

ESTTA Tracking number: **ESTTA740601**

Filing date: **04/18/2016**

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	Other Motions/Papers
Filer's Name	Shun C. Chen
Filer's e-mail	shunchen@att.net
Signature	/Shun C. Chen/
Date	04/18/2016
Attachments	Mot.Modify.J.pdf(43759 bytes) img04182016_0001.pdf(203597 bytes)

Serial No. **85867803**

**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 AMEND OR MODIFY JUDGMENT

Applicant, Toys Tekk Corporation, (“Applicant”), hereby moves to amend and/or modify the Judgment issued on April 13, 2016, to vacate the portions of the Judgment against the Applicant, to sustain the opposition, and to refuse the registration, based on Opposer’s written consent, in a settlement agreement with Applicant, pursuant to 37 CFR 2.134(a) and TBMP 605.03(a) (e). This Motion is made pursuant to Fed. R. Civ. P. 59(e) and 60.

Paragraph 5 of the settlement agreement, a true and correct copy thereof is attached hereto as Exhibit A, states there was no admission of fact nor liability of an kind. Paragraph 7 of the settlement agreement provides mutual release of each other.

Since Opposer is experienced litigator in this Board and this is Applicant’s counsel Shun

C. Chen, Esq.'s ("Mr. Chen") first-time litigation in front of the Board, after the settlement, Mr. Chen elicits a sample of withdrawal, from Opposer's counsel Jennifer K. Ziegler, Esq. ("Ms. Ziegler"), based on common practice that counsels are no longer adversary on the subject of settlement. Unbeknown to Mr. Chen, Ms. Sigler intentionally provides a sample to prejudice Applicant. A true and correct copy of the e-mail and the sample provided are attached as Exhibit B.

Due to a clerical error, Mr. Chen's assistant adopted the format and withdrawal and submitted the same. The error was not discovered until the board issued the Judgment against Applicant.

WHEREFORE, Applicant respectfully requests the Board to find this motion is timely pursuant to FRCP 59(e), and evidence of Opposer's fraudulent representation and Applicant's error in submitting the prior withdrawal is contrary to the written consent of the Opposer, and the Judgment is amended to show the withdrawal was made based on Opposer's written consent manifested in the settlement agreement.

Dated: November 30, 2015

Respectfully submitted,

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

LAW OFFICES OF SHUN C. CHEN

4521 Campus Drive, #324

Irvine, CA 92612

Telephone: (949) 854-6671

Fax: (949) 725-9801

E-Mail: shunhen@att.net

CERTIFICATE OF SERVICE

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

APPLICANT'S MOTION TO AMEND OR MODIFY JUDGMENT

in a sealed envelope, on April 18, 2016, 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 April 18, 2016.

/Shun C. Chen/
Shun C. Chen

EXHIBIT A

AGREEMENT

This Agreement (“Agreement”), effective as of the date of the last signature below (the “Effective Date”), is by and between Jaguar Land Rover Limited (“JLR”), having a principal place of business at Abbey Road, Whitley Coventry, United Kingdom CV3 4LF, and Toys Tekk Corporation (“Toys Tekk”), 1005 E. Las Tunas Drive #777, San Gabriel, California 91776, U.S.A. (collectively, the “Parties”).

WHEREAS, JLR is the owner of the trademarks LAND ROVER and RANGE ROVER (the “JLR Marks”), among others, for a wide range of vehicles and related goods and services, including toy vehicles;

WHEREAS, JLR is the owner of numerous trademark registrations for the JLR Marks worldwide, including the following trademark registrations in the United States: U.S. Reg. Nos. 2860099, 2380434, 2100825, 2767628, 541722, 3485024, and 929034;

WHEREAS, Toys Tekk is using and has applied to register CLOUD ROVER (the “Accused Mark”) for “Radio controlled toy vehicles; Remote control toys, namely, remote control car, remote control vehicle” in the United States Patent and Trademark Office, Application Serial No. 85/867,803 (the “Application”);

WHEREAS, JLR has objected to the Application and use by Toys Tekk of the Accused Mark;

WHEREAS, JLR has filed an opposition before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (“TTAB”) against the Application, Opposition No. 91213584 (the “Opposition”), to which Toys Tekk filed an Answer and Counterclaim (“the Counterclaim”);

WHEREAS, Toys Tekk has denied the allegations contained in the Opposition and JLR has denied the allegations contained in the Counterclaim; and

WHEREAS, the Parties wish to resolve this matter under the terms below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Within five (5) business days of the Effective Date, Toys Tekk shall file a Withdrawal of the Application, with prejudice, with the TTAB, and shall provide written notice to JLR of such action.

