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

Proceeding	91205896
Party	Plaintiff Beau L. Tardy
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Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Wendy Peterson
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Signature	/Wendy Peterson/
Date	03/12/2014
Attachments	Motion to Amend & Fourth Amended Notice of Opposition.pdf(137736 bytes )

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

**v.**

**Wild Brain Entertainment, Inc., Applicant**

**MOTION TO AMEND NOTICE OF OPPOSITION**

A Fourth Amended Notice of Opposition is being filed which no longer contains Opposer's claim of likelihood of confusion. Opposer has gotten Applicant's consent to withdraw this claim with prejudice. (William Marone: "In view of your representations, my client will consent to Opposer's withdrawal of his Section 2(d) claim with prejudice.")

Applicant does not however agree with Opposer's contention that their discovery requests are now moot. (William Marone: "we do not agree with your contention that restricting the pleaded claims in the Notice of Opposition necessarily moots any of our discovery requests.") Hence the Motion to Strike and Motion to Suspend that are being filed with this Motion to Amend.

Submitted By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC  
PO Box 18716  
Minneapolis, MN 55418  
(651) 500-7590; wsp@NJPLS.com

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2014, the foregoing was served upon Applicant's attorney  
by email to:

JONATHAN D REICHMAN  
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tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

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**FOURTH AMENDED NOTICE OF OPPOSITION**

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same. On July 3, 2012, Opposer timely filed a Notice of Opposition against the above-identified application. Opposer through its counsel now amends its Notice of Opposition. This Amended Notice of Opposition is intended to supercede and completely replace the prior pleading. For purposes of expediency, the prior rights of the Opposer and the ground of likelihood of confusion have been withdrawn by Opposer.

Based upon information and belief, Opposer avers it will be damaged by the registration of the opposed mark and asks the Board to sustain the opposition in favor of the Opposer.

Opposer submits that actions by Applicant thwart the intent to use provisions set forth by Congress by reserving rights in the mark and using the system to traffic in marks.

**Standing.** Opposer is a competitor of Applicant. DIZZY is the brand name owned by Beau Tardy as an individual and as several business entities ~~continuously, substantially~~ ~~exclusively, openly and obviously throughout the years 1996 to present (2012).~~ The DIZZY ~~name is~~ and has been a company name, merchandise, pop culture websites, cartoon character, TV show, comics, and web streaming entertainment. Dizzy went from being the name of a business that provided production services, to a brand on its own.

1. Both parties produce cartoon characters for entertainment purposes and use these characters to advertise collateral goods and entertainment services. The web site for Wild Brain Entertainment [www.wildbrain.com](http://www.wildbrain.com) self-identifies that it: “Provides animation for commercials, TV series, feature films and other media.” Opposer has therefore established its standing because of its interest as a competitor. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Cerveceria Modelo S.A. de C.V. v. R.B. Marco & Sons Inc.*, 55 USPQ2d 1298 (TTAB 2000); and *Hartwell Co. v. Shane*, 17 USPQ2d 1569 (TTAB 1990).
2. **Additional Standing.** Opposer has a pending trademark application SN 85741800 (see Exhibit A) for DIZZY for IC 009: *Digital materials, namely, CDs featuring television programs, cartoons, music in the field of entertainment; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital discs featuring animation; Digital media, namely, DVDs, downloadable audio and video recordings, downloadable files featuring television programs, cartoons, music in the field of entertainment;*

*Downloadable videos and downloadable audio visual recordings featuring television programs, cartoons, music in the field of entertainment via the internet and wireless devices; Prerecorded digital video disks featuring television programs, cartoons, music in the field of entertainment; Prerecorded video cassettes featuring television programs, cartoons, music in the field of entertainment* refused because of a likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d) because of a likelihood of confusion with the subject pending application. Opposer has standing under *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953 (TTAB 2008).

