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

Proceeding	91185393
Party	Defendant Marquee, Inc.
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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.

MARQUEE, INC.,

Applicant.

Opposition No. 91185393

**ANSWER TO NOTICE OF
OPPOSITION**

Vudu, Inc., assignee of and successor in interest to Marque, Inc., (“Applicant”) by its counsel, hereby answers as follows:

1. Responding to the preamble, Applicant denies each and every allegation.
2. Responding to the first numbered paragraph, Applicant admits each and every allegation.
3. Responding to the second numbered paragraph, Applicant admits each and every allegation.
4. Responding to the third numbered paragraph, Applicant admits each and every allegation.
5. Responding to the fourth numbered paragraph, Applicant admits that amendments to the recitation of the goods and services listed in Application Serial No. 77112745 were made on November 13, 2007 and February 1, 2008. Applicant further admits that Application Serial No. 77112745 was published in the Official Gazette on March 25, 2008. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations

and therefore denies each and every remaining allegation.

6. Responding to the fifth numbered paragraph, Applicant admits that it owns Application Serial No. 77229745 for VUDU (stylized), filed on June 13, 2007, and now suspended. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation.

7. Responding to the sixth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

8. Responding to the seventh numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

9. Responding to the eighth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

10. Responding to the ninth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

11. Responding to the tenth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

12. Responding to the eleventh numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

13. Responding to the twelfth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

14. Responding to the thirteenth numbered paragraph, Applicant is without

knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

15. Responding to the fourteenth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

16. Responding to the fifteenth numbered paragraph, Applicant denies each and every allegation.

17. Responding to the sixteenth numbered paragraph, Applicant admits that Application Serial No. 77229745 for VUDU (stylized) was assigned “VOODOO” as a pseudo mark. Applicant also admits that the Examining Attorney for Application Serial No. 77229745 for VUDU (stylized) stated in an outgoing Office Action that “Applicant’s VUDU and registrant’s VOODOO share sound, meaning and commercial impression. Moreover, the goods and services of the applicant are extremely related to the registrant’s goods and services and likely to be found in the same channels of trade. Upon encountering VUDU on applicant’s various goods and services in the field of audio and video content, purchasers would likely mistakenly believe that the goods and services emanated from the same source as VOODOO’s various goods and services in the field of gaming.” Applicant denies each and every remaining allegation.

18. Responding to the seventeenth numbered paragraph, Applicant denies each and every allegation.

19. Responding to the eighteenth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

20. Responding to the nineteenth numbered paragraph, Applicant denies that its products are related to Opposer’s VOODOO product line, or that consumers will otherwise confuse the source of Opposer’s and Applicant’s products. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore

denies each and every remaining allegation.

21. Responding to the twentieth numbered paragraph, Applicant denies that the goods and services listed in Application Serial No. 77112745 for VUDU are related to those in Opposer's VOODOO product line, or that consumers will otherwise confuse the source of Opposer's and Applicant's products. Applicant admits that Opposer's registered VOODOO marks include goods and services in Class 9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation.

22. Responding to the twenty-first numbered paragraph, Applicant denies that such goods and services are within Opposer's "natural zone of expansion." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation.

23. Responding to the twenty-second numbered paragraph, Applicant repeats and realleges each and every response/denial above associated with Paragraphs 1 through 21 of the Notice of Opposition.

24. Responding to the twenty-third numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

25. Responding to the twenty-fourth numbered paragraph, Applicant denies each and every allegation.

26. Responding to the twenty-fifth numbered paragraph, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation.

27. Responding to the twenty-sixth numbered paragraph, Applicant denies each and every allegation.

28. Responding to the twenty-seventh numbered paragraph, Applicant repeats and realleges each and every response/denial above associated with Paragraphs 1 through 21 of the

Notice of Opposition.

29. Responding to the twenty-eighth numbered paragraph, Applicant denies each and every allegation.

30. Responding to the twenty-ninth numbered paragraph, Applicant denies each and every allegation.

31. Responding to the thirtieth numbered paragraph, Applicant denies each and every allegation.

32. Responding to the paragraph beginning with the word “WHEREFORE”, Applicant avers that the paragraph does not contain any allegations that require a response. To the extent this paragraph is deemed by the Board to contain allegations requiring a response, Applicant denies each and every such allegation.

AFFIRMATIVE DEFENSES

33. The allegations of the Notice of Opposition fail to state a claim upon which relief may be granted.

34. This Opposition is barred by the absence of any likelihood of confusion.

35. This Opposition is barred by the absence of any dilution.

36. This Opposition is barred by the doctrine of waiver.

37. This Opposition is barred by the doctrine of acquiescence

38. This Opposition is barred by the doctrine of laches

39. This Opposition is barred by the doctrine of unclean hands.

40. This Opposition is barred by the doctrine of estoppel because Opposer has long been aware of Applicant and has taken no action to protect its rights.

41. Opposer lacks standing to bring this Notice of Opposition because Opposer does not have rights, superior or otherwise, sufficient to support its underlying claims.

42. Opposer lacks standing to bring this Notice of Opposition because Opposer is not likely to be damaged by the registration of the mark at issue.

43. Opposer lacks standing to bring this Notice of Opposition on dilution grounds

because Opposer's purported trademark rights lack the requisite fame.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety and that a registration issue to Applicant for Application Serial No. 77112745.

Dated: October 1, 2008

Respectfully submitted,
HARVEY SISKIND LLP
D. PETER HARVEY
MATTHEW A. STRATTON

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

Attorneys for Applicant,
Vudu, Inc., assignee of, and successor in
interest to, Marquee, Inc.

CERTIFICATE OF TRANSMISSION

I hereby certify that this **ANSWER TO NOTICE OF OPPOSITION**, (Opposition No. 91185393), dated October 1, 2008, is being electronically transmitted to the Trademark Trial and Appeal Board on October 1, 2008.

/s/ Matthew A. Stratton

Matthew A. Stratton

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **ANSWER TO NOTICE OF OPPOSITION**, dated October 1, 2008 (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, 7th Floor, San Francisco, CA 94111, on October 1, 2008.



LEE D. MARTINEZ