attached hereto as Exhibit C.

9. When not using stylized type, HP appears to display its VOODOO mark using a capital “V,” with rest of the word in lowercase letters (i.e., “Voodoo”).

10. I am not aware of any instances where a consumer mistakenly believed that an affiliation existed between VUDU and HP’s Voodoo brand. Nor am I aware of any consumer mistakenly believing that the source of a VUDU product or service was from HP’s Voodoo, or the reverse. I believe this is because VUDU’s relatively inexpensive set-top boxes are very different products with very different purposes than the ultra-luxury personal computers offered under the Voodoo brand, costing several thousand dollars or more.

11. VUDU has no plans to manufacture or sell personal computers.

12. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 25th day of March, 2009 in Santa Clara, California.



---

Edward Lichty

**Exhibit A**  
**to Declaration of Edward Lichty in Support**  
**of Applicant's Opposition to Opposer's**  
**Motion for Summary Judgment**

**Offered by Applicant VUDU, Inc.**

***Hewlett-Packard Development Company, L.P.***  
***v. VUDU, Inc.***

**Opposition No. 91185393**  
**Serial No. 77112745**



## News release

[» Return to original page](#)

### HP Delivers Stunning Design, Personalization and World-class Engineering in New Voodoo Portfolio

BERLIN, June 10, 2008

HP today announced a new portfolio of Voodoo-branded computing devices targeted at the growing segment of consumers who demand products that combine luxurious quality, personalized styling and unmatched technology innovation.

#### Related Links

» [VoodooPC](#)

» [View the press kit](#)

The first two in the portfolio – the powerful Voodoo Omen desktop and the ultra-mobile Voodoo Envy 133 notebook – were unveiled at the HP [Connecting Your World](#) event.

The new Voodoo Omen and Voodoo Envy 133 set the tone for the new portfolio with striking design elements, world-class engineering and extensive personalization options.

“The new Voodoo portfolio is designed to appeal to consumers who have very high expectations for form, function and looks,” said Mike Perkins, vice president and general manager, Voodoo Business Unit, HP. “Our new Voodoo systems exemplify technology excellence while also looking like they would fit as well at an art gallery as on a desk.”

Customers can purchase and personalize Voodoo-branded devices at the redesigned Voodoo website – [www.voodooopc.com](#). Voodoo Envy 133 is expected to be available this summer, and initially, the new Voodoo Omen will be available by invitation only to customers who have previously purchased a Voodoo PC. General availability is planned to follow later this summer.

For gamers and performance users, HP continues to support and develop the HP Blackbird 002 and a family of “HP with Voodoo DNA” products. HP Blackbird 002 and anticipated “HP with Voodoo DNA” products are expected to be available at [www.hp.com/voodoodna](#). An exclusive configuration of HP Blackbird 002 is planned for availability through select retailers.

#### The pinnacle of design and performance

Supporting up to four graphics processing units and sporting advanced thermal engineering, the modern-styled Voodoo Omen blends art and technology inside and out. The Omen features integrated copper liquid cooling pipes and a built-in, fully functional LCD auxiliary screen. Its advanced thermal engineering with liquid cooling makes it run quietly, even when performing at high levels.

Customers can add the finishing touches to their Voodoo Omen via an extensive palette of Voodoo Allure paint color choices. The new Voodoo Omen will be available for a starting price of \$7,000.<sup>(1)</sup> Other key features include:

- Vertical diffusion thermals – the power of natural convection currents is harnessed for advanced cooling and quiet acoustics.
- Auxiliary LCD – a 7-inch (diagonal) built-in auxiliary LCD is a full-function secondary display.
- Advanced liquid cooling – copper cooling pipes embedded in the chassis, aircraft-quality quick-release hose connectors, and more combine in one of the most advanced liquid cooling systems on the planet.
- Tool-less architecture – side panels, hard drives, video cards and other critical components can be removed without tools.
- Top-loading cables – cables plug into the system under a removable top panel, improving access to the cable connections and contributing to the clean exterior design.
- Interior lighting – battery-powered interior lighting gives users visibility to upgrade components when the system is powered off.