3. **Applicant.** Applicant Wild Brain Entertainment Inc. submitted an intent to use application and is attempting to register the word mark DIZZY for IC 9 for *Electrical and scientific apparatus, namely, electronic game software; computer game software; downloadable computer games; computer and video-game cassettes, cartridges, discs and programs; downloadable game software; motion picture films featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; pre-recorded video and audio cassettes, video and audio tapes, video and audio discs, CD ROMs, compact discs, digital versatile discs, musical video recordings, musical sound recordings and phonograph records featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; software and manuals sold as a unit in the field of children's education, namely, for use in creating, updating and maintaining calendars, for information management and for use as computer screen savers; decorative refrigerator magnets; hand held units for playing electronic games for use with external display screen or monitor.*

4. **Lack of Bona Fide Intent-to-Use Grounds.** Upon information and belief Applicant did not have a bona fide intention to use the mark in commerce on all the specified goods when it filed this and its other applications covering DIZZY for the many goods specified therein under Trademark Act § 1(b), 15 U.S.C. § 1052(b). *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1506 (TTAB 1993).
5. Applicant has shown a propensity for applying for trademarks for goods and goods categories for which it did not file Statements of Use (TEAM SMITHEREEN SN 77581487, OKI'S OASIS SN 77015865) indicating applications may be made merely to reserve a right in a mark. *Paramount Pictures Corp. v. White*, 31 USPQ 1768 (TTAB 1996) (“use in commerce” involves the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark).
  - a. Applicant has shown a propensity for applying for long lists of trademark goods to reserve rights in potential collateral items in the name of characters.
  - b. This application for DIZZY, SN 85509929 has over 20 goods in the list.
  - c. During this proceeding on September 2, 2013, Applicant abandoned a DIZZY mark SN 85509933 for failing to file a Statement of Use for the following list of goods: Toys, games and sporting goods, namely, board games, card games, play figures and accessories therefor, action figures and accessories therefor, toy figures, electric action toys, mechanical action toys, dolls and accessories therefor, doll playsets, plush toys, stuffed toys, puppets, windup toys, dominoes, jigsaw puzzles, manipulative games, marbles, paddle ball games, yo-yo's, balloons, jump ropes, kites and accessories therefor, namely, kite boards, kite handles, kite string, kite tails and kite reels, bubble making wands

and solution sets, magic tricks, bath toys, play swimming pools, toy vehicles and accessories therefor, toy model hobby craft kits, toy banks, toy boxes, toy guns, toy holsters, toy archery bows and arrows, toy rockets, toy bucket and shovel sets, children's play cosmetics, baby rattles, baby multiple activity toys, toy construction blocks, musical toys, target games, action skill games, balls, namely, baseballs, basketballs, footballs, golf balls, tennis balls, playground balls, sport balls, soccer balls, volleyballs, rubber balls, foam rubber balls, baseball bats, baseball gloves, flying disks, disc type toss toys, body boards, badminton sets, dart flights, golf club head covers, roller skates, skateboards, toy scooters, swim fins, swim floats for recreational use, face masks, pinball-type games, Christmas tree decorations, egg decorating kits, hand held units for playing electronic games other than those adapted for use with an external display screen or monitor, arcade game machines, arcade-type electronic video game machines, pinball machines, pinball-type game machines, stand-alone video game machines, LCD game machines, beach balls, in-line skates, ride-on toys, toy swords, and playing cards.

- d. During this proceeding on September 2, 2013, Applicant abandoned a DIZZY mark SN 85509926 for failing to file a Statement of Use with over 30 goods in the list: Paper goods and printed matter, namely, a series of fiction books featuring stories in the field of children's education; trading cards; collectors cards; comic books and magazines in the field of children's education; graphic novels; novels; printed postcards; picture postcards; comic postcards; postcards; notebooks; binders; decals; stickers; posters; photograph and

scrapbook albums; calendars; greeting cards; folders; desk pads; writing pads; stationery folders and stationery; pens; pencils; erasers; video game strategy manuals and books; computer game instruction manuals; paper towels; paper storage containers; chalk boards; dry erase writing boards and writing surfaces; paper flags; paper pennants.

