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Filing date: **07/14/2011**

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

Proceeding	91199922
Party	Plaintiff Christopher A McGrath
Correspondence Address	CHRISTOPHER MCGRATH McG PRODUCTIONS LTD 22 ST JOHN STREET NEWPORT PAGNELL MILTON KEYNES, MK16 8HJ UNITED KINGDOM legal@mcgproductionsltd.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Mr Christopher McGrath
Filer's e-mail	chris@mcgproductionsltd.com
Signature	/Mr C A McGRATH/
Date	07/14/2011
Attachments	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE AMENDED AFTER MOTION TO DISMISS2011.pdf (25 pages)(1067563 bytes)

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

In the matter of trademark application Serial No. 85053714 and opposition Serial No. [91199922](#)

For the mark: 20XI

Published in the Official Gazette on 3 May 2011

BETWEEN

MR. CHRISTOPHER McGRATH

Opposer

- and -

NIKE, INC.

Claimant

REVISED NOTICE OF OPPOSITION

1. Pursuant to Rule 15 (a)(1)(B) of the Federal Rules of Civil Procedure a party may amend its pleading once as a matter of course within 21 days after service of a motion under Rule 12(b). Having been served with a motion under Rule 12(b) on 30 June 2011 the Opposer therefore amends and re-files a claim to relief that, pursuant to TBMP §503.02, is 'plausible on its face' as follows (with the proviso that no proofs are provided at this stage in accordance with TBMP 503.02, and all documents reproduced below are by way of allegation only):

2. The Opposer is a citizen of the United Kingdom and is Managing Owner/Director of McG Productions Ltd to which a worldwide trading licence has been granted by the Opposer in the use of the following trademark: 20XII The Honor of Sport™, which the Opposer owns. McG Productions Ltd is a Third Sector Social Enterprise, registered in the United Kingdom:

<http://www.companieshouse.gov.uk/> :

Company Details:

Name & Registered Office:

MCG PRODUCTIONS LIMITED

22 ST JOHN STREET , NEWPORT PAGNELL , MILTON KEYNES

BUCKINGHAMSHIRE , UNITED KINGDOM

MK16 8HJ - Company No. 05311705

3. The Opposer also holds the trade name 20XII, in use in the United States since October 2007, and both the United States and elsewhere since January 2008, as will be shown below.

4. STANDING: The Opposer cites Jewelers Vigilance Committee, Inc. v. Ullenberg Corp., [823 F.2d 490](#), 493, 2 U.S.P.Q.2d 2021, 2023 (Fed.Cir.1987): "opposer must plead facts sufficient only to show

a personal interest in the outcome of the case beyond that of the general public." The Opposer has a material interest in the outcome of this claim, given the Opposer expects licence income and direct sales income from use of 20XII and has a material interest in the company's financial performance in respect of said trademark licence, as both its salaried employee and its sole shareholder.

5. The following website address establishes Opposer's ownership of the trademark 20XII The Honor Of Sport™ :



<http://www.ipo.gov.uk/t-find-number?detailsrequested=C&trademark=2477961>

Details therein read as follows:

Case details for Trade Mark 2477961

Mark text: 20XII The Honor of Sport; **Status:** Registered; **Classes:** 25, 35;

Filing date: 24 January 2008

Next renewal date: 24 January 2018

Registration date: 12 September 2008

Publication in Trade Marks Journal :

First advert: Journal: 6738; **Publication date:** 06 June 2008

Registration: Journal: 6755; **Publication date:** 03 October 2008

Assignment: Journal: 6759; **Publication date:** 31 October 2008

List of goods or services:

Class 25: Clothing, footwear, headgear.

Class 35: Advertising; dissemination of advertising matter via all media, in particular in the form of thematic messages centred on human values; publicity through sponsoring; business management; business administration; office functions; the organisation, operation and supervision of loyalty and incentive schemes; advertising services provided via the Internet; production of television and radio advertisements; promoting the goods and services of others by means of contractual agreements, in particular of sponsoring and licensing, enabling partners to gain additional notoriety and/or image and/or liking derived from those of cultural and sporting events, in particular international; promoting the goods and services of others by means of image transfer; rental of advertising space of all kinds and on all carriers, digital or not; administration of the participation of national teams to an international athletic competition, and promoting the support to said teams with the public and the concerned circles; accountancy; auctioneering; trade fairs; opinion polling; data processing; provision of business information.

Names and addresses: Proprietor:

Mr. Christopher McGrath

22 St. John Street, Newport Pagnell, Milton Keynes, MK16 8HJ

Residence country: United Kingdom

Effective assignment date: 12 September 2008

ADP number: 0939765001

6. Standing is self-evident in the fact that the Opposer has demonstrated personal ownership of the Trademark 20XII The Honor Of Sport™; and a trademark is a mark denoting commercial trade – 20XII is also a trading name of the Opposer, as will be demonstrated below. Since 20XI and 20XII are unquestionably so similar as to cause confusion, and since 20XI will unquestionably have a deleterious commercial effect on the sports brand 20XII, as will be shown, there is therefore a de facto material, personal interest in the outcome of this case beyond that of the general public.