#### The head-turning ultra-mobile notebook

Measuring just over half an inch thin and weighing less than 3.4 pounds,<sup>(2)</sup> the Voodoo Envy 133 is a showcase of ultra-mobility and thermal engineering in a tiny, sophisticated chassis. Its Voodoo IOS (Instant-On Solution) makes it one of the fastest-loading systems ever launched by HP, giving mobile users near-instant access to the Internet and Skype.<sup>(3)</sup>

The Voodoo Envy 133 was developed using the smallest available Intel® Centrino® technology. Despite its small size and elegant design, the notebook offers a wide range of functionality typically associated with larger notebooks, and includes Ethernet and wireless connectivity,<sup>(4)</sup> a wide selection of ports, a replaceable battery and more.<sup>(5)</sup>

“We worked with HP to enable the Voodoo Envy 133 to be as small as possible without losing key features such as performance and battery life,” said Mooly Eden, corporate vice president and general manager, Mobile Platforms Group, Intel. “The final outcome is a terrific notebook that showcases the benefits of our Intel Centrino platform, which retains a high level of performance and low-energy consumption even after we shrunk it by more than 50 percent using our expertise in packaging technology.”

To appeal to everyone’s unique tastes, customers can personalize their Voodoo Envy with Voodoo Allure paint colors. A high-quality, backlit keyboard, full 13.3-inch LED display and coordinated peripherals add to the overall styling and sophistication of the notebook.

The Voodoo Envy 133 will be available for a starting price of \$2,099.<sup>(1)</sup> Other key features include:

- Voodoo Adapter – establishes a one-to-one wireless connection between the Envy 133 notebook and an Ethernet connector located on the power supply, allowing users to roam free from the wired connection.<sup>(3)</sup>
- Multiple gesture touchpad – more than a standard touchpad, the Envy 133 also provides capabilities such as a circular gesture called chiral scroll and pinch options.
- Durability – the carbon fibre casing and fused composite glass covering the display provide surprising strength and durability.
- External optical disk drive – an ID-coordinated external eSATA optical drive is included with every unit.
- Professional backlit keyboard – reminiscent of old-school tactile desktop keyboards with just enough “click” to get even the most die-hard tech enthusiast smiling.
- Ports – extensive usability via a variety of I/O ports, including headphone/microphone, HDMI, USB 2.0 (1x) and a shared e-SATA/USB (1x).

Further details and images of the Voodoo portfolio, along with other information about the HP Connecting Your World event, are available in an online press kit at [www.hp.com/go/connectingyourworld2008](http://www.hp.com/go/connectingyourworld2008).

## About HP

HP focuses on simplifying technology experiences for all of its customers – from individual consumers to the largest businesses. With a portfolio that spans printing, personal computing, software, services and IT infrastructure, HP is among the world’s largest IT companies, with revenue totaling \$110.4 billion for the four fiscal quarters ended April 30, 2008. More information about HP (NYSE: HPQ) is available at <http://www.hp.com>.

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<sup>(1)</sup> Estimated U.S. street prices. Actual prices may vary.

<sup>(2)</sup> Actual weight will vary by configuration.

<sup>(3)</sup> Internet access required and sold separately.

<sup>(4)</sup> Wireless access point and Internet service required and not included.

<sup>(5)</sup> Battery life will vary depending on the product model, configuration, loaded applications, features and power management settings. The maximum capacity of the battery will decrease with time and usage.

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Intel and Intel Centrino are trademarks of Intel Corporation in the United States and other countries.

This news release contains forward-looking statements that involve risks, uncertainties and assumptions. If such risks or uncertainties materialize or such assumptions prove incorrect, the results of HP and its consolidated subsidiaries could differ materially from those expressed or implied by such forward-looking statements and assumptions. All statements other than statements of historical fact are statements that could be deemed forward-looking statements, including but not limited to statements of the plans, strategies and objectives of management for future operations; any statements concerning expected development, performance or market share relating to products and services; anticipated operational and financial results; any statements of expectation or belief; and any statements of assumptions underlying any of the foregoing. Risks, uncertainties and assumptions include the execution and performance of contracts by HP and its customers, suppliers and partners; the achievement of expected results; and other risks that are described in HP’s Quarterly Report on Form 10-Q for the fiscal quarter ended January 31, 2008 and HP’s other filings with the Securities and Exchange Commission, including but not limited to HP’s Annual Report on Form 10-K for the fiscal year ended October 31, 2007. HP assumes no obligation

and does not intend to update these forward-looking statements.

