

ESTTA Tracking number: **ESTTA459237**

Filing date: **02/29/2012**

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

Name	Innovation First, Inc.
Granted to Date of previous extension	02/29/2012
Address	1519 Interstate 30 West Greenville, TX 75402 UNITED STATES
Attorney information	Kevin Gray, Linda Novak, Jennifer Nagy Fish & Richardson P.C. P.O. Box 1022 Minneapolis, MN 554401022 UNITED STATES novak@fr.com, tmdoctc@fr.com, dlc@fr.com, nagy@fr.com

Applicant Information

Application No	77676722	Publication date	11/01/2011
Opposition Filing Date	02/29/2012	Opposition Period Ends	02/29/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	Spin Master Ltd. 450 Front Street West Toronto Ontario, M5V1B6 CANADA		

Goods/Services Affected by Opposition

Class 028. All goods and services in the class are opposed, namely: Toys, games and playthings, namely, marbles that transform into action figures, toy action figures; game collectables, namely, transforming marbles; transforming marble games, and parts and fittings for all of the aforesaid
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3108065	Application Date	11/29/2004
Registration Date	06/20/2006	Foreign Priority	NONE

		Date	
Word Mark	VEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2005/03/25 First Use In Commerce: 2005/03/25 Educational robotic kits comprising all of the following (1) robot construction building elements, programmable on-board electronic control, motors and sensors, remote controller, all for building motorized robots, (2) computer software and manual for designing and remotely controlling motorized robots (3) electronic computer interface for controlling motorized robots, and (4) electrical power transformer for motorized robots		

U.S. Registration No.	3184599	Application Date	11/30/2004
Registration Date	12/12/2006	Foreign Priority Date	NONE

Word Mark	VEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/08/31 First Use In Commerce: 2005/08/31 On-line educational services in the field of robots, namely, web-based training; on-line educational services, namely, arranging and conducting live seminars, online-workshops and virtual classes, all in the field of robotics; entertainment services, namely production and syndication of television shows; electronic publishing services, namely, publication of text and graphic works of others on CD, CD-ROM and DVD featuring information in the field of robotics; online publication of books and magazines; and entertainment services, namely, organizing exhibitions, competitions and conducting contests and games, all in the field of robots		

U.S. Registration	3113039	Application Date	01/06/2005
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No.			
Registration Date	07/04/2006	Foreign Priority Date	NONE
Word Mark	VEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2005/03/25 First Use In Commerce: 2005/03/25 Educational personal robots, each with a programmable microcontroller and sensor array for the detection and navigation of the surrounding environment, for educational, hobby or personal use; Educational computer programs for designing and remotely controlling motorized toys		

U.S. Registration No.	3172264	Application Date	01/06/2005
Registration Date	11/14/2006	Foreign Priority Date	NONE
Word Mark	VEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2005/03/25 First Use In Commerce: 2005/03/25 Educational instructional manuals for use in teaching engineering, math, science, technology, and means for building robots		

U.S. Application No.	85496569	Application Date	12/15/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VEX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: construction toys

Attachments	78523823#TMSN.jpeg (1 page)(bytes) 78524490#TMSN.jpeg (1 page)(bytes) 78543461#TMSN.jpeg (1 page)(bytes) 78543477#TMSN.jpeg (1 page)(bytes) 85496569#TMSN.jpeg (1 page)(bytes) INNOVATION FIRST NOTICE OF OPPOSITION 2-29-12.pdf (15 pages) (1985722 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.

Signature	/jennifer nagy/
Name	Kevin Gray, Linda Novak, Jennifer Nagy
Date	02/29/2012

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

In the matter of Application Serial No. 77/676,722
For the Mark VEXOS
Published in the Official Gazette on November 1, 2011

Innovation First, Inc.,

Opposer,

v.

Spin Master Ltd.

Applicant.

Opposition No.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Innovation First, Inc., a corporation duly organized and existing under the laws of the State of Texas, with principal offices at 1519 Int. 30 West, Greenville, Texas 75402 (“IFI” or “Opposer”), believes that it will be damaged by registration of United States Trademark Application Serial No. 77/676,722 filed on February 24, 2009 with a priority date of February 4, 2009 (the “Application”), by Spin Master Ltd. (“Applicant”) and hereby opposes the same. The grounds for opposition are as follows:

1. Opposer is now and has been engaged in the production and sale of educational robotic kits, educational personal robots and educational computer programs for designing and remotely controlling motorized toys since at least as early as March 2005.

