

ESTTA Tracking number: **ESTTA331532**

Filing date: **02/10/2010**

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

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| Name | Wham-O, Inc. | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 5903 Christie Avenue Emeryville, CA 94608 UNITED STATES | | |

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| Attorney information | Todd A. Noah Dergosits & Noah LLP Three Embarcadero Center, Suite 410 San Francisco, CA 94111 UNITED STATES tmdocketing@dergnoah.com Phone:(415) 705-6377 |
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Applicant Information

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| Application No | 77748136 | Publication date | 02/09/2010 |
| Opposition Filing Date | 02/10/2010 | Opposition Period Ends | 03/11/2010 |
| Applicant | Manley Toy Limited 8th Floor HK Spinners Industrial Bldg. 818 Cheung Sha Wan Road Kowloon, HONG KONG | | |

Goods/Services Affected by Opposition

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| Class 028. First Use: 2008/12/01 First Use In Commerce: 2008/12/01 All goods and services in the class are opposed, namely: Disc toss toys; Flying discs; Hand-powered non-mechanical flying toy; Tossing disc toys |
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Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

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| U.S. Registration No. | 679186 | Application Date | 07/28/1958 |
| Registration Date | 05/26/1959 | Foreign Priority Date | NONE |
| Word Mark | FRISBEE | | |
| Design Mark | | | |
| Description of | NONE | | |

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| Mark | |
| Goods/Services | Class U022 (International Class 028). First use: First Use: 1957/06/17 First Use In Commerce: 1957/07/08 TOY FLYING SAUCERS FOR TOSS GAMES |

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| U.S. Application No. | 78931341 | Application Date | 07/17/2006 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | FRISBEE |
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| Design Mark |  |
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| Description of Mark | NONE |
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| Goods/Services | <p>Class 006. First use: Metal key chains; metal key rings; figures of common metal; figurines of common metal; metal bicycle locks; metal key holders; bronze recognition plaques</p> <p>Class 009. First use: Computer games and computer game programs, namely, videogames and interactive videogames for use with gaming consoles, cell phones, personal computers, and hand-held videogame devices, downloadable software, namely, videogames and interactive videogames; sunglasses; decorative magnets; eyeglass cases; telephones; fashion eyeglasses; swimming goggles; snow goggles; diving goggles; goggles for sports; inflatable floatation devices</p> <p>Class 014. First use: Precious metals and their alloys; horological and chronometric instruments; jewelry, costume jewelry; earrings; rings; medallions; non-monetary coins of precious metal; clocks, watches; stop watches; ankle bracelets; body piercing rings and studs; and identification bracelets</p> <p>Class 018. First use: Animal skins, hides; trunks and traveling bags; umbrellas; saddlery; luggage, sports bags, duffel bags, garment bags, backpacks, brief cases, fanny packs, handbags, luggage tags; knapsacks; tote bags; purses; wallets; credit card cases; gym bags; all-purpose sports gear carrying bags; dog leashes; shoe bags for travel; school bags; pet collars</p> <p>Class 020. First use: Non-metal key rings and chains; hand-held mirrors; plaques of bone, ivory, plastic, wax, and wood; soft sculpture wall decorations; decorative mobiles; plastic and metal stands for displaying or holding various types of toys and sporting equipment; plastic figurines; plastic water-filled snow globes; toy boxes; plastic and wood figurines; plastic identification tags; furniture, chairs and stools, tables, folding sports seats and stools, footstools, inflatable pillows</p> <p>Class 021. First use:</p> |
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| | <p>Combs, bath sponges, kitchen sponges; beverage glassware; drinking cups and glasses; jugs; decorative and commemorative plates; dinnerware; figurines made of china, crystal, earthenware, glass, porcelain and terra cotta; mugs made of earthenware, glass and porcelain; lunch boxes; tankards not of precious metal; meal trays, wastepaper baskets; candlesticks of glass</p> <p>Class 024. First use: Table linen, table cloths not of paper, towels; beach towels; bed linens; table linens; cloth banners; cloth pennants; woolen blankets, silk blankets, bed blankets; coverlets; cloth napkins; lap robes</p> <p>Class 025. First use: Men's, women's and children's clothing, namely, bathing suits, belts, neckties, suspenders, bandanas, infant and toddler sleepwear, bathrobes, night shirts, pajamas and loungewear, beach cover-up dresses, cloth diaper sets, knit dresses with pants sets, shorts and top sets, skirt/panty combinations, socks, play suits, coveralls, union suits, collarless shirts, shorts, pants and slacks, shirts; jackets, namely, wind-resistant jackets and nylon shells; sports uniforms; sweaters; parkas; turtlenecks; mittens; gloves; underwear; rompers; jerseys; headwear and scarves; ear muffs, ear bands and headbands; hosiery; rain ponchos and jackets; bath thongs; visors; aprons; ski and cloth bibs; T-shirts; sweatshirts; sweatpants; coats; pullovers; ski suits; golf shirts and hats; blazers; legwarmers; evening tops; jeans; leotards; workout and sports apparel, namely, tank tops, sports bras; ski masks; footwear, namely, shoes, boots, slippers, and beach sandals; headgear, namely, hats, caps, baseball caps</p> <p>Class 028. First use: Board games, target games; decorations for Christmas trees; toy flying disks; sleds; toboggans; body boards; bags especially designed for surfboards; leashes used in conjunction with surfing; skim boards; surf boards; swim fins; dolls and stuffed toy animals; toy scale model vehicles; jigsaw puzzles; Christmas tree ornaments; commemorative sports balls; action puppets; inflatable toys; teddy bears; dartboard cabinets and darts; Christmas stockings; basketball backboards; yo-yos; action figures and accessories therefore; marbles; sports balls; volleyball nets, tennis nets, nets for ball games; plastic toy hoops; toy foot bean bags; gymnastic equipment, namely, equipment for practicing body surfing out of the water; balloons; golf gloves; radio-operated toy vehicles; toys for pets; pinball machines; discuses; exercise equipment, namely, equipment for practicing body surfing out of the water; hand-held units for playing video games; inflatable float mattresses or pads for recreational use; inflatable inner tubes for aquatic recreational use; water toys; sand toys</p> |
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| Attachments | 78931341#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (4 pages)(22789 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.

