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Filing date: **05/19/2016**

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

Proceeding	91221324
Party	Plaintiff Nintendo of America, Inc.
Correspondence Address	KATHERINE KEATING BRYAN CAVE LLP 560 MISSION STREET, 25TH FLOOR SAN FRANCISCO, CA 94105 UNITED STATES katherine.keating@bryancave.com, jill.chalmers@bryancave.com, judi.cope@bryancave.com, dee.kerkow@bryancave.com
Submission	Motion to Compel Discovery
Filer's Name	Katherine Keating
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Signature	/katherine keating/
Date	05/19/2016
Attachments	Motion to Compel.pdf(484342 bytes)

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

NINTENDO OF AMERICA INC.,

Opposer,

v.

MARIO JONES,

Applicant.

Opposition No. 91,221,324

Serial No.: 86/283,191

Mark: SUPAH MARRIO

Filed: May 16, 2014

Published: December 2, 2014

Classes: 41

**OPPOSER’S MOTION FOR AN ORDER COMPELLING RESPONSES
TO SECOND SET OF INTERROGATORIES AND SECOND SET OF
REQUESTS FOR PRODUCTION**

Pursuant to 37 C.F.R. § 2.120(e), Fed. R. Civ. P. 37(a)(3)(B), and TBMP § 523, Opposer Nintendo of America Inc. (“Nintendo”) hereby moves for an order compelling Applicant Mario Jones (“Applicant”) to provide written responses to Nintendo’s Second Set of Interrogatories and to provide written responses and produce documents in response to Nintendo’s Second Set of Requests for Production of Documents and Things prior to his deposition on May 27, 2016.

The April 20, 2016 deadline for Applicant to serve responses has long passed, and Applicant has not responded to Nintendo’s discovery requests or to communications attempting to resolve the failure to respond.

Background Facts

Prior Motion to Compel. This is the second time Applicant has required Nintendo to seek the Board’s intervention in the discovery process. In November, Nintendo filed a motion to compel responses to its first set of interrogatories and requests for production after Applicant not only failed to provide responses but also failed to respond to communications from Nintendo attempting to resolve the discovery issue. *See* Opposer’s Motion for an Order Compelling

Discovery Responses at 3-4 (filed Nov. 12, 2015) (Doc. 10). Applicant did not respond to the motion to compel but, on December 4, mailed discovery responses. *See* Notice Relating to Opposer's Motion for an Order Compelling Discovery Responses at 1-3 (filed Dec. 18, 2015) (Doc. 12) ("Notice on First Motion to Compel").

In its January 28 order, the Board held that the motion to compel was therefore moot but reminded Applicant "that he has a duty to make a good faith effort to meet Opposer's discovery needs" and noted that "if Applicant fails to communicate with Opposer to discuss alleged deficiencies in his discovery responses, the Board may entertain a renewed motion to compel." Order at 2 (filed Jan. 28, 2016) (Doc. 13).

Further Attempts to Communicate with Applicant. Nintendo then attempted to contact Applicant by e-mail and telephone to discuss a potential resolution of the parties' dispute and, if no resolution could be reached, to meet and confer about Applicant's responses to Nintendo's first set of written discovery and to discuss Applicant's availability for a deposition. Declaration of Christopher Parent in Support of Opposer's Unconsented Motion to Extend Discovery Period and Trial Dates at ¶¶ 2-8 (filed March 25, 2016) (Doc. 14) ("Parent Decl."). Applicant did not respond to Nintendo's e-mail messages, and phone calls to Applicant's telephone number of record reached a recorded message stating that the voice mailbox was full. *Id.* at ¶¶ 3-8.

Nintendo's Second Set of Interrogatories and Requests for Production. Nintendo served a second set of interrogatories and requests for production of documents by sending them to his mailing address of record by both U.S. Mail and FedEx on March 16, 2016. Declaration of Katherine Keating ("Keating Decl.") at ¶ 2 & Exhs. A & B. Applicant's responses were due by April 20, 2016.