2. On or before March 25, 2005, Opposer adopted and used, and continues to use, the mark "VEX" in association with its goods and services. Opposer's use of the "VEX" mark is evidenced by its:

(a) U.S. Trademark Registration No. 3,108,065 in International Class 9 for "educational robotic kits comprising all of the following (1) robot construction building elements, programmable on-board electronic control, motors and sensors, remote controller, all for building motorized robots, (2) computer software and manual for designing and remotely controlling motorized robots, (3) electronic computer interface for controlling motorized robots, and (4) electrical power transformer for motorized robots" with a first use date of at least as early as March 25, 2005;

(b) U.S. Trademark Registration No. 3,184,599 in International 41 for "on-line educational services in the field of robots, namely, web-based training; on-line educational services, namely, arranging and conducting live seminars, online-workshops and virtual classes, all in the field of robotics; entertainment services, namely production and syndication of television shows; electronic publishing services, namely, publication of text and graphic works of others on CD, CD-ROM and DVD featuring information in the field of robotics; online publication of books and magazines; and entertainment services, namely, organizing exhibitions, competitions and conducting contests and games, all in the field of robots" with a first use date of at least as early as August 31, 2005;

(c) U.S. Trademark Registration No. 3,113,039 in International Class 9 for “educational personal robots, each with a programmable microcontroller and sensor array for the detection and navigation of the surrounding environment, for educational, hobby or personal use; Educational computer programs for designing and remotely controlling motorized toys” with a first use date of at least as early as March 25, 2005;

(d) U.S. Trademark Registration No. 3,172,264 in International Class 16 for “educational instructional manuals for use in teaching engineering, math, science, technology, and means for building robots” with a first use date of at least as early as March 25, 2005; and

(e) U.S. Trademark Application Serial No. 85/496,569 in International Class 28 for “construction toys.”

A printout from the USPTO Trademark Electronic Search System (TESS) records for each of Opposer's “VEX” registrations and applications is attached hereto as **Exhibit A**. Hereinafter, Opposer's “VEX” marks will be referred to as “Opposer's Marks.”

3. Opposer has continuously offered and advertised its goods and services in connection with Opposer's Marks in interstate commerce since at least as early as March 25, 2005, thereby creating valuable goodwill.

4. Opposer has so used Opposer's Marks in connection with its goods and services that the relevant consuming public has come to associate Opposer's Marks with Opposer, and as indicating that goods and services bearing Opposer's Marks originate with Opposer.

5. On February 24, 2009, Applicant filed U.S. Application Serial No. 77/676,722 for the mark “VEXOS” for use in connection with “toys, games and playthings, namely, marbles that transform into action figures, toy action figures; game collectables, namely, transforming

marbles; transforming marble games, and parts and fittings for all of the aforesaid” in Class 28 and originally claimed a bona fide intention to use the mark in commerce in association with the stated goods based on a Section 44(d) filing, but currently claiming a Section 44(e) filing based on a Canadian registration. Said Application was published for opposition on November 1, 2011.

6. Applicant's mark, VEXOS, if used in connection with the goods described in the Application, is confusingly similar to Opposer's Marks and is likely to cause confusion or to cause mistake or to deceive as to the affiliation, connection, association, origin, sponsorship, endorsement, or approval of Applicant's goods by Opposer, to the irreparable damage of Opposer.

7. Applicant's goods and Opposer's goods and services would likely be encountered by the same consumers offered under confusingly similar marks. Objections to Applicant's goods offered under its mark would necessarily reflect on and injure Opposer's reputation for excellence in the goods and services offered under Opposer's Marks.

8. If Applicant is granted a registration for the mark herein opposed for the goods specified in its Application, it would result in damage and injury to Opposer due to the confusing similarity of Applicant's mark to the earlier-used Opposer's Marks.

9. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

10. Based upon the foregoing, the registration of VEXOS, Serial No. 77/676,722 filed February 24, 2009, will cause injury and damage to Opposer.

Applicant : Spin Master Ltd.
Serial No. : 77/676,722
Filed: : February 24, 2009
Mark : VEXOS
Page : 5

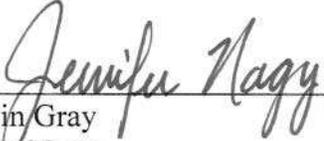
Attorney's Docket No.: 14489-0142PP1

WHEREFORE, Opposer requests that registration of Serial No. 77/676,722 be denied and this opposition be sustained.

