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

Proceeding	91193730
Party	Defendant Manley Toy Limited
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Date	03/15/2010
Attachments	Applicant's Answer To Notice of Opposition.pdf (6 pages)(34774 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WHAM-O, INC.,

Opposer,

v.

MANLEY TOYS LTD.,

Applicant.

Opposition No. 91/193,730

Appl. Serial No.: 77/748,136

Mark: YO-BE

Published for Opposition: February 9, 2010

Atty. Ref. No.: 69447-0026

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Manley Toys Ltd. ("Applicant"), the owner of the above-referenced application, Serial No. 77/748,136, by and through its attorneys, hereby submits its Answer to the Notice of Opposition filed by Wham-O, Inc. ("Opposer"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Notice of Opposition bearing the same number.

Applicant lacks sufficient knowledge and information regarding the allegations contained in the unnumbered introductory paragraph of the Notice of Opposition to admit or deny and, on that basis, denies each and every allegation contained therein. To the extent any other unnumbered paragraphs, captions, or headings in the Notice of Opposition are treated as allegations, such allegations are hereby denied.

1. Applicant admits that it is the Applicant for U.S. Trademark Application Serial No. 77/748,136. Applicant further admits that U.S. Trademark Application Serial No. 77/748,136 and the Official Gazette in which that application was published in all ways speak for themselves. Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 1 of the

Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

2. Applicant admits that it is a Hong Kong limited company with its principal place of business at 8/F, Hong Kong Spinners Industrial Building, 818 Cheng Sha Wan Road, Kowloon, Hong Kong. Except as expressly admitted and alleged herein, Applicant denies each and every remaining allegation contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits that U.S. Trademark Reg. No. 679,186 and U.S. Trademark Application Serial No. 78/931,341 in all ways speak for themselves. Applicant alleges that "frisbee" is a generic term for "toy flying saucers for toss game." Applicant alleges that Opposer lacks the required *bona fide* intent to use "frisbee" in connection with the goods identified in U.S. Trademark Application Serial No. 78/931,341, and that, as a result, that application is void. Applicant denies that U.S. Trademark Reg. No. 679,186 is valid. Applicant denies that Opposer has any trademark rights in the term "frisbee." Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 3 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

4. Applicant admits that U.S. Trademark Reg. No. 679,186 in all respects speaks for itself. Applicant admits that U.S. Trademark Application Serial No. 78/931,341 in all respects speaks for itself. Applicant admits that its U.S. Trademark Application Serial No. 77/748,136 in all respects speaks for itself. Applicant alleges that Opposer lacks the required *bona fide* intent to use "frisbee" in connection with the goods identified in U.S. Trademark Application Serial No. 78/931,341, and that, as a result, that application is void. Applicant denies that U.S. Trademark Reg. No. 679,186 is valid. Applicant denies that Opposer has any trademark rights in the term

"frisbee." Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 4 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

5. Applicant denies that Opposer has any trademark rights in the term "frisbee." Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 5 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

6. Applicant denies that Opposer has any trademark rights in the term "frisbee." Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 6 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

8.¹ Applicant admits that its U.S. Trademark Application Serial No. 77/748,136 in all respects speaks for itself. Applicant denies that Opposer has any trademark rights in the term "frisbee." Applicant denies that confusion is likely to result from the registration of YO-BE in connection with the goods in its U.S. Trademark Application Serial No. 77/748,136. Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 8 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

¹ Applicant notes that Opposer's Notice of Opposition contains no numbered "Paragraph 7." For the sake of clarity, Applicant likewise omits "Paragraph 7" from its Answer.

9. Applicant denies that Opposer has any trademark rights in the term "frisbee." Except as expressly admitted or alleged herein, Applicant lacks sufficient knowledge and information regarding the remaining allegations contained in Paragraph 9 of the Notice of Opposition to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

10. Applicant denies each and every allegation contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies each and every allegation contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies each and every allegation contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies each and every allegation contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies each and every allegation contained in Paragraph 14 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

15. Opposer lacks standing to bring this opposition.

Second Affirmative Defense

16. Opposer has failed to state a claim on which relief can be granted.

Third Affirmative Defense

17. U.S. Trademark Reg. No. 679,186 is invalid.

Fourth Affirmative Defense

18. Opposer's alleged trademark "frisbee" is generic for "toy flying saucers for toss games."

Fifth Affirmative Defense

19. U.S. Trademark Application Serial No. 78/931,341 is void and invalid.

Sixth Affirmative Defense

20. Opposer has abandoned its alleged trademark "frisbee" as well as the application and registration therefor asserted in this proceeding.

Respectfully submitted,

Dated: March 5, 2010

By: _____

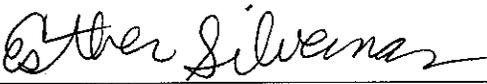
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CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

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