7. Pursuant to rule 37 CFR § 2.101(b), additional specific facts in support of standing, which demonstrate both a commercial interest in the outcome of the claim and how the Defendant’s registration of 20XI would have a deleterious effect on the commercial prospects of the Opposer in using 20XII, are detailed in the following paragraphs:

8. On 30 October 2007, prior use of 20XII was begun by the Opposer in the furtherance of building the sports brand, 20XII. It started with the purchase of 20XII.COM, a domain name, with the receipt for purchase as follows:

GoDaddy.com, Inc.
Receipt#: 85739300

DATE: 10/30/2007 3:48:37 PM

Customer #: 17174225

Billing Information

Chris McGrath
 McG Productions Ltd
 22 St John Street
 Newport Pagnell
 Milton Keynes, Buckinghamshire MK16 8HJ
 UK
 Daytime Phone: 07788961886
 Email: weaveword@yahoo.com

Name: MR C A MCGRATH
Paid: Visa (\$35.75)
Account Number: #####1337

<u>Label Name</u>	<u>Attributes</u>	<u>Unit Price</u>	<u>Today's Price</u>	<u>ICANN fee</u>	<u>Qty</u>	<u>Extra Disc.</u>	<u>Total Price</u>
105-1 .COM Domain Name Registration - 5 Years		\$48.95	\$48.95	\$1.00	1	\$14.20	\$35.75
Domain: 20XII.COM							
+ Show Domains							

Subtotal: \$35.75
Shipping & Handling: \$0.00
Tax: \$0.00

Total (United States Dollars): \$35.75

9. It is clear that there was a long-term commitment to the brand, purchasing the domain name for five years from the start. It was not a generic name, no one in the world was trading with that name, and it had no obvious intrinsic meaning beyond the combination of Arabic and Roman numerical values,

which made it intrinsically distinctive. The purchase of a domain name for five years was a clear act of commercial intent: it was a commercial contract, cementing the Opposer's clear trading-name intention. Moreover, that commercial act, the purchase of a piece of cyber real estate, was conducted not through the United Kingdom, but through GoDaddy.com, an American company, and was paid for in American Dollars. As a trading name of the Opposer, transacted via an American provider of cyber real estate, the Paris Convention for Protection of Industrial Property protects the Opposer's trade name from any trade by another company as follows:

Article 8: Trade Names: *A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.*

10. A United States Trademark was therefore not required to protect the trade name 20XII from any future trademark registration of a similar or near identical or identical name. The Defendant's trademark, if registered, would therefore break the international treaty to which the United States is a signatory.

11. Counsel for the Defendant cites: *In re Dr. Matthias Rath*, 402 F.3d 1207, 1210, 74 USPQ2d 1174, 1176 (Fed Cir. 2005); *Bayer Consumer Care AG v. Belmora LLC*, 90 USPQ2d 1587, 1591 (TTAB 2009); and *International Finance Corp. v. Bravo Co.*, 64 USPQ2d 1597, 1603 (TTAB 2002). All three of the above cited decisions on the Paris Convention relate to Articles other than Article 8, specifically related to the protection of well-known marks (Article 6bis), which were not cited as grounds and were not relevant to introduce to the proceedings. To say, as counsel for the Defendant does, that the Convention itself in its entirety is not self-executing is itself in contravention of Article 19 of the Paris Convention, which reads as follows:

Article 19: Special Agreements: *It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.*

11a. The most important special agreements in relation to the protection of trademarks are the Madrid Agreement, the Protocol relating to the Madrid Agreement, the TRIPS Agreement, the Nice Agreement, the Vienna Agreement, the Trademark Law Treaty, and the Madrid Agreement on Indications of Origin, none of which overturns Article 19 of the Paris Convention and none of which supersedes Article 8 of the Paris Convention, which is protected by Article 19 of that Convention and deals specifically not just with trademarks but also with trade names.

11b. Any United States statutory provision or government body that sought to undermine Article 8 would itself be contrary to the convention to which the United States is a signatory. Article 8 of the Paris Convention must therefore stand as valid grounds for opposition to the Defendant's registration on the grounds that 20XII has been a trading name of the Opposer for some three and a half years.

11c. Moreover, United States trademark rights at common law are established by using the mark in trade. The trade name became a mark by default.

12. The Paris Convention right is therefore further bolstered by the Act of March 3, 1881, which is “AN ACT To authorize the registration of trade--marks *and protect* the same... Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That owners of trade--marks used in commerce with foreign nations... provided such owners shall be domiciled in the United States, or located in any foreign country ... which by treaty, convention, or law, affords similar privileges to citizens of the United States...”

13. The Opposer’s trade name 20XII also became a trade mark by default, by dint of use as a trade name in commerce and therefore immediately benefits from the protection cited in the Act of March 3, 1881. It is therefore protected on statutory grounds since the Paris Convention is one such Convention mentioned in that Act, one such treaty, which confers on the Opposer similar privileges to citizens of the United States.

14. In addition, the Opposer has further grounds for opposition under Section 2(d) of the Trademark Act (15 U.S.C.§1052(d)), where,

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it... Consists of or comprises a mark which so resembles a mark... or trade name previously used in the United States by another... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive...” The grounds are as follows:

15. First, further establishing trade name credentials, on 22 January 2008 the trade name (and at common law, trade-mark) was bolstered by purchase *by the Opposer* of the following domain names, as per the following receipts:

GoDaddy.com, Inc.

Receipt#: 95315632

DATE: 1/22/2008 3:40:20 AM

Customer #: 17174225

Billing Information

Chris McGrath
McG Productions Ltd
22 St John Street
Newport Pagnell
Milton Keynes, Buckinghamshire MK16 8HJ
UK
Daytime Phone: 07788961886

Email: weaveword@yahoo.com

Name: MR C A MCGRATH

Paid: Visa (\$70.73)