Please apply any charges to Deposit Account 061050-0401.

Respectfully submitted,

Date: February 29, 2012



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Jennifer Nagy
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Attorneys for Opposer,
INNOVATION FIRST, INC.



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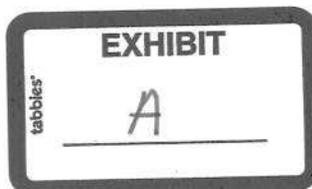
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VEX

Word Mark	VEX
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Educational robotic kits comprising all of the following (1) robot construction building elements, programmable on-board electronic control, motors and sensors, remote controller, all for building motorized robots, (2) computer software and manual for designing and remotely controlling motorized robots (3) electronic computer interface for controlling motorized robots, and (4) electrical power transformer for motorized robots. FIRST USE: 20050325. FIRST USE IN COMMERCE: 20050325
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78523823
Filing Date	November 29, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 20, 2005
Registration Number	3108065
International Registration Number	0969268
Registration Date	June 20, 2006



Owner (REGISTRANT) TRS Quality, Inc. CORPORATION DELAWARE Mail Stop #CF4-101 RadioShack Riverfront Compus 300 RadioShack Circle Fort Worth TEXAS 761021964

(LAST LISTED OWNER) INNOVATION FIRST, INC. CORPORATION TEXAS 6611 INTERSTATE 30 WEST GREENVILLE TEXAS 75402

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Linda M. Novak

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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VEX

Word Mark	VEX
Goods and Services	IC 041. US 100 101 107. G & S: On-line educational services in the field of robots, namely, web-based training; on-line educational services, namely, arranging and conducting live seminars, online workshops and virtual classes, all in the field of robotics; entertainment services, namely production and syndication of television shows; electronic publishing services, namely, publication of text and graphic works of others on CD, CD-ROM and DVD featuring information in the field of robotics; online publication of books and magazines; and entertainment services, namely, organizing exhibitions, competitions and conducting contests and games, all in the field of robots. FIRST USE: 20050831. FIRST USE IN COMMERCE: 20050831
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78524490
Filing Date	November 30, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 29, 2005
Registration Number	3184599
International Registration Number	0969268

Registration Date December 12, 2006
Owner (REGISTRANT) INNOVATION FIRST, INC. CORPORATION TEXAS 6611 INTERSTATE 30 WEST GREENVILLE TEXAS 75402
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Linda M. Novak
Type of Mark Register SERVICE MARK PRINCIPAL
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VEX

Word Mark	VEX
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Educational personal robots, each with a programmable microcontroller and sensor array for the detection and navigation of the surrounding environment, for educational, hobby or personal use; Educational computer programs for designing and remotely controlling motorized toys. FIRST USE: 20050325. FIRST USE IN COMMERCE: 20050325
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78543461
Filing Date	January 6, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 20, 2005
Registration Number	3113039
International Registration Number	0969268
Registration Date	July 4, 2006
Owner	(REGISTRANT) TRS Quality, Inc. CORPORATION DELAWARE MS CF4-101 300 RadioShack

Circle Fort Worth TEXAS 761021964

(LAST LISTED OWNER) INNOVATION FIRST, INC. CORPORATION TEXAS 6611
 INTERSTATE 30 WEST GREENVILLE TEXAS 75402

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record J. Christian Angle
Type of Mark TRADEMARK
Register PRINCIPAL
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VEX

Word Mark	VEX
Goods and Services	IC 016. US 002 005 022 023 029 037 038 050. G & S: Educational instructional manuals for use in teaching engineering, math, science, technology, and means for building robots. FIRST USE: 20050325. FIRST USE IN COMMERCE: 20050325
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78543477
Filing Date	January 6, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 20, 2005
Registration Number	3172264
International Registration Number	0969268
Registration Date	November 14, 2006
Owner	(REGISTRANT) INNOVATION FIRST, INC. CORPORATION TEXAS 6611 INTERSTATE 30 WEST GREENVILLE TEXAS 75402
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	J. Christian Angle
Type of Mark	TRADEMARK

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VEX

Word Mark	VEX
Goods and Services	IC 028. US 022 023 038 050. G & S: construction toys
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85496569
Filing Date	December 15, 2011
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Innovation First, Inc. CORPORATION TEXAS 6611 Interstate 30 West Greenville TEXAS 75402
Attorney of Record	Linda M. Novak
Prior Registrations	3108065;3113039;3184599
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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