- e. On information and belief, Applicant did not have a bona fide intent to use the goods in the DIZZY mark SN 85509926 and has no goods used in commerce in this application as of the date of this amendment March 12, 2014 and will not file a Statement of Use by January 2014, two years after the application was filed.
- f. Applicant's application on November 18, 2010 for UMIGO SN 85179735 had the following goods in the original application: Electrical and scientific apparatus, namely, electronic game software; computer game software; downloadable computer games; computer and video-game cassettes, cartridges, discs and programs; downloadable game software; motion picture films featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; pre-recorded video and audio cassettes, video and audio tapes, video and audio discs, CD ROMs, compact discs, digital versatile discs, musical video recordings, musical sound recordings and phonograph records featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; software and manuals sold as a unit in the field of children's education,

namely, for use in creating, updating and maintaining calendars, for information management and for use as computer screen savers; and decorative refrigerator magnets.

- g. UMIGO RN 4358390 is one of Wild Brain's prior registrations.
- h. When UMIGO registered on June 25, 2013, the goods list was: electrical and scientific apparatus, namely, downloadable computer games; downloadable game software; and musical sound recordings featuring music in the field of children's education.
- i. Applicant's prior registration for UMIGO is another example of an application where the applied-for-goods greatly exceeded the actual use and registration.
- j. On information and belief, Applicant on many occasions has not had firm plans or intentions in all of its goods in any original single application for any successful character in which it has filed trademark applications.
- k. On information and belief, Applicant has never produced and sold all of the collateral items in any original single application for any successful character in which it has filed trademark applications.

- 6. Upon information and belief Applicant has shown a propensity for the filing of intent-to-use applications (TEAM SMITHEREEN) to replace applications which have lapsed (TEAM SMITHEREEN) because no timely statement of use was filed and provides additional evidence bearing on applicant's lack of a bona fide intent to use the mark.

*Research in Motion Limited v. Nbor Corp.* (TTAB 2009).

7. Upon information and belief Applicant has claimed an intent to use as 'hand held units for playing electronic games for use with external display screen or monitor' without bona fide intent to develop and market these products.
8. Upon information and belief Applicant has not offered any of the goods listed in the application for sale to the public under the involved mark, DIZZY.
9. Upon information and belief Applicant has no documents sufficient to show actual or planned promotional expenditures under the mark for DIZZY for the goods listed.
10. Upon information and belief Applicant has no documents concerning trade shows, conventions, seminars and other events open to the public at which the listed goods sold or were offered for sale under the DIZZY mark were or are planned to be displayed.
11. Upon information and belief there is no projected date of first use in commerce for all of the goods listed under the mark DIZZY.
12. Upon information and belief there is no projected date of first use in commerce for any of the goods listed under the mark DIZZY.

Inasmuch as the issuance of a federal registration for Applicant will harm Opposer's ~~prior~~ rights and the public interest, Opposer respectfully requests that this registration be denied and that the Opposition is sustained in favor of Opposer. .

Submitted By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

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PO Box 18716  
Minneapolis, MN 55418

(651) 500-7590; wsp@NJPLS.com

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2014, the foregoing was served upon Applicant's attorney  
by email to:

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jreichman@kenyon.com, wmerone@kenyon.com, nsardesai@kenyon.com,  
tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Markups in **red additions & ~~deletions~~**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Opposer through its counsel now amends its Notice of Opposition. This Amended Notice of Opposition is intended to supercede and completely replace the prior pleading. For purposes of expediency, the prior rights of the Opposer and the ground of likelihood of confusion have been withdrawn by Opposer.

Based upon information and belief, Opposer avers it will be damaged by the registration of the opposed mark and asks the Board to sustain the opposition in favor of the ~~prior user, the~~ Opposer. Opposer submits that actions by Applicant thwart the intent to use provisions set

forth by Congress by reserving rights in the mark and using the system to traffic in marks.