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**Exhibit B**  
**to Declaration of Edward Lichty in Support**  
**of Applicant's Opposition to Opposer's**  
**Motion for Summary Judgment**

**Offered by Applicant VUDU, Inc.**

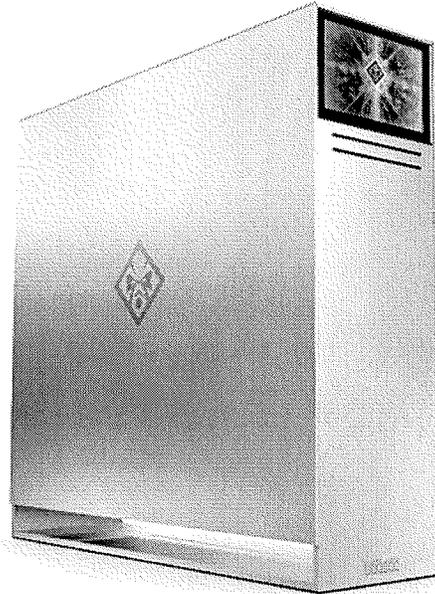
*Hewlett-Packard Development Company, L.P.*  
*v. VUDU, Inc.*

**Opposition No. 91185393**  
**Serial No. 77112745**

VOODOO OMEN

## Voodoo Omen Gaming Desktop Is Most Beautiful Ever, Only \$6500-\$20,000

By [matt buchanan](#), 4:00 AM on Tue Jun 10 2008, 33,602 views



I almost don't care what's inside Voodoo's Omen desktop, beyond the usual gaming PC bombast —quad radiator and liquid cooling with integrated copper pipes to stave thermonuclear meltdown for *extreme* overclocking—because this is the best-looking made-to-order gaming desktop I've ever seen. It looks like a clean, efficient killing machine, not a disco-in-a-box. (Okay, there is a built-in seven-inch LCD auxiliary display that adds the necessary over-the-top flourish for obscene gaming PCs.) You can party it up with custom lights and paint, but I urge otherwise. But, if you can afford the \$20,000 for the top of the line model, I'm two social classes away from judging you. **Update:** Full spec sheet below shows what \$20k will buy you.



### Introducing Voodoo Omen

The Voodoo Omen is a machine that takes personalization to new heights. Rich with innovation and unmatched in design, Voodoo Omen is for the discerning technology lover who equally appreciates sophisticated styling and performance computing. And because each Voodoo Omen is built using a personalized, co-creation process, every owner of a Voodoo Omen becomes an architect and a designer.

The Omen's clean lines and square edges give its exterior a classic look. Consumers then add the finishing touches via personalization options that include high-quality Voodoo Allure paint finishes, laser engraving and custom side panels in materials such as glass, leather and wood - all of which contribute to making the Voodoo Omen a signature showpiece for each individual owner.

While its exterior design hints at its Voodoo heritage, the Voodoo Omen is completely redesigned.. Elements of this quiet, high-

performance system such as the quad radiator and integrated copper cooling pipes, built directly into the Voodoo Omen chassis, make the Voodoo Omen stand out from the crowd. Vertical thermal diffusion cooling, developed by turning the motherboard 90 degrees to allow air to flow naturally throughout the machine.

#### Performance and innovation

- Vertical thermal diffusion - The Omen fully optimizes the natural power of convection currents by turning the motherboard 90 degrees, which allows air to naturally flow from bottom to top. This innovative approach to thermal management offers maximum cooling and quiet acoustics.
- Auxiliary LCD - A 7-inch full auxiliary LCD is built into the Omen chassis. This screen acts as a fully functional secondary display that can be used to show game stats, movies, music videos or other additional information users need at work or play.
- Quad radiator - This is one of the first systems to feature a quad radiator for maximum cooling and performance and unbelievably quiet acoustics.
- Tool-less architecture - The Omen has tool-less architecture on components such as hard drives and video cards.
- Industry standard components - The Omen is built using only the best industry-standard components to ensure ultimate performance and longevity.
- Integrated copper cooling pipes - Unlike any other system in the industry, copper cooling pipes are built directly into the aluminum Omen chassis, cutting interior clutter and improving air flow.
- Quick-release connectors - The self-sealing, anti-leak liquid cooling system allows for hassle-free component upgrades
- Interior lighting - Battery-powered interior lighting gives users visibility to upgrade components when the system is powered off.

#### Design and personalization

- Classic Voodoo style - The clean lines and square edges of the Omen set the standard for the sophisticated look that will define all Voodoo-branded devices.
- All-aluminum chassis - The sophisticated all-aluminum chassis adds to the Omen's durability and cooling capabilities.
- Top-loading cables - The rotated motherboard allows cables to be plugged into the system under a removable top panel. This gives users easier access to the cable board and contributes to the clean system design.
- Removable panels - For easy access to the interior of the system, the Omen comes equipped with tool-less side panels that completely detach using latches hidden under the top panel. The side panel is a thick square plate of aluminum with a flat, smooth surface unblemished by handles, rivets or screws.
- Extensive high-quality Voodoo Allure paint finishes - A palette of 14 color choices is available, including six new Voodoo Allure colors.
- Laser engraving - Choose from eight Voodoo Ink design options and eight Voodoo Iconograph patterns.
- Custom side panels - Customers will soon be able to develop custom side-panels from a variety of materials usually associated with luxury apparel and furniture such as glass, leather and wood.
- RGB accent lighting - Select one of 16 million different colors in real time through software run from the auxiliary display. LED lights are inside the unit at the top and below the chassis to accent, but not overwhelm, the design of the machine.

#### Security

- The Omen includes Voodoo's Fuel Essential software suite: Roxio, Cyberlink PowerDVD, AVG Professional Anti-Virus and PCDoctor.

#### Pricing and availability

- Pricing ranges from \$6,500 to \$20,000, depending on configuration.
- Current Voodoo customers will receive a private invitation to be among the first to order a customized Omen.

#### CHASSIS

- Strengthened aluminum construction
- Hover suspended box design
- Easy removable side and top panels
- Built-in USB driven 7" Widescreen display

Resolution: 800x480

#### • Dimensions

Width (cm): 19.05 = 7.5 inches

Length (cm): 58.42 = 23 inches

Height (cm): 55.88 = 22 inches

Weight starting at: ~45Kg = ~100 lbs.

#### LIQUID COOLING

- Liquid coolant options: red, blue, green, purple and orange

#### POWER SUPPLY

- 1150W air cooled
- 1300W liquid cooled

#### MOTHERBOARDS

- ASUS Striker Extreme II (NVIDIA 790i)

#### PROCESSOR

- Intel® Core™ 2 Micro architecture, overclockable, liquid cooled

Intel® Core™ 2 Extreme Quad-Core 3.20GHz QX9770

12 MB of L2 cache; 1600 MHz FSB

Intel® Core™ 2 Extreme Quad-Core 3.00GHz QX9650

12 MB of L2 cache; 1333 MHz FSB

#### MEMORY

- Four DIMM slots supporting up to 8 GB of main memory, overclockable

2, 4, or 8GB 1600 MHz CORSAIR PC-14400 DDR3 SDRAM

#### GRAPHICS AND DISPLAYS

- Supports both NVIDIA® SLI™ and ATI CrossFire™, liquid cooled

NVIDIA® GeForce® 8800 ULTRA with 768MB of GDDR3 SDRAM

ATI Radeon™ HD3870 series

- Includes support for next generation NVIDIA and ATI graphics cards

#### STORAGE

- Flexible RAID capabilities (0, 1)

- Up to 6, no carrier, tool-less drive bays

Options:

- Up to 3 independent Serial ATA Hard Disk Drives (HDD)

(Up to 3 TB of internal storage using drives with the following capacities):

Seagate 500 GB SATA @ 7200 rpm

Seagate 750 GB SATA @ 7200 rpm

Seagate 1 TB SATA @ 7200 rpm

Western Digital Raptor 160 GB 10,000 rpm

Western Digital VelociRaptor 300 GB 10,000 rpm

STORAGE (cont.)

Options (cont.):

- Up to 6 Solid State Drives (SSD)

(Up to 384 GB of internal storage using drives with the following capacities):

Samsung 64 GB SLC

- One or two super multi-drive, slim slots with Lightscribe (DVD+/-R/RW+/-DL)

Writes DVD-R discs at up to 16x speed

Writes DVD+R DL discs at up to 4x speed

Reads DVDs at up to 8x speed

Writes CD-R discs at up to 40x speed

Writes CD-RW discs at up to 24x speed

Reads CDs at up to 24x speed

- Optional upgrade for one or two slot Blu-Ray drive

Writes BD-R discs at up to 2x speed

Writes BD-RE discs at up to 2x speed

Reads BDs at up to 2x speed

Writes DVD RAM discs at up to 5x speed

Writes DVD+/-R discs at up to 8x speed (SL) and 2x speed (DL)