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|-----------|----------------|
| Signature | /Todd A. Noah/ |
| Name | Todd A. Noah |
| Date | 02/10/2010 |

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

In the Matter of Application Serial No. 77/748,136

Published in the Official Gazette on: February 9, 2010

Trademark: **YO-BE**

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| Wham-O, Inc. Opposer v. Manley Toy Limited Applicant. | NOTICE OF OPPOSITION Opposition No. _____ |
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NOTICE OF OPPOSITION

Wham-O, Inc. (“Opposer”), a Delaware corporation having a principal place of business at 5903 Christie Avenue, Emeryville, California 94608, believes it will be damaged by registration of the mark YO-BE shown in Serial No. 77/748,136, in International Class 28, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Manley Toy Limited (“Applicant”) has filed an application to register the mark YO-BE for “Disc toss toys, flying discs, hand-powered non-mechanical flying toy, tossing disc toys” in International Class 28, as evidenced by the publication of such mark in the *Official Gazette* on February 9, 2010.

2. Applicant is, upon information and belief, a Hong Kong corporation having a principal place of business at 8/F, Hong Kong Spinners Industrial Bldg, 818 Cheung Sha Wan Road, Kowloon, Hong Kong.

3. Opposer has, since at least as early as 1957, used the FRISBEE mark in connection with recreational goods. Opposer is the owner of, among others, an incontestable registration for the trademark FRISBEE, Registration No.0679186, registered May 26, 1959 in

International Class 28 (the “186 Registration”), and pending application, Serial No. 78/931,341, filed July 17, 2006 in International Class 28 (the “341 Application”), among others (collectively, the “FRISBEE Mark”).

4. There is no issue as to priority. Opposer’s ‘186 Registration of the FRISBEE Mark issued decades before Applicant’s dates of filing and of claimed first use of its mark. Additionally, Opposer’s ‘341 Application was filed almost three years before Applicant’s dates of filing and of claimed first use of its mark.

5. Opposer has sold its goods under the FRISBEE mark throughout the United States and the world for over fifty years and has developed exceedingly valuable goodwill with respect to the FRISBEE Mark.

6. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods over an extended period of time, Opposer has gained for its FRISBEE Mark a most valuable reputation and has created, in the minds of the buying public, an exclusive association between the FRISBEE mark and its goods.

8. Applicant seeks to register YO-BE as a mark in connection with goods that are related to the goods of Opposer and such use is likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

9. Upon information and belief, the Applicant’s goods will be marketed, promoted and offered through the same or similar marketing channels as are the goods provided by Opposer under its FRISBEE mark.

10. If Applicant is permitted to register the YO-BE mark for its goods as specified in the opposed application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant’s mark is confusingly similar to Opposer’s FRISBEE Mark. Persons familiar with Opposer’s FRISBEE Mark would be likely to assume that there is some association between the Applicant’s goods and Opposer. Furthermore, any defect, objection, or fault found with Applicant’s services marketed under its YO-BE mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its FRISBEE Mark.

11. The FRISBEE Mark is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The FRISBEE mark became famous

well in advance of the Applicant's filing of the application for YO-BE and Applicant's alleged date of first use of the YO-BE mark.

12. The trademark proposed for registration by Applicant, namely YO-BE, is likely to cause dilution by blurring of Opposer's FRISBEE Mark and is likely to impair the distinctiveness of the famous FRISBEE Mark.

13. Further, the trademark proposed for registration by Applicant, namely, YO-BE, is likely to cause dilution by tarnishment of Opposer's FRISBEE Mark and is likely to harm the reputation of the famous FRISBEE Mark.

14. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that registration of the mark shown in Application Serial No. 77/748,136, be refused.

Respectfully submitted,
DERGOSITS & NOAH LLP

Dated: February 10, 2010

By: /Todd A. Noah/
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San Francisco, CA 94111
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Facsimile: (415) 705-6383

CERTIFICATE OF SERVICE

I certify that on February 10, 2010, a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant via first class mail, postage prepaid, at the following address:

Manley Toy Limited
8th Floor HK Spinners Industrial Bldg.
818 Cheung Sha Wan Road
Kowloon, Hong Kong

/Todd A. Noah/
Todd A. Noah