On April 23, Nintendo sent an e-mail to Applicant noting that the deadline for Applicant to serve responses to the second set of written discovery had passed and asking him to confirm that he had mailed the responses. *Id.* at ¶ 3 & Exh. C. Applicant did not respond to this e-mail or otherwise communicate with Nintendo, and he did not serve responses to the second set of discovery requests. *Id.* at ¶¶ 3-6.

Meanwhile, as Applicant had also failed to respond to requests to discuss deposition scheduling, *id.* at ¶¶ 3-4 & Exh. C, Nintendo noticed Applicant's deposition for May 27, 2016, prior to the currently scheduled close of fact discovery. *Id.* at ¶¶ 4-5 & Exhs. D, E. Nintendo served the Notice of Deposition on May 13 by mail and overnight delivery and also sent a copy by e-mail. *Id.* In the accompanying e-mail message, Nintendo noted that it had not received Applicant's responses to Nintendo's second set of discovery requests and explained that it needed the responses before taking Applicant's deposition so that it would have an opportunity to ask face-to-face questions about the information in the responses. *Id.*, Exh. E. The message also stated that if Nintendo had not received Applicant's responses to the second set of written discovery by May 17, it would take that to mean that Applicant did not intend to respond and would have to ask the Board to intervene. *Id.*

As of the filing of this Motion, Applicant has not responded to Nintendo's May 13 e-mail or otherwise communicated with Nintendo and has not provided any responses to Nintendo's second set of interrogatories or requests for production of documents. *Id.* at ¶ 6.

Argument

I. Responses to Interrogatories and Requests for Production

Responses to interrogatories and requests for production must be served within 30 days after the date of service, with five additional days to respond when service is made by means

other than electronic service. TBMP § 405.04(a), § 406.04(a). Nintendo served its second set of interrogatories and requests for production on March 16, 2016, and Applicant's responses to Nintendo's Interrogatories and Requests for Production were due by April 20, 2016. To date, Applicant has not served any responses or objections and has refused to respond to Nintendo's communications about the overdue responses or any other issues in these proceedings. *See Keating Decl.* at ¶¶ 3-6.

A party's refusal to respond to interrogatories and requests for production is a proper basis for the Board to grant a motion to compel. TBMP § 523.01; *see also, e.g., Cadbury UK Limited v. Meenaxi Enterprise, Inc.*, 115 USPQ2d 1404 (TTAB 2015) (granting motion to compel where failure to cooperate interfered with party's ability to take discovery); *Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80 (TTAB 1984) (“[E]ach party ... has a duty ... to make a good faith effort to satisfy the discovery needs of its opponent ...”).

Applicant's failure to cooperate in the discovery process has continued to frustrate Nintendo's ability to move the proceedings forward. Applicant responded to Nintendo's initial discovery requests only after Nintendo filed its first motion to compel. Notice on First Motion to Compel at 1-3. Then, despite the Board's January 28 order reminding Applicant of his obligations to cooperate, he failed to respond to attempts to discuss his initial discovery responses, his availability for deposition, and his failure to respond to Nintendo's second set of written discovery. *Parent Decl.* at ¶¶ 2-8; *Keating Decl.* at ¶¶ 3-6.

Applicant's silence has left Nintendo with no option but to file this motion to compel. *See, e.g., H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715 (TTAB 2008) (“If applicant was unsatisfied with opposer's failure to respond to its discovery requests, it was required to file a

motion to compel discovery, failing which applicant waived its right to object to such testimony and evidence on the ground that it was not produced during discovery.”).

Accordingly, Nintendo respectfully asks the Board to compel Applicant to respond to Nintendo’s Second Set of Interrogatories and Second Set of Requests for Production of Documents and Things prior to his deposition on May 27, 2016.

II. Nintendo’s Good Faith Effort to Resolve

Pursuant to 37 CFR § 120(e) and TBMP § 523.02, Nintendo hereby states that it has, through counsel, made a good faith effort to resolve with Applicant the issues presented in this motion. As set forth above and in the accompanying declaration, Applicant has declined to communicate with Nintendo. On May 13, 2016, Nintendo explained the importance of receiving Applicant’s discovery responses before his deposition on May 27 and asked Applicant to inform Nintendo if Applicant intended to respond to the outstanding discovery requests. Keating Decl. at ¶ 5 & Exh. E. Once again, Nintendo has received no response. *Id.* at ¶ 6.

