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

Proceeding	91213584
Party	Defendant Toys Tekk
Correspondence Address	SHUN C CHEN LAW OFFICES OF SHUN C CHEN 4521 CAMPUS DRIVE #324 IRVINE, CA 92612-2621 UNITED STATES shunchen@att.net
Submission	Motion to Dismiss - Rule 12(b)
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Date	11/30/2015
Attachments	Mot.12b6l.pdf(64984 bytes)

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

Jaguar Land Rover Limited,)	
)	Serial No. 85867803
Opposer,)	Opposition No. 91213584
)	
v.)	
)	
Toys Tekk Corporation,)	
)	
Applicant.)	

APPLICANT’S MOTION TO DISMISS OPPOSITION FOR FAILURE TO STATE A CLAIM, AND IN THE ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT

Applicant, Toys Tekk Corporation, (“Applicant”), hereby moves to dismiss the Opposition for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6), and in the alternative for a more definite statement, pursuant to Fed. R. Civ. P. 12(e), and states

1. The Opposer Jaguar Land Rover Limited filed an amended opposition, opposing Applicant’s registration of CLOUD ROVER mark in IC 028, for remote control toy vehicles.
2. The Opposer collectively alleged 7 registered marks in the names of LAND ROVER and RANGE ROVER, four of which were in IC 012 as motor vehicles, and three of which in IC 028 for scale models and toy model vehicles.
3. The Opposer alleged the ground for opposition was Applicant’s use of the word ROVER in its mark.

4. The opposition was based on Section 2(d) only.

5. As a matter of law the marks on motor vehicles will not cause likelihood of confusion because they is no similarity of goods.

6. As a matter of law there is no similarity between the toy (scale) model vehicles and remote control imaginary vehicles.

7. As a matter of law Applicant's use of the generic work ROVER will not cause the likelihood of confusion.

WHEREFORE, Applicant respectfully requests the Board to dismiss the Opposition and in the alternative to grant Applicant's motion for a more definite statement.

Dated: November 30, 2015

Respectfully submitted,

By: /Shun C. Chen/
Shun C. Chen
Attorney for Applicant

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**BRIEF IN SUPPORT OF APPLICANT’S MOTION TO DISMISS AND
MOTION FOR A MORE DEFINITIVE STATEMENT**

I.

INTRODUCTION

Applicant filed these motions pursuant to 37 CFR § 2.116(a).

II.

ARGUMENT

A. THERE IS NO PROBABILITY OF LIKELIHOOD OF CONFUSION BETWEEN
MOTOR CARS AND REMOTE CONTROL TOY VEHICLES:

There is no similarity between motor vehicles, (‘825, and ‘034), motor cars, (‘722),
and/or sport utility vehicles (‘024) on one hand, and remote controlled toy vehicles on the other
hand. No reasonable person can argue one is confused between a motor car and a remote-

controlled toy vehicle. They are not alike, overwhelmingly different in size, and have entirely different utilities. To argue the motor cars are similar to remote-controlled toy vehicles is both commercially unrealistic and infeasible. See, *In re Amsted Indus. Inc.*, 972 F.2d 1326, 24 USPQ2d 1067 (Fed. Cir. 1992). There is no explanation how the video, clothing, and/or off-road driving instruction services ('434, IC 009, IC 025, and IC 041) can have any similarity with remote control toy vehicle, because they do not.

B. THERE IS NO PROBABILITY OF LIKELIHOOD OF CONFUSION FOR TOY SCALE MODEL VEHICLE AND REMOTE CONTROL TOY VEHICLES:

Opposer's remaining marks, i.e., '099, '434, and '825, in IC 028, were affixed on toy scale models vehicles. There is no similarity between a scale model Land Rover or Range rover and Applicant's imaginary remote-controlled toy vehicles. They look entirely different. They function entirely differently. Opposer's scale toys are for display only, while Applicant's toy is marketed for its movement functions.

C. THE OPPOSER'S PRODUCTS ARE NEITHER COMPETITIVE NOR RELATED:

To analyze the similarity from a different angle, the goods are classified as competitive, non-competitive but related and non-competitive and unrelated. In this case the goods are non-competitive and unrelated. See *Murray v. Cable Nat'l Broad Co.*, 86 F.3d 858, 39 U.S.P.Q. 2d 1214, 1216 (9th Cir. 1996); TEMP 1207.01(a)(i) (2009). A remote control toy vehicle is not competing with a toy scale model. They are unrelated due to its purpose and function.

D. APPLICANT'S MARK WOULD NOT CAUSE ANY LIKELIHOOD OF CONFUSION
BECAUSE THE COMMON PORTION IS GENERIC OR FUNCTIONAL:

Opposer's ground for the alleged likelihood of confusion is Applicant's mark uses the same word ROVER. Rover is either generic and/or functional. Consumers are not likely to use ROVER as an indication of source. See, *Mr. Hero Sandwich Sys., Inc. v. Roman Meal Co.*, 781 F.2d 884, 888, 228 U.S.P.Q. 364, 366 (Fed. Cir. 1986). In any event, even if we analyze the marks at dispute, the focus is on the nongeneric portions. Opposer never alleged CLOUD would lead to likelihood of confusion with either LAND or RANGE. See, *Dranoff-Perlstein Assoc. v. Sklar*, 967 F.2d 852, 23 U.S.P.Q. 2d 1174, 1182 (3d Cir. 1992).

III.

CONCLUSION

For the foregoing reasons, the Board should dismiss this opposition. In the alternative, order Opposer to make more definite statement which mark is at issue and why.

Dated: November 30, 2015

Respectfully submitted,

By: /Shun C. Chen/
Shun C. Chen
Attorney for Applicant

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CERTIFICATE OF SERVICE

I, Shun C. Chen, hereby certify that I served the

**APPLICANT'S MOTION TO DISMISS OPPOSITION FOR FAILURE TO
STATE A CLAIM, AND IN THE ALTERNATIVE MOTION FOR A MORE DEFINITE
STATEMENT**

in a sealed envelope, on November 30, 2015, by first-class mail, with postage fully affixed thereon, and deposited in the United States Postal Service Depository in Irvine, California, to

Brooks Kushman P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075

The foregoing documents is also transmitted the aforesaid counsel by e-mail.

This certificate of service is signed on November 30, 2015.

/Shun C. Chen/
Shun C. Chen