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

Proceeding	91196822
Party	Defendant Megamedia Ltd.
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Date	02/09/2012
Attachments	MEGAVIDEO Opposition - Answer.pdf ( 5 pages )(151363 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

MEGATRAX PRODUCTION MUSIC, INC.

Opposer,

v.

MEGAMEDIA, LTD.

Applicant.

Opposition No. 91196822  
Application Serial No. 77/679,307

**ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

**ANSWER**

Applicant Megamedia, Ltd. hereby answers the Notice of Opposition filed by Megatrax Production Music, Inc. as follows:

In response to the unnumbered introductory paragraph, Applicant lacks sufficient knowledge or information to form a belief as to the nature of Opposer or the location of Opposer's principal place of business and, accordingly, denies the allegation. Applicant admits that Opposer believes it will be damaged by the registration of Application Serial No. 77/679,307

1. Applicant admits the allegations in Paragraph 1.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 and, accordingly, denies the allegations.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 and, accordingly, denies the allegations.
4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 and, accordingly, denies the allegations.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 and, accordingly, denies the allegations.
6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 and, accordingly, denies the allegations.
7. Applicant denies each and every allegation contained in Paragraph 7.
8. Applicant denies each and every allegation contained in Paragraph 8.
9. Applicant denies each and every allegation contained in Paragraph 9.
10. Applicant denies that Applicant requires Opposer's consent or permission to make use of Opposer's mark identified in Application Serial No. 77/679,307.

The remainder of the Notice of Opposition contains Opposer's prayer for relief for which no responsive pleading is required. To the extent a response is required, Applicant denies that Opposer is entitled to the relief requested.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Applicant has been using the mark identified in Application Serial No. 77/679,307 and developing consumer recognition and goodwill therein since at least July 21, 2007, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition. Applicant has relied on Opposer's failure to Applicant's detriment. Consequently, Opposer's claim is barred, in whole or in part, by the doctrine of laches.

#### **Second Affirmative Defense**

Applicant has been using the mark identified in Application Serial No. 77/679,307

and developing consumer recognition and goodwill therein since at least July 21, 2007, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition. Applicant has relied on Opposer's failure to Applicant's detriment. Consequently, Opposer's claim is barred, in whole or in part, by the doctrine of acquiescence.

### **Third Affirmative Defense**

Applicant has been using the mark identified in Application Serial No. 77/679,307 and developing consumer recognition and goodwill therein since at least July 21, 2007, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition. Applicant has relied on Opposer's failure to Applicant's detriment. Consequently, Opposer's claim is barred, in whole or in part, by the doctrine of waiver.

### **Fourth Affirmative Defense**

Applicant has been using the mark identified in Application Serial No. 77/679,307 and developing consumer recognition and goodwill therein since at least July 21, 2007, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition. Applicant has relied on Opposer's failure to Applicant's detriment. Consequently, Opposer's claim is barred, in whole or in part, by the doctrine of estoppel.

**Additional Affirmative Defenses Reserved**

Applicant specifically reserves the right to assert such additional affirmative defenses as may be found to be applicable through or following discovery in this Opposition.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed with prejudice, and that Application Serial No. 77/679,307 be permitted to proceed to registration.

DATED: February 9, 2012

FOCAL PLLC

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Answer to Notice of Opposition and Affirmative Defenses was served on Applicant on February 9, 2012, in the following manner:

**Via Email to:**

Alexa L. Lewis  
all@msk.com  
emk@msk.com

**Via First Class Mail, postage prepaid to:**

Alexa L. Lewis  
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### **CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that the foregoing Answer to Notice of Opposition and Affirmative Defenses and Certificate of Service is being filed electronically today, February 9, 2012, with the United States Patent and Trademark Office via the Electronic System for Trademark Trial and Appeals.

/s/ Sean M. McChesney  
Sean M. McChesney