III. Request for Relief

Based on the foregoing, Nintendo respectfully requests that the Board grant Nintendo’s Motion and enter an order compelling Applicant to provide written responses to Nintendo’s Second Set of Interrogatories and to provide written responses and produce documents in response to Nintendo’s Second Set of Requests for Production of Documents and Things prior to his deposition on May 27, 2016. Nintendo hereby states that it will accept service of Applicant’s responses by e-mail. To avoid the possibility that responses served by mail remain in transit as of the deposition, Nintendo further requests that the Board order Applicant to bring a copy of his responses and documents to his deposition on May 27 if he has chosen to serve them by mail.

Finally, Nintendo requests that, pursuant to 37 C.F.R. § 2.120(e)(2), the Board suspend these opposition proceedings pending disposition of this Motion and re-set remaining deadlines upon resumption of the proceedings.

Respectfully submitted,

BRYAN CAVE LLP

Dated: May 19, 2016

/katherine keating/
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Attorneys for NINTENDO OF AMERICA INC.

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

NINTENDO OF AMERICA INC.,

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Opposition No. 91,221,324

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**DECLARATION OF KATHERINE KEATING IN SUPPORT OF OPPOSER’S MOTION
FOR AN ORDER COMPELLING RESPONSES TO SECOND SET OF
INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION**

I, Katherine Keating, declare as follows:

1. I am an attorney in the law firm of Bryan Cave LLP, counsel of record for Opposer Nintendo of America Inc. (“Nintendo”) in the above-captioned proceedings. I have personal knowledge of the facts set forth in this declaration and if called to do so, I could and would testify competently to such facts.

2. On March 16, 2016, I served Nintendo’s Second Set of Interrogatories and Second Set of Requests for Production of Documents and Things on Applicant Mario Jones both by mailing them to his mailing address of record and by sending them for overnight delivery to his mailing address of record via FedEx. Attached hereto as **Exhibits A & B**, respectively, are true and correct copies of Nintendo’s Second Set of Interrogatories and Second Set of Requests for Production of Documents.

3. On April 23, 2016, Nintendo Senior Corporate Counsel Kristopher Kiel sent an e-mail to Mr. Jones at his e-mail address of record. In this message, Mr. Kiel explained that

Nintendo needed to take Mr. Jones' deposition by May 28 and asked for dates on which Mr. Jones would be available. In this message, Mr. Kiel also noted that Mr. Jones' responses to Nintendo's second set of interrogatories and requests for production were due on April 20 and asked Mr. Jones to confirm that he had mailed the responses. Mr. Kiel informed me that Mr. Jones never responded to the April 23 e-mail message. Attached hereto as **Exhibit C** is a true and correct copy of Mr. Kiel's April 23, 2016 e-mail message to Mr. Jones.

4. Having had no communication from Mr. Jones as to deposition scheduling, the overdue discovery responses, or any other matter, Nintendo noticed his deposition for May 27, 2016, in Silver Spring, Maryland, via Notice of Deposition served on May 13, 2016 by regular mail and FedEx. Attached hereto as **Exhibit D** is a true and correct copy of the Notice of Deposition.

5. On May 13, 2016, I also sent a copy of the Notice of Deposition to Mr. Jones via e-mail to his e-mail address of record. In that May 13 e-mail message, I noted that we had not received Mr. Jones' responses to Nintendo's second set of interrogatories and requests for production. I explained that Nintendo needed the responses prior to Mr. Jones deposition so that we could ask him questions about the information in the responses. I wrote that if we had not received his responses by Tuesday, May 17, we would take that to mean that he did not intend to respond to the discovery requests and would then have to ask the Board to intervene so that we would have the information we needed when we deposed Mr. Jones on May 27. Attached hereto as **Exhibit E** is a true and correct copy of my May 13, 2016 e-mail to Mr. Jones.