Account Number: #####1337

<u>Label</u>	<u>Name</u>	<u>Attributes</u>	<u>Unit</u> <u>Price</u>	<u>Today's ICANN</u> <u>Price</u>	<u>fee</u>	<u>Qty</u>	<u>Extra</u> <u>Disc.</u>	<u>Total</u> <u>Price</u>
12030-1	.NET Bulk Domain Name Registration (1-5)		\$9.99	\$9.99	\$0.20	1	\$0.00	\$10.19
	<i>Domain: 20XII.NET</i>							
	+Show Domains							
13201-1	.TV Domain Name Registration - 1 Year		\$39.99	\$19.99	\$0.00	1	\$0.00	\$19.99
	<i>Domain: 20XII.TV</i>							
	+Show Domains							
13302-1	.UK (.CO.UK) Domain Name Registration - 2 Years		\$19.98	\$19.98	\$0.00	1	\$0.00	\$19.98
	<i>Domain: 20XII.CO.UK</i>							
	+Show Domains							
12130-1	.ORG Bulk Domain Name Registration (1-5)		\$9.99	\$6.99	\$0.20	1	\$0.00	\$7.19
	<i>Domain: 20XII.ORG</i>							
	+Show Domains							
460-1	.INFO Bulk Domain Name Registration (1-5)		\$9.99	\$2.99	\$0.20	1	\$0.00	\$3.19
	<i>Domain: 20XII.INFO</i>							
	+Show Domains							
11330-	.BIZ Bulk Domain Name Registration (1-5)		\$9.99	\$9.99	\$0.20	1	\$0.00	\$10.19

Domain: 20XII.BIZ

[+Show Domains](#)

Subtotal:	\$70.73
Shipping & Handling:	\$0.00
Tax:	\$0.00
<hr/>	
Total (United States Dollars):	\$70.73

16. 20XII and its various website extensions renew on a regular basis through GoDaddy.com – that is, the Opposer pays an American company in American dollars to routinely register the trade name across various domain name extensions. That is commercial trade in a trade name, repeatedly protecting the brand as the brand is broadened in wider commercial use across the United States and elsewhere. This name 20XII.com identified and distinguished the source of goods and services for which it was set up, namely games and sports related activities and subsequently sportswear. The domain name functions as a trade name, supported by the trademark 20XII The Honor Of Sport™.

17. The manner in which the trade name would be extended and exploited commercially was conceived in a novel way and took months to prepare: the project was long-term, as is evinced by the initial five-year receipt above for the main domain name, and the sports brand would emerge uniquely, as follows:

18. In January 2008, the Opposer added the following subtitle to his trading name, 20XII: The Honor Of Sport; 20XII was the brand and The Honor Of Sport denoted the value system and commercial arena targeted - namely sport. This was prior to the effective date of the eventual United Kingdom trademark in September 2008. The Opposer licenced the trade name to the company McG Productions Ltd, of which he is sole shareholder, and, under McG Productions Ltd, began the trademark registration process for 20XII The Honor Of Sport on 24 January 2008, later transferring the trademark from the company to the Opposer on 13 October 2008. The Opposer then had both a trademark in common law in the United States, a trade name protected by international treaties, and a United Kingdom trademark and trading name, again protected by international treaty, to exploit commercially.

19. The association between 20XII and Sport was not established anywhere in the world prior to January 2008, nor had any sports-related company combined the Roman and Arabic numerals in this

unique way. Uniqueness is a key feature towards successful trademark registration and its clear uniqueness is beyond question since it was later capable of passing through the strictest test applied by the U.K. Intellectual Property Office. Moreover, combining the word 'sport' in the mark creates an instant association with sport for which the Defendant is known worldwide and which company will undoubtedly subsume the smaller, but growing sports brand 20XII, against all fair competition, inevitably resulting in the commercially deleterious effect complained of above.

20. This is inevitable in consideration of its near-limitless financial resources that have instantly placed 20XI in a worldwide marketplace, even before it has the trademark registration. A simple websearch for 20XI will now return hundreds of Nike, Inc licensee promotions of 20XI, which have only recently been marketed to help support the Defendant's application and which already threaten to subsume 20XII through sheer marketing strength. Sport and 20XII are inextricably linked through the Opposer's commercial and intellectual property-building efforts that are now threatened by a growing association between Nike (i.e. sport) and 20XI.

21. To explore further the trading position from 2008, the purpose of the licence granted to McG Productions Ltd was for use of 20XII The Honor Of Sport in an international online treasure hunt, GoldenKeyQuest.com, registered as follows:

GoDaddy.com, Inc.

[PRINT](#)

Receipt#: 97157439

DATE: 2/5/2008 6:51:50 AM

Customer #: 17174225

Billing Information

Chris McGrath
 McG Productions Ltd
 22 St John Street
 Newport Pagnell
 Milton Keynes, Buckinghamshire MK16 8HJ
 UK
 Daytime Phone: 07788961886
 Email: weaveword@yahoo.com

Name: MR C A McGRATH
Paid: AMEX (\$10.19)
Account Number: #####2002

<u>Label Name</u>	<u>Attributes</u>	<u>Unit</u>	<u>Price</u>	<u>Today's ICANN</u>	<u>Price</u>	<u>fee Qty</u>	<u>Extra</u>	<u>Disc.</u>	<u>Total</u>	<u>Price</u>
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101-1 .COM Domain Name Registration - 1 Year	\$9.99	\$9.99	\$0.20	1	\$0.00	\$10.19
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Domain: *GOLDENKEYQUEST.COM*

[+ Show Domains](#)

Subtotal:	\$10.19
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Shipping & Handling:	\$0.00
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Tax:	\$0.00
-------------	---------------

Total (United States Dollars):	\$10.19
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22. It can be seen that the registration of Golden Key Quest came long after 20XII; with the online sports game seen as a unique way to introduce the sports brand 20XII into the market.