Reads DVD+/-R discs at up to 8x speed (SL) and 6x speed (DL)

Writes DVD+/-RW discs at up to 4x speed

Reads DVD+/-RW discs at up to 6x speed

Writes CD-R, CD-RW discs at up to 8x speed

Reads CDs at up to 24x speed

AUDIO AND PERIPHERALS

- Onboard Hi-Definition audio

- Creative Audio Sound Blaster® X-Fi™ XtremeGamer

- Creative Audio Sound Blaster® X-Fi™ XtremeGamer Fatal1ty Professional

- Includes Voodoo Razer Keyboard and Mouse

CONNECTIONS

- Hidden top panel I/O ports (motherboard dependent)

- 1 x PS/2 Keyboard

- 2 x External SATA

- 1 x IEEE 1394a

- 2 x LAN(RJ45) port

- 6 x USB 2.0/1.1

- 1 x Clr CMOS switch

- 1 x Optical + 1 x Coaxial S/PDIF Output 1 x onboard LED switch

OS

- Microsoft® Windows Vista™ Ultimate 64-bit SP1

- Microsoft® Windows Vista™ Home Premium 64-bit SP1

VOODOO FUEL ESSENTIALS SOFTWARE

- Security

Grisoft AVG Professional (1 year base standard)

Grisoft AVG Professional (2 year upgrade available)

Grisoft AVG Internet Security (2 year license available)

PC Doctor

- Roxio 9.0

- CyberLink PowerDirector

- CyberLink Power2Go

- CyberLink DVD Play

- CyberLink Label Print

PRODUCTIVITY

- Microsoft® Office Pro 2007

- Microsoft® Office Small Business Edition 2007

- Microsoft® Office Basic 2007

SUPPLEMENTAL DISCS

- Genuine Microsoft® Windows Vista™ Installation DVD

- Driver and Applications Recovery DVD

**Exhibit C**  
**to Declaration of Edward Lichty in Support**  
**of Applicant's Opposition to Opposer's**  
**Motion for Summary Judgment**

**Offered by Applicant VUDU, Inc.**

***Hewlett-Packard Development Company, L.P.***  
***v. VUDU, Inc.***

**Opposition No. 91185393**  
**Serial No. 77112745**

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- Brand
- » HP Pavilion Elite (3)
  - » HP Pavilion Slimline (3)
  - » HP Pavilion (3)
  - » HP TouchSmart (2)
- Processor
- » Intel (9)
  - » AMD (3)
- Operating System
- » Windows Vista Home Basic (2)
  - » Windows Vista Home Premium (12)
  - » Windows Vista Ultimate (9)
  - » Windows Vista Business (9)
- ENERGY STAR
- » Yes (3)
  - » Not applicable (8)
- Usage
- » Home (7)
  - » Business (4)
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Quick-find

Firebird series

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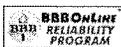
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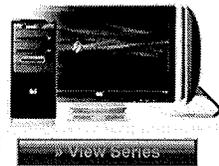
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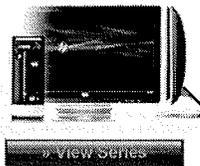


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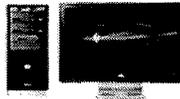
Touch enabled All-in-One design for instant access to everything

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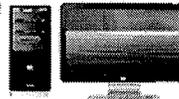
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  - » HP (2)
  - » HP HDX (2)
  - » HP Mini (4)
  - » HP Pavilion (4)
  - » HP TouchSmart (1)
  - » Special Edition (2)
- Display (diagonal)
  - » Under 10.9" (4)
  - » 11.0" - 14.9" (5)
  - » 15.0" - 15.9" (2)
  - » Over 15.9" (6)
- Weight
  - » Under 2.5 lb. (5)
  - » 2.5 - 5 lb. (4)
  - » 5 - 6 lb. (1)
  - » Over 6 lb. (7)
- Processor
  - » Intel (14)
  - » AMD (3)
- Usage
  - » Home (9)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77112745 for the mark VUDU, filed on February 21, 2007, and published in the Official Gazette on March 25, 2008.

HEWLETT-PACKARD DEVELOPMENT  
COMPANY, L.P.

Opposer,

v.

VUDU, INC.,

Applicant.