~~The public also has a right not to be confused by the identical trademarks for DIZZY and~~

~~Opposer asks the Board to sustain the opposition also for the public's benefit.~~

1. **Standing.** Opposer is a competitor of Applicant. DIZZY is the brand name owned by Beau Tardy as an individual and as several business entities ~~continuously, substantially exclusively, openly and obviously throughout the years 1996 to present (2012). The DIZZY name is~~ and has been a company name, merchandise, pop culture websites, cartoon character, TV show, comics, and web streaming entertainment. Dizzy went from being the name of a business that provided production services, to a brand on its own.
2. Both parties produce cartoon characters for entertainment purposes and use these characters to advertise collateral goods and entertainment services. The web site for Wild Brain Entertainment [www.wildbrain.com](http://www.wildbrain.com) self-identifies that it: "Provides animation for commercials, TV series, feature films and other media." Opposer has therefore established its standing because of its interest as a competitor. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Cerveceria Modelo S.A. de C.V. v. R.B. Marco & Sons Inc.*, 55 USPQ2d 1298 (TTAB 2000); and *Hartwell Co. v. Shane*, 17 USPQ2d 1569 (TTAB 1990).
3. **Additional Standing.** Opposer has a pending trademark application SN 85741800 (see Exhibit A) for DIZZY for IC 009: *Digital materials, namely, CDs featuring television programs, cartoons, music in the field of entertainment; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital discs featuring animation;*

*Digital media, namely, DVDs, downloadable audio and video recordings, downloadable files featuring television programs, cartoons, music in the field of entertainment; Downloadable videos and downloadable audio visual recordings featuring television programs, cartoons, music in the field of entertainment via the internet and wireless devices; Prerecorded digital video disks featuring television programs, cartoons, music in the field of entertainment; Prerecorded video cassettes featuring television programs, cartoons, music in the field of entertainment that is reasonably expected to be* refused because of a likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d) because of a likelihood of confusion with the subject pending application. Opposer has standing under *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953 (TTAB 2008).

~~4.—**Opposer's Priority.** Opposer claims common law rights in the goods produced under the DIZZY trademark, Digital materials, namely, CDs featuring television programs, cartoons, music in the field of entertainment; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital discs featuring animation; Digital media, namely, DVDs, downloadable audio and video recordings, downloadable files featuring television programs, cartoons, music in the field of entertainment; Downloadable videos and downloadable audio visual recordings featuring television programs, cartoons, music in the field of entertainment via the internet and wireless devices; Prerecorded digital video disks featuring television programs, cartoons, music in the field of entertainment; Prerecorded video cassettes featuring television programs, cartoons, music in the field of entertainment The mark was first used anywhere in a different form other than that~~

~~sought to be registered at least as early as 12/31/1996. Opposer also claims common law rights from actual use in commerce since at least 1996 in the service mark DIZZY for Production of television commercials, television programs, cartoons, animation, games, screensavers and other forms of entertainment.~~

~~5. **Opposer's Ownership.** Opposer asserts that any Opposer's predecessor in interest abandoned any rights it had in the DIZZY Marks and DIZZY trade names and that Opposer is the sole owner of the rights with privity of interest dating back to 1996.~~

~~6. Because Opposer has not pleaded any registrations, Opposer claims common law rights since 1996 prior to applicant's priority date, Jan. 5, 2012, the filing date of the intent to use application. *Hydro Dynamics Inc. v. George Putnum and Company Inc.*, 811 F.2d 1470, 1 USPQ2d 1772, 1773 (Fed. Cir. 1987).~~

~~7. **Opposer's Mark is Protectable.** Opposer's mark DIZZY is an inherently distinctive mark.~~

~~8. Opposer's mark DIZZY operates as a source identifier for Opposer's services.~~

~~9. Opposer's trademark should be given a broad scope of protection based on the inherent distinctiveness and priority of use.~~