23. It then formed part of a clue: 20 is a score, X marks the spot, I is the 9th letter and so on; with the intention that the word ‘goal’ (“20 is a *score*”) would form the answer to the first part of the clue and lead contestants from website to website (other clues were to follow to assist in this). The commercial intention was to encourage players, in a sporting endeavour, eventually to use one particular search engine and for the Opposer then to charge that search engine to help build recognition. The search return strings from specific word combinations would be unique to one search engine alone, making Google, for instance, no use in the unravelling of clues embedded in the return strings – they would have to use another search engine to gather the clues. In addition, while contestants played for free, websites were to be invited to hold clues and be charged a fee for driving traffic to their site. The Opposer’s separate trading name, 20XII The Honor Of Sport, an emerging sports brand – was at the heart of this sporting quest and, in this way, the Opposer began to build brand recognition for 20XII in the world of sports, with a view to building an international sports brand.

24. With over one million hits to the website goldenkeyquest.com from over 70 countries, including the United States, the sporting challenge was an instant hit - and this was only the test-run. Players from the United States, in particular, were already poring over the sporting clue, 20XII The Honor Of Sport -- the new sports brand as it was emerging.

25. The following website at unfiction.com establishes prior use of this trade name in the United States for this express sporting purpose:

<http://forums.unfiction.com/forums/viewtopic.php?p=538115>

The details therein read in part as follows:



unfiction
ALTERNATE REALITY GAMING

unforum
a.r.g.b.b

[Calendar](#) [FAQ](#) [Search](#) [Memberlist](#) [Usergroups](#)

[Register](#) [Log in](#)

goldenkeyquest.com
Moderators: [Giskard](#), [ndemeter](#), [ScarpeGrosse](#)

[newtopic](#) [postreply](#)

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Author	Message
<p>NeonX257 Boot Joined: 16 Jun 2007 Posts: 18</p>	<p>X marks the spot</p> <div style="border: 1px solid black; padding: 5px;"><p>chulo333 wrote:</p><div style="border: 1px solid black; padding: 5px;"><p>harlequin2701 wrote:</p><div style="border: 1px solid black; padding: 5px;"><p>chulo333 wrote:</p><p>20 is a score X marks the spot i is the 9th letter 81 is a power of 3 20Xii.. I'm really curious about this. feels like a riddle. not sure where to go with it though... Anyone got any ideas? it feels like they want us to do something with the "20Xii" 20, X, and i are all in it, but the last statement, "81 is a power of 3" isnt...but since i is the 9th letter, ii could mean 9x9 which would give us 81...which (expressed as a power of 3) is 3^4. So we have 20X3^4 don't know where i'm going with this...</p></div></div></div>

I would agree, but then it gives us 20Xii. why would that be included? It doesn't really make sense.

A "spot" used to be Australian slang for 100 dollars, And a score is equal to 20. (ex. 4 score and 7 years ago)
So maybe it says "Score:100*3" like maybe it takes 300 people to launch the main site? Who knows...

 **Posted:** Thu Jun 05, 2008 4:58 pm

pondrthis
Veteran

Joined: 22 Jun 2007
Posts: 86

Well....

20Xii could be 2012, the mayan predicted end-of-an-era that alarmists are saying is the end of the world. With all of that other... really ridiculous... nonsense ending in 20×3^4 , one extra ridiculous step is $20(3^4)$ or 2012 again. This is total nonsense just like 20Xii and 20×3^4 so I wouldn't worry about it. Just laughed that these are the first two things that came to mind.

 **Posted:** Wed Jun 11, 2008 1:35 pm

NARIKO
Kilroy

Joined: 26 May 2008
Posts: 1

20xii

Or 2012 OLYMPICS? Could tie in with the "Honor of sport is global..." motto - Slightly random though.

 **Posted:** Fri Jun 13, 2008 7:39 am

Recon509
Kilroy

Joined: 06 Jun 2008
Posts: 1

20xii

Just a guess but "i is the 9th letter". That was used in the first code. Just wonder if the other parts may come into play with other codes. like maybe one code will use powers of numbers, one might use 20 as a spot..etc? Just another thought to throw in.

 **Posted:** Fri Jun 13, 2008 11:52 am

NeonX257 Boot Joined: 16 Jun 2007 Posts: 18	Possibilities <hr/> It's possible that it could represent 2012, but it wouldn't really make sense since the game is supposed to end 2010. <p style="text-align: right;">📅 Posted: Thu Jun 19, 2008 12:52 pm</p>
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26. In addition, players can be seen during 2008 in the following thread at twelve.org, some of whom are playing in the United States, as is clear (Las Vegas, for one):

<http://webcache.googleusercontent.com/search?q=cache:yOYdMP1XjfsJ:tweleve.org/new-hunts-rumors/23571-golden-key-quest-7.html+20xii+the+honor+of+sport+goldenkeyquest+2007&cd=1&hl=en&ct=clnk&gl=uk&source=www.google.co.uk>

The details therein read in part as follows:

Thread: Golden Key Quest

1. 07-02-2008 #61

Join Date	Aug 2007
Location	Manchester, UK
I've been puzzling over that too. There is a suggestion I've seen somewhere that 20Xii equates to 2012 but the only thing that springs to mind with that is the Olympic Games and quite what that has to do with the GKQ I've no idea.	
Writerian	
2. 07-02-2008 #62

j15bell	
Join Date	Sep 2006
Location	Shenango Valley PA
don't know what is going on with this thread. indicates there is a page 7 with 60 replies. can't get past page 6 with 56 replies. so I cannot seem to read the last four replies. so gonna ask anyway.....	
I don't have time for this right now but can register if it helps the cause. Will probably try to participate eventually. Can some twelve peeps register and not play right away to get this thing up and running?	
3. 07-02-2008 #63

Molnar

Join Date

Feb 2005

Location

CA

The page problem is likely due to the forum database having stale links after the eradication of everything Ricky.

4. 07-08-2008 #64

MDC777

Join Date

Apr 2008

Location

Las Vegas

20Xii = 27. It seems 27 is a special number somehow...