6. As of today, Mr. Jones has not responded to my May 13, 2016 e-mail message, has not provided any responses or objections to Nintendo's second set of interrogatories and

requests for production, and has not otherwise communicated to me, my office, or Nintendo about his failure to provide discovery responses.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Dated: May 19, 2016



Katherine Keating

EXHIBIT A

persons acting on your behalf, and not merely such information as may be of your own personal knowledge or under your immediate control.

2. If you object to any interrogatory, you must state specifically the legal or factual basis for the objection and the extent to which you are refusing to respond to the interrogatory. You must respond to that part of the interrogatory to which you have no objection.

3. These interrogatories are to be regarded as continuing requests for information pursuant to Rule 26(e) of the Federal Rules of Civil Procedure. You are required to promptly supplement your responses with any additional or corrective information as may be obtained or discovered by you or any person acting on your behalf that will augment or modify your responses to any of the following interrogatories.

4. Unless specifically defined herein, all words and terms used herein shall be construed and interpreted according to ordinary custom, usage, and meaning.

5. As used herein, the terms “you” and “your” refer to Applicant Mario Jones, including, when appropriate, Applicant’s agents, employees, representatives, and attorneys.

6. As used herein, the term “SUPAH MARRIO mark” or “the mark SUPAH MARRIO” refers to the mark that is the subject of Trademark Application No. 86/283,191, and includes the mark presented in standard characters, presented in a stylized format, combined with additional words, and/or combined with a design element.

7. As used herein, the term “Nintendo” refers to Opposer Nintendo of America Inc., including, when appropriate, Nintendo’s predecessors, agents, employees, representatives, affiliates, and attorneys.

8. As used herein, the term “Super Mario video game franchise” refers to Nintendo’s video games that include the words “Super Mario” in the title or feature the “Super Mario” character.

9. The term “document” is used herein in its broadest sense and includes every writing or record of every type, including electronically stored information, that is in your possession, custody, or control. “Documents” include, but are not limited to, notes, letters, e-mails, instant messages, text messages, voice mail messages, images, web site pages, social media transmissions, photographs, reports, charts, drawings, audio recordings, and video recordings.

10. The term “communication” is used herein in its broadest sense and means the transmission, sending, or receipt of information of any kind by or through any means, including in face-to-face interactions, in tangible writings, through social media, and by telephone, e-mail, instant message, and text message.

11. As used herein, the term “identify” means:

a. With respect to persons, “identify” means to provide, to the extent known, the person’s full name, mailing address, e-mail address, and telephone number. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent requests to identify that person.

b. With respect to documents, “identify” means to provide, to the extent known, (i) the type of document (e.g., letter, memorandum, report, e-mail); (ii) the document’s general subject matter; (iii) the document’s date; (iv) the document’s author(s) and recipient(s); and (v) the present location of the document. The above information shall be given in sufficient detail to enable a person to whom a subpoena or request for production of documents is directed

to identify fully the documents sought to be produced, and to enable Nintendo to determine that such document, when produced, is in fact the document described in your response. In lieu of providing this identifying information in your response to an interrogatory, the document may be produced with your responses to these interrogatories.

c. With respect to dates, “identify” means to provide, to the extent known, the day, month, and year.

12. As used herein with respect to trademarks, the term “use in commerce” has the same meaning as set forth in the definition of the term in Section 45 of the federal Lanham Act, 15 U.S.C. § 1127.

13. The words “and” and “or” shall be construed either disjunctively or conjunctively as necessary to make the interrogatory inclusive rather than exclusive.

14. The word “any” shall be understood to encompass the word “all.”

15. The past tense shall be construed to include the present tense, and vice versa, to make the interrogatory inclusive rather than exclusive.

16. The singular shall be construed to include the plural, and vice versa, to make the interrogatory inclusive rather than exclusive.

17. In responding to these interrogatories, please restate the text of each interrogatory before your written response thereto.

INTERROGATORIES

INTERROGATORY NO. 18:

Describe in details any actions you took on or before May 15, 2014 in preparation for using the mark SUPAH MARRIO in connection with live performances by a musical band, including the date on which you took each such action.