10. **Applicant.** Applicant Wild Brain Entertainment Inc. submitted an intent to use application and is attempting to register the word mark DIZZY for IC 9 for *Electrical and scientific apparatus, namely, electronic game software; computer game software; downloadable computer games; computer and video-game cassettes, cartridges, discs and programs; downloadable game software; motion picture films featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; pre-recorded video and audio*

*cassettes, video and audio tapes, video and audio discs, CD ROMs, compact discs, digital versatile discs, musical video recordings, musical sound recordings and phonograph records featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; software and manuals sold as a unit in the field of children's education, namely, for use in creating, updating and maintaining calendars, for information management and for use as computer screen savers; decorative refrigerator magnets; hand held units for playing electronic games for use with external display screen or monitor.*

11. **Lack of Bona Fide Intent-to-Use Grounds.** Upon information and belief Applicant did not have a bona fide intention to use the mark in commerce on all the specified goods when it filed this and its other applications covering DIZZY for the many goods specified therein under Trademark Act § 1(b), 15 U.S.C. § 1052(b). *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1506 (TTAB 1993).
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- c. During this proceeding on September 2, 2013, Applicant abandoned a DIZZY mark SN 85509933 for failing to file a Statement of Use for the following list of goods: Toys, games and sporting goods, namely, board games, card games, play figures and accessories therefor, action figures and accessories therefor, toy figures, electric action toys, mechanical action toys, dolls and accessories therefor, doll playsets, plush toys, stuffed toys, puppets, windup toys, dominoes, jigsaw puzzles, manipulative games, marbles, paddle ball games, yo-yo's, balloons, jump ropes, kites and accessories therefor, namely, kite boards, kite handles, kite string, kite tails and kite reels, bubble making wands and solution sets, magic tricks, bath toys, play swimming pools, toy vehicles and accessories therefor, toy model hobby craft kits, toy banks, toy boxes, toy guns, toy holsters, toy archery bows and arrows, toy rockets, toy bucket and shovel sets, children's play cosmetics, baby rattles, baby multiple activity toys, toy construction blocks, musical toys, target games, action skill games, balls, namely, baseballs, basketballs, footballs, golf balls, tennis balls, playground balls, sport balls, soccer balls, volleyballs, rubber balls, foam rubber balls, baseball bats, baseball gloves, flying disks, disc type toss toys, body boards, badminton sets, dart flights, golf club head covers, roller skates, skateboards, toy scooters, swim fins, swim floats for recreational use, face masks, pinball-type games, Christmas tree decorations, egg decorating kits, hand held units for playing electronic games other than those adapted for use with an external display screen or monitor, arcade game machines, arcade-type electronic video game machines, pinball machines, pinball-type game machines, stand-

alone video game machines, LCD game machines, beach balls, in-line skates, ride-on toys, toy swords, and playing cards.

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- e. On information and belief, Applicant did not have a bona fide intent to use the goods in the DIZZY mark SN 85509926 and has no goods used in commerce in this application as of the date of this amendment March 12, 2014 and will not file a Statement of Use by January 2014, two years after the application was filed.
- f. Applicant's application on November 18, 2010 for UMIGO SN 85179735 had the following goods in the original application: Electrical and scientific apparatus, namely, electronic game software; computer game software; downloadable computer games; computer and video-game cassettes,

cartridges, discs and programs; downloadable game software; motion picture films featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; pre-recorded video and audio cassettes, video and audio tapes, video and audio discs, CD ROMs, compact discs, digital versatile discs, musical video recordings, musical sound recordings and phonograph records featuring music, animated cartoons, live-action performances and live action performances by costumed characters all in the field of children's education; software and manuals sold as a unit in the field of children's education, namely, for use in creating, updating and maintaining calendars, for information management and for use as computer screen savers; and decorative refrigerator magnets.

- g. UMIGO RN 4358390 is one of Wild Brain's prior registrations.
- h. When UMIGO registered on June 25, 2013, the goods list was: electrical and scientific apparatus, namely, downloadable computer games; downloadable game software; and musical sound recordings featuring music in the field of children's education.
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- j. On information and belief, Applicant on many occasions has not had firm plans or intentions in all of its goods in any original single application for any successful character in which it has filed trademark applications.