(81 is a power of 3)

3 x 27 = 81.

My first thought is the 27th ranked player is special somehow or a clue to something else.

Hmmmm

5. 07-08-2008 #65

anneiam

Join Date

Apr 2007

 Originally Posted by **MDC777** 

20Xii = 27. It seems 27 is a special number somehow...

(81 is a power of 3)

3 x 27 = 81.

My first thought is the 27th ranked player is special somehow or a clue to something else.

Hmmmm

I'm trying to understand how $20Xii = 27$

I've been looking at it and can't figure out how you drew that conclusion.

If Roman numerals are used I think it's:

$20 + (X \text{ or } 10) + (ii \text{ or } 2) = 32$

Following player after 32 is 33 and does appear to have a special rank.

 [Reply With Quote](#)

6. 07-08-2008 #66

Writerian

Join Date

Aug 2007

Location

Manchester, UK



Interesting theories, but I suspect that either the meaning is still evading us or it really doesn't have hidden meaning at all.

So far this is what I've discovered about

20XII The Honor of Sport

- McG Productions Ltd (the organisers of the Golden Key Quest) have filed it as a trademark - see: <http://www.ipo.gov.uk/t-find-number?...demark=2477961><http://www.lulu.com/content/2001669>
- There is a link at the bottom of that page to the trademark filed by the London Organising Committee of the Olympic Games and Paralympic Games - see: <http://www.ipo.gov.uk/t-find-number?...demark=2457502>

Now I have no idea how trademarks work, could be that they are connected or could be that the Intellectual Property Office are highlighting the similarities.

Whatever it means the number of players on the Rankings page has cranked up to 123 maybe its beginning to gain momentum?

Writerian

7. 07-09-2008 #67

MDC777

Join Date

Apr 2008

Location

Las Vegas

Your right I was thinking X was 5 instead of 10.

8. 07-09-2008 #68

Srial

Join Date

Dec 2005

Location

Pennsylvania

Hi all. Long time lurker, first (or I suppose second) time poster. Giving this hunt a whirl. I figured out the dots, just all my emails keep bouncing, but it's moving.

-Srial

[Reply With Quote](#)

9. 07-09-2008 #69

MDC777

Join Date

Apr 2008

Location

Las Vegas

As soon as a certain (undisclosed) number of visitors is reached - whether they crack the code or not - the main site is triggered live. Spread the word. The game is in your hands.

So I suppose they are going by individual IP addresses? If we get everyone we know to just visit the site and not even try to register then we will launch the main site!?!?

27. The following Case Law was objected to by Defendant's counsel because it was stated it was not a statutory ground for opposition: FIRST NIAGARA INSURANCE BROKERS INC v. FIRST NIAGARA FINANCIAL GROUP INC: (<http://caselaw.findlaw.com/us-federal-circuit/1115048.html>). Following First Niagara Ins. Brokers Inc. v. First Niagara Financial Group, Inc., (77 USPQ2d 1334 (TTAB 2005), rev'd, 476 F.3d 867 (Fed. Cir. 2007)), foreign and domestic trademark owners can oppose United States trademark applications on the basis of likelihood-of-confusion even if they do not own a trademark registration in the United States. A trademark owner need only show prior use of its trademark in the United States. It is not necessary that the trademark owner use its trademark in a type of commerce lawfully regulated by United States Congress, such as interstate commerce. Mere use in the United States is sufficient.

28. While the Defence's objection is noted, a case that is 'plausible on its face' has no exact definition in law. The Second Circuit stated, "Considerable uncertainty concerning the standard for assessing the adequacy of pleadings has recently been created by the Supreme Court's decision in Bell Atlantic Corp. v. Twombly." The Opposer's best understanding on the matter accords with United States Court of Appeals, Fifth Circuit decision In re Plywood Antitrust Litigation. Plywood Antitrust requires, at a minimum, that "a complaint . . . contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." First Niagara Insurance Brokers Inc v. First Niagara Financial Group Inc contains such a viable legal theory. So on the question of plausibility, viable legal theory is employed by the Opposer. It is not the statutory grounds for opposition for which First Niagara Insurance Brokers Inc v. First Niagara Financial Group Inc is employed in this paragraph, but the viable legal theory in support of 'plausible' cause for responding to a motion to dismiss. At bottom, decisions of courts, like decisions of the Board, are supported by opinion, and it is the opinion of the Federal Circuit that is highlighted for the Board's deliberation.

29. However, it must also be noted that pursuant to 37 C.F.R. PART 2-RULES OF PRACTICE IN TRADEMARK CASES 2.104(a) Contents of opposition: *"The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition."*

30. This was complied with in the initial opposition, and no mention above is made of the need for statutory grounds, only 'grounds'. The Defence cited the Federal Circuit decision that the notice of opposition must state a valid *statutory* ground for the Notice of Opposition. *Young v. AGB Corp.*, 152

F.3d 1377, 1368, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998). It is perverse for the Defence to rely on Federal Circuit decisions for the benefit of the Defendant and not also accept that Federal Circuit decisions can be used for the benefit of the Opposer. In this way, the Opposer maintains his reliance on *First Niagara Insurance Brokers Inc v. First Niagara Financial Group Inc*. It should be noted that *First Niagara Insurance Brokers Inc v. First Niagara Financial Group Inc* is the later decision in any case.

31. That decision notwithstanding, trade name protection is further supported in the second thread at twelveve.org above, where players openly discuss the trademark registration in progress in 2008 and make an association between 20XII and the London Olympic Games of 2012. This latter association was not intended by the Opposer, but it is clear that the sporting credentials of 20XII were emerging as far back as 2008 in the United States and elsewhere (for instance, on 25 November 2008, the Opposer added 20XII to Youtube.com, at the following web address: www.youtube.com/user/20xii). Indeed, the International Olympic Committee (IOC) challenged the U.K registration of 20XII by the Opposer (through The London Organising Committee of the Olympic Games and Paralympic Games Limited) because they saw an instant association with their London 2012 Olympic Games.

