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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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Attachments	MEGAVIDEO - Answer to Amended Notice of Opposition.pdf (5 pages)(151177 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 AMENDED NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

ANSWER

Applicant Megamedia, Ltd. hereby answers the Amended 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 each and every allegation contained in Paragraph 10.

11. As to paragraph 11, Applicant admits that it has not obtained Opposer's consent or permission to use the mark MEGAVIDEO, but denies that Applicant requires Opposer's consent or permission to make use of said mark.

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: April 2, 2012

FOCAL PLLC

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Answer to Amended Notice of Opposition and Affirmative Defenses was served on Opposer's counsel of record on April 2, 2012, in the following manner:

Via First Class U.S. Mail, postage prepaid to:

Alexa L. Lewis, Esq.
Mitchell, Silberberg & Knupp, LLP
11377 W. Olympic Boulevard
Los Angeles, CA 90064

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that the foregoing Answer to Amended Notice of Opposition and Affirmative Defenses and Certificate of Service is being filed electronically today, April 2, 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