- k. On information and belief, Applicant has never produced and sold all of the collateral items in any original single application for any successful character in which it has filed trademark applications.
13. Upon information and belief Applicant has shown a propensity for the filing of intent-to-use applications (TEAM SMITHEREEN) to replace applications which have lapsed (TEAM SMITHEREEN) because no timely statement of use was filed and provides additional evidence bearing on applicant's lack of a bona fide intent to use the mark. *Research in Motion Limited v. Nbor Corp.* (TTAB 2009).
14. Upon information and belief Applicant has claimed an intent to use as 'hand held units for playing electronic games for use with external display screen or monitor' without bona fide intent to develop and market these products.
15. Upon information and belief Applicant has not offered any of the goods listed in the application for sale to the public under the involved mark, DIZZY.
16. Upon information and belief Applicant has no documents sufficient to show actual or planned promotional expenditures under the mark for DIZZY for the goods listed.
17. Upon information and belief Applicant has no documents concerning trade shows, conventions, seminars and other events open to the public at which the listed goods sold or were offered for sale under the DIZZY mark were or are planned to be displayed.
18. Upon information and belief there is no projected date of first use in commerce for all of the goods listed under the mark DIZZY.
19. Upon information and belief there is no projected date of first use in commerce for any of the goods listed under the mark DIZZY.

~~20. Likelihood of Confusion Grounds. Applicant's word mark DIZZY and Opposer's word mark DIZZY are identical.~~

~~21. The fact that the cartoon characters do not look like each other is immaterial here because Applicant seeks to register the mark DIZZY alone. See, e.g. *Sealy, Inc. v. Simmons Co.*, 265 F.2d 934, 121 USPQ 456, 459 (CCPA 1959); *Hat Corp. of America v. John B. Stetson Co.*, 223 F.2d 485, 106 USPQ 200, 203 (CCPA 1955); and *ITT Canteen Corp. v. Haven Homes Inc.*, 174 USPQ 539, 540 (1972).~~

~~Beau Tardy's DIZZY~~

~~Wild Brain's DIZZY~~



~~22. Inevitable confusion will result from Applicant's use of DIZZY as a mark. Identical marks for identical goods and services cause inevitable confusion.~~

~~23. The Applicant's mark DIZZY is legally identical in appearance to Opposer's DIZZY.~~

~~24. The Applicant's mark DIZZY is legally identical in sound to Opposer's DIZZY.~~

~~25. The parties' goods are identical or highly similar goods and have an identical connotation.~~

~~26. Neither parties' description of the goods have restrictions as to the intended channels of trade.~~

~~27. The parties' services are identical and intended and assumed to be in the same channels of trade and intended and assumed to be for the same class of purchasers.~~

~~28. The marks are likely to be confused under 15 U.S.C. §1052(d).~~

~~29. Identical trademarks for identical goods or services lead to inevitable confusion.~~

~~30. The public interest is the dominant interest and served by removing marks that cause inevitable confusion from the register. See, e.g., *Swank, Inc. v. Ravel Perfume Corp.*, 438 F.2d 622, 58 CCPA 948 (1971); *Chum King Corp. v. Genii Plant Line, Inc.*, 403 F.2d 274, 56 CCPA 740 (1968); *Cohen & Sons Co., Inc. v. Hearst Magazines, Inc.*, 220 F.2d 763, 42 CCPA 836 (1955); see also *In re Avedis Zildjian Co.*, 394 F.2d 860, 55 CCPA 1126 (1968); *In re Continental Baking Co.*, 390 F.2d 747, 55 CCPA 967 (1968).~~

Inasmuch as the issuance of a federal registration for Applicant will harm Opposer's prior rights and the public interest, Opposer respectfully requests that this registration be denied and that the Opposition is sustained in favor of Opposer. .

Submitted By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy