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

Proceeding	91204259
Party	Defendant Valhalla Game Studios Co. Ltd.
Correspondence Address	MARVIN GELFAND WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN 9665 WILSHIRE BLVD, 9TH FLOOR BEVERLY HILLS, CA 90212 2316 UNITED STATES mgelfand@weintraub.com, lwang@weintraub.com, dmoreno@weintraub.com
Submission	Other Motions/Papers
Filer's Name	Marvin Gelfand, Esq.
Filer's e-mail	mgelfand@weintraub.com, dmoreno@weintraub.com, bshugart@weintraub.com
Signature	/marvingelfand/
Date	04/07/2015
Attachments	Response to VMP's Evidentiary Objections to Reply Brief.pdf(180135 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Serial Nos. 77/948,333; 77/948,895; 85/310,089
Applicant's Marks: VALHALLA GAME STUDIOS, VALHALLA GAME STUDIOS and design;
Applicant's Mark in Child Case: VALHALLA ENTERTAINMENT

VALHALLA MOTION PICTURES, INC.

Opposer,

v.

Opposition No.: 91204259
(parent case)

VALHALLA GAME STUDIOS CO. LTD.,

Applicant.

VALHALLA GAME STUDIOS CO. LTD,

Opposer,

v.

Opposition No. 91206662
(child case)

VALHALLA MOTION PICTURES, INC.

Applicant.

RESPONSE TO VMP'S EVIDENTIARY OBJECTIONS TO REPLY BRIEF

Opposer Valhalla Game Studios Co. Ltd. ("VGS"), Applicant for the marks VALHALLA GAME STUDIOS (Serial No. 77/948,333) and VALHALLA GAME STUDIOS & Design (Serial No. 77/948,895) hereby submits its response to the request of Applicant Valhalla Motion Pictures, Inc. ("VMP") to disregard VGS's reply brief and supporting declaration as untimely and not subject to cross-examination. Rather than attempting to introduce new evidence outside of the testimony period, VGS sought to clarify the false statements in VMP's briefs regarding its purported uses of its mark. Until VMP filed its briefs in the parent and child cases, VGS was

unaware that VMP would claim its use in *The Wronged Man* as first use in commerce of the mark VALHALLA ENTERTAINMENT. Though cited in VMP's Statement of Use, testimony of VMP's representatives presented conflicting testimony as to whether it was the VALHALLA MOTION PICTURES mark, and not the VALHALLA ENTERTAINMENT mark, that was used in *The Wronged Man.* VGS assumed that VMP would correct this misrepresentation for the record, but this was not done, and VGS introduced this evidence solely for impeachment purposes.

VMP's briefs in the parent and child case state that VMP's application for VALHALLA ENTERTAINMENT was filed in May 2011 and its first commercial use was as early as January 2010, "when VALHALLA ENTERTAINMENT & Viking Ship Design appeared in the closing credits of the television movie *The Wronged Man.* (Doc. #40, Exh. 51)." (VMP's Trial Brief in the Parent Case, at p. 13; *see also* VMP's Responding Brief in the Child Case, at p. 12, 15). VGS was caught off-guard by these representations, as the trial testimony of VMP's representatives indicated that the VALHALLA MOTION PICTURE mark, rather than the VALHALLA ENTERTAINMENT mark, appeared on *The Wronged Man.* Specifically, Phillip Kobylanski testified that the closing credit for *The Wronged Man* was VALHALLA MOTION PICTURES, with a "logo of the ship with the crescent moon, with the text "Valhalla" underneath it… and then underneath that, the words 'Motion Picture' appear." (Doc. #40 (Kobylanski), at p. 23).

On the other hand, Julie Thompson testified that the VALHALLA ENTERTAINMENT mark was used in 2010 on *The Wronged Man.* (Doc. #41 (Thompson), at p. 16). Therefore, VMP presented conflicting testimony during the testimony period and VGS could not have known, prior to VMP submitting its briefs, that it would repeatedly cite its purported use of the

VALHALLA ENTERTAINMENT mark in *The Wronged Man* as its first use in commerce, despite contradictory testimony. VMP has falsely represented this evidence to the Board, and it must be considered if only for the limited purposes of impeachment and correcting the record.

Dated: April 7, 2015

Respectfully submitted,

Valhalla Game Studios Co. Ltd.

/MG/

Marvin Gelfand, Attorney for Applicant

weintraub tobin chediak coleman grodin law corporation
9665 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212

CERTIFICATE OF SERVICE

I hereby certify that this **RESPONSE TO VMP'S EVIDENTIARY OBJECTIONS TO REPLY BRIEF** is being filed electronically with the United States Trademark Trial and Appeal Board pursuant to 37 C.F.R. § 18.

I hereby further certify that on April 7, 2015, a true and complete copy of the foregoing **RESPONSE TO VMP'S EVIDENTIARY OBJECTIONS TO REPLY BRIEF** has been served on Opposer by electronic mail addressed to:

Michael Grace
mgrace@gracelaw.com
Pamela D. Deitchle
pdeitchle@gracelaw.com
Grace+Grace LLP
790 East Colorado Blvd., Suite 797
Pasadena, CA 91101-2113

Dated: April 7, 2015

Denise Moreno

Denise Moreno