Opposition No. 91185393

**DECLARATION OF MATTHEW A.  
STRATTON IN SUPPORT OF  
APPLICANT'S OPPOSITION TO  
OPPOSER'S MOTION FOR  
SUMMARY JUDGMENT**

I, Matthew A. Stratton declare as follows:

1. I am an associate in the law firm Harvey Siskind LLP. Our firm represents Applicant VUDU Inc. ("VUDU") against Opposer Hewlett-Packard Development Company, L.P. ("HP"). I have personal knowledge of each fact stated in this declaration and, if called upon, would testify under oath thereto.

2. On February 21, 2007, VUDU filed Application Serial No. 77112745 for the mark VUDU. The USPTO published the mark in the Official Gazette on March 25, 2008. On July 23, HP filed its Notice of Opposition to the registration of the VUDU mark.

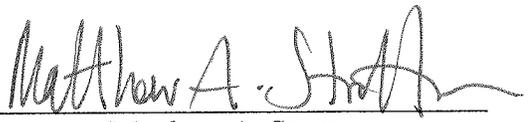
3. On December 22, 2008, I propounded discovery requests on HP. On January 13, 2009, HP propounded its discovery requests on VUDU. On January 14, 2009, HP requested an additional month to complete its responses. I granted HP's request, extending the deadline to February 25, 2009. On February 12, 2009, VUDU responded to HP's discovery requests.

4. However, rather than respond to VUDU's discovery requests, HP instead used its extension of time to prepare its motion for summary judgment. HP filed its motion on February 23, 2009. On February 24, 2009, attorneys for HP took the position that the pending motion stayed HP's obligation to respond to VUDU's discovery requests and notified me that it would not be responding until the motion was adjudicated.

5. On March 23, 2009, I conducted two searches on the USPTO's online Trademark Electronic Search System (TESS). Comparing the searches, I observe that there are 23 registered or applied-for VOODOO marks and 100 registered or applied-for VOODOO-formative marks. A true and correct copy of the search results is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: March 25, 2009

By:   
Matthew A. Stratton

**Exhibit A**  
**to Declaration of Matthew A. Stratton in**  
**Support of Applicant's Opposition to**  
**Opposer's Motion for Summary Judgment**

**Offered by Applicant VUDU, Inc.**

***Hewlett-Packard Development Company, L.P.***  
***v. VUDU, Inc.***

**Opposition No. 91185393**  
**Serial No. 77112745**



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78873728	3158834	VOODOO	TARR	LIVE
2	78801524		VOODOO	TARR	LIVE
3	78455142		VOODOO	TARR	LIVE
4	78432222	3509882	VOODOO	TARR	LIVE
5	78459551	3174952	VOODOO	TARR	LIVE
6	78404283	3234278	VOODOO	TARR	LIVE
7	77508455	3540313	VOODOO	TARR	LIVE
8	77672200		VOODOO	TARR	LIVE
9	77646903		VOODOO	TARR	LIVE
10	77645903		VOODOO	TARR	LIVE
11	77207410	3513529	VOODOO	TARR	LIVE
12	77169390		VOODOO	TARR	LIVE
13	77388856	3498650	VOODOO	TARR	LIVE
14	77359546	3480089	VOODOO	TARR	LIVE
15	77039282	3406078	VOODOO	TARR	LIVE
16	76693098		VOODOO	TARR	LIVE
17	76330778	3038749	VOODOO	TARR	LIVE
18	76669709	3270853	VOODOO	TARR	LIVE
19	76526946	2842799	VOODOO	TARR	LIVE
20	76515161	2998675	VOODOO	TARR	LIVE
21	76331293	2988445	VOODOO	TARR	LIVE
22	75599534	2643237	VOODOO	TARR	LIVE
23	74379747	1853624	VOODOO	TARR	LIVE

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Current Search: S3: (voodoo)[MI] and (live)[LD] docs: 123 occ: 254