32. This makes 20XII uniquely placed to qualify as an emerging sports brand with de facto sports brand credentials. The Opposer could not deny that there would be an association with the London 2012 Olympics since the Olympic Committee had said there was one, and indeed the players cited above also found that association; but the Opposer successfully argued his case and the Olympic Committee did not proceed further, due in part to the uniqueness of the vision for 20XII in sport, and because no Nike, Inc-style ambush marketing was intended around the 2012 London Olympics. According to the IOC, ambush marketing is illegal and unethical; the Defendant was of course famous for ambush marketing during the 1996 Atlanta Olympics and the IOC publicly accused the Defendant of unfair sportsmanship. Now that 20XII The Honor of Sport is an official trademark, and a trading name of the Opposer, the Opposer is in a very high-stakes commercial position, no doubt coveted by the Defendant, that by unintended but natural consequences of British law, allows use of 20XII The Honor Of Sport™ now, throughout the London 2012 Olympics, and at all times; in fact protected from the Olympic Committee by the following law:

The London Olympic Games and Paralympic Games Act 2006 (UK Parliament).

It details various ways in which the Olympics association right is infringed by anyone attempting without official Olympic sanction to associate themselves with the 2012 Olympic Games. Paragraph 6 of the Act, however, provides for exclusions to this infringement provision - it states: *'The London Olympics association right is not infringed by the use of a trade mark registered under the Trade Marks Act 1994 (c.26) in relation to goods or services for which it is registered.'*

33. Once the trademark was established in 2008 – and the Olympic Committee had every opportunity to force through their opposition but did not do so - the Olympic Committee had no legal power to prevent the Opposer from using 20XII throughout the London 2012 Olympic Games, no matter how they might characterise its use – whether ambush marketing or otherwise. The Opposer has no intention to employ ambush marketing around the London 2012 Olympic Games, but he is free to promote 20XII as covered by the Trademark. In addition, 20XII has a Facebook page with a growing number of international sporting luminaries across a variety of sports readily associating themselves with it: <http://en-gb.facebook.com/20XII>.

34. Therefore, in consideration of the above, if anyone were said to have an interest in the outcome of this claim beyond that of the ordinary citizen, it is the Opposer and if any mark could be said to be damaged by the registration of 20XI, it is 20XII, so obviously similar as to cause confusion for the buying public, as will be shown below.

35. This becomes pertinent now because counsel for the Defendant has stated, in support of Nike's allegedly innocent motive for seeking this registration, that "NIKE denies that it has engaged in any of the acts of infringement... asserted by Opposer". The Opposer would not suggest it if he did not have proof, alluded to (but not provided at this stage as proof, in accordance with TBMP 503.02) as follows:

Subject: <http://www.ipo.gov.uk/t-find-number?detailsrequested=C&trademark=2477961>
From: info@mcgproductionsltd.com
Date: Mon, May 31, 2010 10:11 am
To: idea.submissions@nike.com

Dear Nike,

We are McG Productions Ltd, a small and relatively new U.K. based company operating in online games, media, sports, intellectual property, recruitment and publishing. Our ethos is informed by Third Sector principles of reinvesting in the community.

My name is Chris McGrath, Managing Director of the company, and on 24 January 2008 I registered the following trademark:

20XII The Honor of Sport

36. The email subject link is to the U.K. intellectual property office trademark registration page for 20XII The Honor of Sport™, as linked to in preceding paragraphs, and it goes on to discuss possible commercial exploitation of the mark. Nike replied with a form email on 1 June 2010, as follows:

Subject: Submitting an Idea to Nike
From: Idea Submissions <Idea.Submissions@nike.com>
Date: Tue, Jun 01, 2010 7:49 am

To: "'info@mcgproductionsltd.com'" <info@mcgproductionsltd.com>
Attach: Blank Bkgrd.gif
Nike Idea Submission Agreement.pdf

You are receiving this automatically-generated message because you have requested a copy of Nike's Outside Idea Submission Guidelines and Agreement....

37. The Defendant was introduced to 20XII on 31 May 2010, replied on 1 June 2010, and then began a registration process for 20XI within a week. By any definition, that is willful infringement of a known trademark.

38. The Opposer well-recognises that The Trademark Trial and Appeal Board “*is an administrative tribunal with jurisdiction to consider only whether a particular party is entitled to have or keep a federal trademark registration within the context of an opposition, cancellation, or concurrent use proceeding and cannot consider questions of infringement or unfair competition, and may not grant injunctions, award damages, or attorney fees. Any such matters must be brought before a court of competent jurisdiction*” - this is understood. However, the alleged willful infringement by such email exchange, and immediate attempt to benefit in commerce by filing to register 20XI as a trademark, places the Defendant in contravention of the following:

35 U.S.C. § 25. Declaration in lieu of oath.

U.S.C. § 1001 provides: “Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.”

And further:

37 C.F.R. PART 2-RULES OF PRACTICE IN TRADEMARK CASES

§ 2.20 Declarations in lieu of oaths.

...willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom...

And further:

§ 1 (15 U.S.C. § 1051). Application for registration; verification:

(3) The statement shall be verified by the applicant and specify that—

(B) to the best of the verifier’s knowledge and belief, the facts recited in the application are accurate; and

(D) to the best of the verifier’s knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance

thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive

39. In view of the documented emails between the Opposer and Defendant alluded to above, at the point the Defendant began the trademark process in June 2010, the Defendant cannot rightly be said to have satisfied paragraph D or the declaration in lieu of oaths and should be denied registration.

40. This wilful intent has also been raised pursuant to section 43(c) [[15 USC 1125\(c\)](#)]: “*a willful violation ... shall have been established in any civil action arising under this Act, the plaintiff shall be entitled... to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.*” To benefit from this section, the Opposer must claim relief under, and also satisfy U.S. Trademark Act section 43(c) [[15 USC 1125\(c\)](#)]: Remedies for dilution of famous marks. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to-- a) *the degree of inherent or acquired distinctiveness of the mark*: the inherent distinctiveness of the mark is, the Opposer asserts, self-evident; b) *the duration and extent of use of the mark in connection with the goods or services with which the mark is used*: the duration is from 2007 onwards, begun with a view to satisfying a five year business plan as evinced in the initial five-year registration of the trade name at GoDaddy.com and protecting the same with repeated trade with GoDaddy.com while the business plan was underway in sports related, indeed Olympics-associated activities by potential consumers that were being introduced the brand in the novel way, as previously described; c) *the duration and extent of advertising and publicity of the mark* – with over 1 million hits from over 70 countries in the test-run of the game GoldenKeyQuest.com to which 20XII The Honor of Sport is central, the extent is international and has been since 2007 with clothing to support the brand emerging in October 2010 following many months of due diligence on global suppliers; d) *the geographical extent of the trading area in which the mark is used*: over 70 countries as per the preceding clause, c); e) *the channels of trade for the goods or services with which the mark is used*: e-commerce between the Opposer and GoDaddy.com since 2007 and the subsequent proliferation of 20XII through websites for games and sports discussing its meaning, participating in its broadening fame, as previously cited, plus the follow-up sales channel created in the logostore, detailed in succeeding paragraphs; f) *the degree of recognition of the mark in the trading areas and channels of trade used by the marks' owner and the person against whom the injunction is sought*: prior to 2010 and the Defendant's sudden marketing campaign for 20XI, no rival existed in sports for anything resembling 20XII, which was exclusively associated with the emerging sports brand as detailed in relation to the international sporting endeavour, GoldenkeyQuest.com, central to which was the emerging brand 20XII; g) *the nature and extent of use of the same or similar marks by third parties*: there are none. The Opposer holds the unique trade name and mark in sports related commercial activities; h) *whether the mark was registered under the Act of March 3, 1881, or the Act of February*

20, 1905, or on the principal register: as per preceding paragraphs, 20XII is protected under the Act of March 3, 1881 through international treaty.

41. By these criteria, 20XII satisfies the tests in U.S. Trademark Act section 43(c) [[15 USC 1125\(c\)](#)]. The Opposer therefore claims entitlement not only to injunctive relief as set forth in section 34 [[15 USC 1116](#)], but also because the Defendant sought willfully to trade on the owner's reputation or to cause dilution of the famous mark, when such willful intent is proven, as it will be at the request of the Board, the Opposer shall also be entitled to the remedies set forth in sections 35(a) and 36 [[15 USC § 1117\(a\), 1118](#)].

42. Moreover, pursuant to Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) the Opposer has good reason to believe that the inevitable confusion between 20XI and 20XII will lead to his being damaged in trade by registration of the mark shown in the above-identified application, and hereby opposes the same on the following grounds:

43. Since 2008, the Opposer has been performing due diligence on companies across the world to help manufacture sportswear and this process has taken some considerable time. On 3 October 2010, the Opposer and his company, McG Productions Ltd, began an association with a Nevada-based company that could source sportswear from around the world and provide an online shop from which to sell the goods. The initial email exchange was, in part, as follows:

Subject: RE: Enquiry from the Firefox Web Site
From: "Peter Havart-Simkin" <Peter@FirefoxSMS.com>
Date: Sun, Oct 03, 2010 12:47 am
To: <20xii@mcgproductionsltd.com>
Attach: image003.jpg

Hi Folks,

Many thanks for the message. I am obviously intrigued by your plans. Thank you for the detailed background. I would be very happy to discuss this further with you and talk about how we might help. I am in the UK at the moment and fly to the US on Tuesday. If it is convenient, perhaps we can have a phone call on Monday to see how things might work? Please let me know by email... (Note that I cannot contact you today as I am at the Ryder Cup where my wife runs all of the VIP Hospitality staff and you cannot take cell phones in!).

Kind Regards

Peter

+++++

Peter Havart-Simkin

President & CEO

Firefox Store Management Solutions

Peter@FirefoxSMS.com

From: Firefox Web Site [mailto:Info@FirefoxSMS.com]

Sent: Saturday, October 02, 2010 1:53 PM

To: CustomerService@FirefoxSMS.com

Subject: Enquiry from the Firefox Web Site

Enquiry
From: McG Productions Ltd

eMail
Address: 20xii@mcgproductionsltd.com

20XII The Honor of Sport™

Dear Firefox,

We recently contacted Shopcreator, having seen their INSIGNeA e-commerce solution via Charlton Commerce and they advise they have come unstuck with their suppliers and may not be able to offer the service in the U.K. for some time, while they source a new supplier. It is by pure chance that we have today found your site and note your previous association with Charlton Commerce. We're struck by the design similarities and are impressed by the set-up. We're aware that you're the originators of the SMS and can only congratulate you - it's ideal for our purposes. We're naturally keen to continue along this route with you, via your Logostore if this is possible. Regarding the above trademark, while there is no association between it and the Olympics, this unique brand was of interest to the International Olympic Committee (IOC) with whom we negotiated successfully through the trademark process. With the 2012 Olympics coming up and its 'honor of sport' tag originating in ancient Greece, the IOC had their concerns - the above quote refers to Herodotus, credited with championing sports provided they were done 'for honor, not for money', a philosophy we valued in our emerging sports and games profile. But having won the trademark, there are now no remaining issues and we are free to use the mark for clothing, footwear, headgear and advertising (<http://www.ipo.gov.uk/t-find-number?detailsrequested=C&trademark=2477961>).