2. Within ten (10) business days of the Effective Date, Toys Tekk shall cease and permanently desist from any and all use of the Accused Mark, or any other trademark that is likely to cause confusion with the JLR Marks or with any other JLR trademark, and will take the following actions:

- a. Toys Tekk shall cease all manufacture, distribution, and sale of products containing the Accused Mark;

- b. Toys Tekk shall destroy all remaining inventory already in existence on the Effective Date containing the Accused Mark;
- c. Toys Tekk shall remove the Accused Mark from all promotional materials, including but not limited to business cards, business papers, advertising and marketing materials, flyers, hats, t-shirts, and other apparel, equipment, signage, and all other print and online media;
- d. Toys Tekk shall remove the Accused Mark from all trade show and event displays;
- e. Toys Tekk shall remove the Accused Mark from all company-owned vehicles and event trailers;

3. Toys Tekk will not file any other applications to register the Accused Mark.

4. This Agreement shall be effective throughout the United States.

5. No provision of this Agreement, nor any acceptance of the benefits thereunder by or on behalf of any of the Parties hereto, shall be construed or deemed to be evidence of any admission of any fact, matter, thing, or liability of any kind to any of the Parties.

6. This Agreement shall inure to the benefit of and be binding upon the Parties, their respective successors-in-interest, related companies, parents, subsidiaries, assigns, suppliers, and licensees.

7. In consideration of this Agreement, the Parties agree for themselves, and their successors-in-interest, related companies, parents, subsidiaries, assigns, suppliers, and licensees to forever release and discharge the other and its related entities, successors, assigns, suppliers, licensees, officers, directors, agents, attorneys, employees, and former employees (collectively, the "Released Parties") from any and all claims, debts, promises, agreements, demands, causes of action, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, relating to the Accused Mark and the claims asserted in the Opposition, arising prior to the Effective Date.

8. The Parties warrant and represent that they have not assigned or transferred, or purported to assign or transfer, all or any part of the claims or rights which are released by this Agreement. The Parties agree that, if they have breached this warranty and representation, they will indemnify, hold harmless, and defend the Released Parties from any claims resulting from such breach.

9. In the event that suit is instituted to enforce any of the rights of the parties to this Agreement, the prevailing party in such litigation shall be entitled, as additional damages, to reasonable attorneys' fees and costs incurred in such action.

10. This Agreement constitutes a single, integrated, written contract expressing the entire understanding between the Parties. No covenants, agreements, representations, or warranties of any kind, whether oral, written, or implied, have been made by either Party except as specifically set forth in this Agreement. All prior discussions, agreements, understandings and negotiations have been and are merged and integrated into, and are superseded by, this Agreement.

11. No cancellation, modification, amendment, deletion, addition, or other changes in this

Agreement, or any waiver of the rights provided in this Agreement, shall be effective for any other purpose unless specifically set forth in a written agreement signed by both Parties.

12. In the event that any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

13. Any individual signing this Agreement on behalf of any party represents and warrants that he or she has full authority to do so.

14. This Agreement shall be enforceable upon the exchange of electronic signatures.

15. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized agents.

JAGUAR LAND ROVER LIMITED

TOYS TEKK CORPORATION

By: 

By: _____

Name: Anurag Kumar

Name: _____

Title: Authorized Representative

Title: _____

Dated: 8/17/16

Dated: _____

Agreement, or any waiver of the rights provided in this Agreement, shall be effective for any other purpose unless specifically set forth in a written agreement signed by both Parties.

12. In the event that any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

13. Any individual signing this Agreement on behalf of any party represents and warrants that he or she has full authority to do so.