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78562527		VOODOO GURU	TARR	LIVE
2	78650245	3098027	VOODOO BAYOU	TARR	LIVE
3	78873728	3158834	VOODOO	TARR	LIVE
4	78801386		AMERICAN VODOO RECORDS	TARR	LIVE
5	78601472		ZOMBIE VODOO SCREAM PARTY	TARR	LIVE
6	78716044	3412931	JERSEY VODOO	TARR	LIVE
7	78606086		ZOMBIE VODOO SCREAM PARTY	TARR	LIVE
8	78606084		ZOMBIE VODOO SCREAM PARTY	TARR	LIVE
9	78601465		ZOMBIE VODOO SCREAM PARTY	TARR	LIVE
10	78969123		VOODOO BABY	TARR	LIVE
11	78813446	3187118	THE VODOO JETS	TARR	LIVE
12	78948188	3253620	VOODOO BBQ	TARR	LIVE
13	78601053	3406655	RADIO VODOO	TARR	LIVE
14	78975865	2946846	VOODOO VINCE	TARR	LIVE
15	78975358	2855358	VOODOO VINCE	TARR	LIVE
16	78949035	3298044	VOODOO SKATEBOARDS	TARR	LIVE
17	78932368	3348486	VOODOO TEMPLE	TARR	LIVE
18	78918015	3241953	LOVE VODOO	TARR	LIVE
19	78883274	3224881	VOODOO AMPS	TARR	LIVE
20	78802937	3311920	MARIE LAVEAU'S HOUSE OF VODOO	TARR	LIVE
21	78802921	3311919	HOUSE OF VODOO	TARR	LIVE
22	78801524		VOODOO	TARR	LIVE
23	78598747	3079306	VOODOO CHURCH	TARR	LIVE

24	78517009	3091484	VOODOO CHILD CAROLINA BBQ SAUCE	TARR	LIVE
25	78455142		VOODOO	TARR	LIVE
26	78061434	2703243	REDRUM VODOO SPICED RUM	TARR	LIVE
27	78392786	3067474	VOODOO CAFE & LOUNGE	TARR	LIVE
28	78212101		VOODOO DOLLS	TARR	LIVE
29	78432222	3509882	VOODOO	TARR	LIVE
30	78459608	3237982	VOODOO BY LUNATI CAMS	TARR	LIVE
31	78459551	3174952	VOODOO	TARR	LIVE
32	78404283	3234278	VOODOO	TARR	LIVE
33	78449074	3294662	VOODOO TIKI	TARR	LIVE
34	78349304	2966681	SONIC VODOO	TARR	LIVE
35	78337841	3058689	VOODOO DOLLS	TARR	LIVE
36	78262392	2834674	VOODOO DOG	TARR	LIVE
37	78093250	2628422	VOODOO CAR AUDIO	TARR	LIVE
38	78043697	2637366	VOODOO CHOPPERS	TARR	LIVE
39	78024136	2637315	VOODOO CHEWS	TARR	LIVE
40	78010015	2734680	STUDIO VODOO	TARR	LIVE
41	77548483		VENICE VODOO	TARR	LIVE
42	77680659		TRUE 2 VODOO	TARR	LIVE
43	77267140		VOODOO DOLLS	TARR	LIVE
44	77508455	3540313	VOODOO	TARR	LIVE
45	77254157		VOODOO BAYOU	TARR	LIVE
46	77672200		VOODOO	TARR	LIVE
47	77662676		VOODOO VIXEN	TARR	LIVE
48	77519046		VOODOO DOLLS	TARR	LIVE
49	77254138		VOODOO BAYOU	TARR	LIVE
50	77254150		VOODOO BAYOU	TARR	LIVE
51	77254163		VOODOO BAYOU	TARR	LIVE
52	77654363		VOODOO GURU	TARR	LIVE
53	77168099		VOODOO DOG	TARR	LIVE
54	77435832		V VODOO MAGIC	TARR	LIVE
55	77345049		DOUBLE 4X VODOO 7S	TARR	LIVE
56	77646903		VOODOO	TARR	LIVE
57	77645903		VOODOO	TARR	LIVE
58	77641504		VINTAGE VODOO	TARR	LIVE
59	77207410	3513529	VOODOO	TARR	LIVE
60	77588036		VOODOO TIKI DESERT ROSE PRICKLY PEAR INFUSED TEQUILA	TARR	LIVE
61	77343109		VOODOO DOLLY	TARR	LIVE
62	77626421		VOODOO TIKI	TARR	LIVE
63	77620078		VOODOO WAX	TARR	LIVE
64	77169390		VOODOO	TARR	LIVE
65	77257942		VOODOO SPIN	TARR	LIVE
66	77036263		VOODOO MAGIC	TARR	LIVE