The mark itself is registered to the Managing Director of McG Productions Ltd, who licences it to McG Productions Ltd with a view to widening the licensing to other companies in due course....

Ideally, we'd like to be able to approach high street sports retailers with realistic, competitive costings. Perhaps you could consider this aspect as we go forward. We're based in Milton Keynes, UK, and you can find us at www.mcgproductionsltd.com

We look forward to hearing from you. Best Regards, McG Productions Ltd.

44. On 4 October 2010, the following agreement for the use of trademark 20XII The Honor of Sport™ was entered into, establishing trade with the Nevada-based company with a convenient U.K. arm for contact:

FIREFOX WEB STORE MANAGEMENT AGREEMENT

7260 West Azure Drive Suite 212-714, Las Vegas, Nevada 89130, USA

P O Box 320638, Los Gates, California 95032-0110, USA

This WEB STORE MANAGEMENT AGREEMENT (this "Agreement") is entered into effective as of the Effective Date below by and between Firefox Store Management Solutions ("Firefox"), and McG Productions Limited ("Customer").

WHEREBY:

1. Firefox creates, builds, hosts and manages internet web store solutions which are pre-populated with a wide range of products that can carry the logo and/or brand of Customer and which have integrated online payment and shipping services along with a comprehensive range of online, realtime reports.
2. Firefox creates, builds, hosts and manages online event management and registration services which share the shopping cart, checkout and payment services of the Firefox internet web stores and provide a complete set of event order management and registration reporting modules.
3. Customer requests Firefox to build, host and manage an internet web store solution on behalf of Customer for the benefit of Customer's members and/or supporters and for the financial benefit of Customer through a revenue sharing arrangement and to manage the supply of logo merchandise and branded products and provide customer service with shipping directly to Customer's members and/or supporters.

TERM AND TERMINATION OF AGREEMENT:

This Agreement may be terminated at any time by either party giving 30 days notice to the other party in writing.

FIREFOX RESPONSIBILITIES UNDER THIS AGREEMENT:

1. Create, host and manage a personalised Firefox *LogoStore™*, *ClubStore™* or *FundRaise™* web store for Customer.
2. Source, supply and manage a range of products for inclusion in Customer's web store that can have Customer logo or brand applied or can be purchased without logo by Customer's members and/or supporters.
3. Provide online internet payment gateway and merchant services to allow Customer's members and/or supporters to pay for products ordered through the internet web store by various types of credit card or by electronic check.
4. Provide shipping services such that products ordered by Customer's members and/or supporters are delivered directly by Firefox's suppliers to Customer's members and/or supporters.
5. Provide customer service for the internet web store including answering inquiries regarding order status and the management of product returns.
6. Provide a realtime web-based administration module that allows the management of products offered through the internet web store and incorporates a range of reports on products sold, revenues, margins, revenue share and the sums due to Customer on a monthly basis.
7. Pay Customer on a monthly basis in arrears the revenue share agreed with Customer for the products ordered through the internet web store.

USE OF TRADE MARKS:

Firefox does not license or request to license any Trade Marks or the use of any Trade Marks. The internet web store is run for and behalf of Customer and the logos and brands applied to merchandise in the internet web store are those which Customer owns or has the right to use. Firefox understands that Customer may own certain Trade Marks or through an organisation Customer belongs to may have affiliations under which certain Trade Marks can be used by agreement or under license by Customer under specific conditions and guidelines. Firefox will use its best endeavours to assist Customer to protect any Trade Mark rights and will ensure that appropriate Trade Mark notices are prominently displayed in the internet web store. Firefox provides a Trade Mark infringement reporting process in the web store and any Trade Mark or Copyright material provided by

Customer or any other third party and incorporated into the internet web store will be acknowledged appropriately.

Signed for Firefox Store

Management Solutions:

Name: Peter Havart-Simkin

Position: President & CEO

Signed for Customer: Chris McGrath Managing Director of McG Productions Ltd.

Date: 4 October 2010

45. The online store was then located at: <http://www.20xii.logostore.uk.com/>

Wherein can be found the following:



All of the products in our store can be embroidered with our logo



Grand Prix Cap

by **Beechfield**

100% Cotton Twill - Pre-embroidered checkered design - Rip-Strip size adjuster

£15.95

Including Logo

46. A variety of sportswear can be bought there, all bearing the sports brand 20XII the Honor of Sport™. The above is just a brief snapshot.

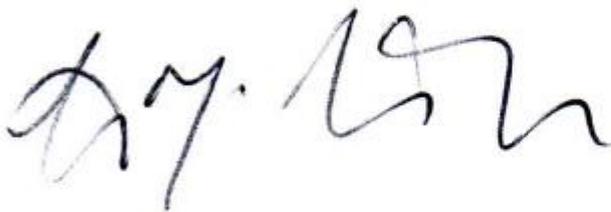
Opposition Signed by Christopher McGrath:

Date : 12 July 2011

STATEMENT OF TRUTH:

I believe that the facts stated in this application are true:

SIGNED BY: Mr. Christopher McGrath:

A handwritten signature in black ink, appearing to read 'C. McGrath', written in a cursive style.

Christopher McGrath

Managing Director

McG Productions Ltd

22 St John Street

Newport Pagnell, Milton Keynes,

UNITED KINGDOM MK16 8HJ

Email: legal@mcgproductionsltd.com

DATE: 12 July 2011.