14. This Agreement shall be enforceable upon the exchange of electronic signatures.

15. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized agents.

JAGUAR LAND ROVER LIMITED

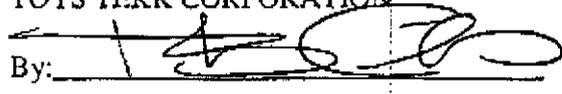
By: _____

Name: _____

Title: _____

Dated: _____

TOYS TEKK CORPORATION

By: 

Name: RANDY CHEN G

Title: PRESIDENT

Dated: 3/18/2016

EXHIBIT B

Subject: FW: Settlement Agreement
From: Jennifer K. Ziegler (jziegler@brookskushman.com)
To: shunchen@att.net;
Cc: RCANTOR@brookskushman.com; gdavis@brookskushman.com;
Date: Tuesday, March 22, 2016 5:32 PM

Shun,

Thank you for the signed Agreement. Here's an example of a recent withdrawal prepared by opposing counsel and filed before the TTAB in another matter.

Best regards,

Jennifer

Jennifer K. Ziegler

Senior Trademark Attorney



1000 Town Center, 22nd Floor | Southfield, MI 48075

Direct: (248) 226-2817 | Main: (248) 358-4400

jziegler@BrooksKushman.com

[Bio](#) | [Website](#)

From: Shun Chen [mailto:shunchen@att.net]
Sent: Tuesday, March 22, 2016 6:32 PM
To: Jennifer K. Ziegler
Subject: Settlement Agreement

Our client executed the settlement agreement. Please advise in what format and to whom you wish us to file the withdrawal of the application.

Shun

(949) 689-5439

Attachments

- image003.png (8.74KB)
- Settlement.Agreement.pdf (117.44KB)
- ttabvue-91225219-OPP-6.pdf (63.17KB)

ESTTA Tracking number: **ESTTA731835**

Filing date: **03/08/2016**

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

Proceeding	91225219
Party	Defendant NuRide Transportation Group, LLC
Correspondence Address	JOSHUA M. GERBEN, ESQ. GERBEN LAW FIRM, PLLC 10TH FLOOR 1050 CONNECTICUT AVE NW WASHINGTON, DC 20036 jgerben@gerbenlawfirm.com
Submission	Withdrawal Of Application
Filer's Name	Joshua M. Gerben, Esq.
Filer's e-mail	jgerben@gerbenlawfirm.com
Signature	/Joshua M. Gerben/
Date	03/08/2016
Attachments	Jaguar v Nuride_Express Abandonment_March 8.pdf(160814 bytes)

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

Jaguar Land Rover Limited	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91225219
	§	
NuRide Transportation Group, LLC	§	
	§	
Applicant.	§	Serial No. 86458107
	§	
	§	

EXPRESS WITHDRAWAL OF APPLICATION

Applicant NuRide Transportation Group, LLC (hereinafter referred to as “NuRide”), a New York limited liability company, wishes to withdrawal its application, ser. no. 86458107.

Applicant, pursuant to Section 602.01 TBMP and 37 C.F.R. §2.68, hereby expressly withdraws the above-identified application.

It is believed that there are no fees associated with the submission of this document.

Respectfully submitted,



Dated: March 8, 2016

Joshua M. Gerben, Esq.
Attorney for Applicant
Gerben Law Firm, PLLC
1050 Connecticut Ave NW
Suite 500
Washington, DC 20036
Phone: 202.294.2287
Email: jgerben@gerbenlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2016, a true and correct copy of the foregoing WITHDRAWAL OF APPLICATION is being served by certified mail, return receipt requested, on Opposer as shown in the correspondence record in the Office, as follows:

Jennifer K. Ziegler
Brooks Kushman P.C.
1000 TOWN CENTER 22ND FLOOR
SOUTHFIELD, MI 48075
UNITED STATES

Dated: March 8, 2016



Joshua M. Gerben, Esq.
Attorney for Applicant
Gerben Law Firm, PLLC
1050 Connecticut Ave NW
Suite 500
Washington, DC 20036
Phone: 202.294.2287
Email: jgerben@gerbenlawfirm.com