67	77459053		VOODOO DOLLY'S SPIRITS, SPICES AND SONG	TARR	LIVE
68	77137695	3503595	VOODOO BAYOU	TARR	LIVE
69	77392486	3501419	'GET FRIKI' VODOO TIKI TEQUILA 'THERE'S MAGIC INSIDE'	TARR	LIVE
70	77388856	3498650	VOODOO	TARR	LIVE
71	77541812		VOODOO LAB	TARR	LIVE
72	77337150	3483954	VOODOO COWBOY ENTERTAINMENT XX XX	TARR	LIVE
73	77359546	3480089	VOODOO	TARR	LIVE
74	77184515	3470413	TATTOO VODOO KITTEN	TARR	LIVE
75	77054929	3252836	VOODOO BBQ & GRILL	TARR	LIVE
76	77054871	3250367	VOODOO BBQ AND GRILL	TARR	LIVE
77	77476366		TEQUILA VODOO	TARR	LIVE
78	77241524	3429959	VOODOO BOSS	TARR	LIVE
79	77044922	3409875	THE VODOO KIN MAFIA	TARR	LIVE
80	77145426	3404465	AMERICAN VODOO	TARR	LIVE
81	77039282	3406078	VOODOO	TARR	LIVE
82	77172419	3394328	VOODOO DOUGHNUT THE MAGIC IS IN THE HOLE	TARR	LIVE
83	77182376	3391178	VOODOO MAGIC	TARR	LIVE
84	77171977	3368455	VOODOO DOUGHNUT	TARR	LIVE
85	77116931	3343005	AUNT SALLY'S GOURMET VODOO MANGO HOT SAUCE NEW ORLEANS	TARR	LIVE
86	77042318	3315683	BLUE VODOO	TARR	LIVE
87	77042314	3315682	BLUE VODOO	TARR	LIVE
88	77026227	3281577	VOODOO BLUES	TARR	LIVE
89	76693098		VOODOO	TARR	LIVE
90	76330778	3038749	VOODOO	TARR	LIVE
91	76666206	3481113	VOODOO RIDE	TARR	LIVE
92	76259190	2578196	VOODOO QUEEN OLD ORLEANS LOVE POTION	TARR	LIVE
93	76366653	2744435	AXE VODOO	TARR	LIVE
94	76669709	3270853	VOODOO	TARR	LIVE
95	76634790	3344709	VOODOO CYCLES	TARR	LIVE
96	76564515	2920531	NEW ORLEANS VODOO DOLLS	TARR	LIVE
97	76526946	2842799	VOODOO	TARR	LIVE
98	76515161	2998675	VOODOO	TARR	LIVE
99	76492543	2907064	NEW ORLEANS VODOO	TARR	LIVE
100	76492542	2977230	NEW ORLEANS VODOO	TARR	LIVE
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102	76473085	2949027	PINK VODOO	TARR	LIVE
103	76473084	3340431	PINK VODOO	TARR	LIVE
104	76472160	2962597	DOODOO VODOO	TARR	LIVE
105	76470073	2896635	VOODOO STIX	TARR	LIVE
106	76427033	2870174	NEW ORLEANS VODOO	TARR	LIVE
107	76359706	2890732	VOODOO NATION INC	TARR	LIVE
108	76350619	2870070	NEW ORLEANS VODOO	TARR	LIVE
			VOODOO DOLL I.L.S. INTERCHANGEABLE LURE		

109	76337579	2668651	SYSTEM	TARR	LIVE
110	76331293	2988445	VOODOO	TARR	LIVE
111	76087740	2584541	VOODOO DOLLS	TARR	LIVE
112	75547767	2300955	VOODOO RAIN	TARR	LIVE
113	75503887	2286729	VOODOO RAIN	TARR	LIVE
114	75599534	2643237	VOODOO	TARR	LIVE
115	75894321	2406392	DEJA VODOO	TARR	LIVE
116	75714880	2336020	VOODOO BALLS	TARR	LIVE
117	75703453	2329641	NAIL VODOO	TARR	LIVE
118	75679242	2424033	VOODOO BRAND	TARR	LIVE
119	75598472	2342824	TEAM VODOO	TARR	LIVE
120	75508764	2621652	VOODOO VISUAL EFFECTS & GRAPHICS	TARR	LIVE
121	75262647	2316958	VOODOO MUSIC	TARR	LIVE
122	74379747	1853624	VOODOO	TARR	LIVE
123	74328705	1849379	VOODOO DOLLS	TARR	LIVE

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