INTERROGATORY NO. 19:

Describe in details any actions you took after May 15, 2014 in preparation for using the mark SUPAH MARRIO in connection with live performances by a musical band, including the date on which you took each such action.

INTERROGATORY NO. 20:

Identify all venues at which you have provided live musical performances under the name or mark SUPAH MARRIO, including the name and location of each venue and the date of each performance.

INTERROGATORY NO. 21:

Identify all venues at which you have provided live musical performances under a name or mark other than SUPAH MARRIO, including the name and location of each venue and the date of each performance.

INTERROGATORY NO. 22:

Describe the nature of any live musical performances you intend to offer under the mark SUPAH MARRIO, including the musical genre of such performances and your role in such performances.

INTERROGATORY NO. 23:

Describe the television commercials identified in your responses to Interrogatory Nos. 10 and 11 in Opposer's First Set of Interrogatories, including how and where the SUPAH MARRIO mark appears in such commercials.

INTERROGATORY NO. 24:

For each of the television commercials identified in your responses to Interrogatory Nos. 10 and 11 in Opposer's First Set of Interrogatories (a) identify the goods or services being

advertised; (b) identify all persons who created the advertisement; (c) describe the nature and extent of your involvement in creating, paying for, and causing the advertisement to air; and (d) identify the dates and times when the advertisement was aired on each network.

INTERROGATORY NO. 25:

Describe the types of customers or audiences to whom you target and/or intend to target live musical performances by a musical band under the mark SUPAH MARRIO.

INTERROGATORY NO. 26:

Identify the range of amounts you have charged and/or intend to charge in connection with live performances by a musical band under the mark SUPAH MARRIO.

INTERROGATORY NO. 27:

Describe your involvement with the musical recording referenced in the May 6, 2014 invoice attached hereto as Exhibit A, which you produced with your Initial Disclosures, including a description of any goods or services you provided under the mark SUPAH MARRIO in connection with that musical recording.

INTERROGATORY NO. 28:

Describe your involvement with the musical recording referenced in the May 27, 2015 invoice attached hereto as Exhibit B, which you produced with your Initial Disclosures, including a description of any goods or services you provided under the mark SUPAH MARRIO in connection with that musical recording.

INTERROGATORY NO. 29:

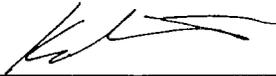
Identify the year in which your friends began calling you "Supah Marriö" during football games, as stated in your response to Interrogatory No. 2 in Opposer's First Set of Interrogatories.

INTERROGATORY NO. 30:

Set forth the lyrics of any songs or musical compositions you have performed under the mark SUPAH MARRIO.

BRYAN CAVE LLP

Dated: March 16, 2016



Katherine Keating

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Attorneys for NINTENDO OF AMERICA INC.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing OPPOSER'S SECOND SET OF INTERROGATORIES has been served on Applicant Mario Jones by mailing said copy on March 16, 2016, via First Class Mail, postage prepaid, and by sending for overnight delivery via FedEx on March 16, 2016, to:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

Executed on March 16, 2016, at San Francisco, California.



Katherine Keating

EXHIBIT B

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

NINTENDO OF AMERICA INC.,

Opposer,

v.

MARIO JONES,

Applicant.

Opposition No. 91,221,324

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Mark: SUPAH MARRIO

Filed: May 16, 2014

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**OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

PROPOUNDING PARTY: Opposer Nintendo of America Inc.

RESPONDING PARTY: Applicant Mario Jones

SET NUMBER: Two

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, 37 CFR § 2.120(d), and Trademark Trial and Appeal Board Manual of Procedure § 406, Opposer Nintendo of America Inc. ("Nintendo"), through its undersigned counsel, hereby requests Applicant Mario Jones ("Applicant"), in accordance with the definitions and instructions set forth below, to produce for inspection and copying the documents and things described in these requests that are in his possession or control, by delivering them to the offices of Bryan Cave LLP, 560 Mission Street, 25th Floor, San Francisco, California 94105-2994, within 30 days following the service of this request.

DEFINITIONS AND INSTRUCTIONS

1. In responding to these requests for production, you are requested to search all documents within your possession, custody or control, or within the possession, custody, or

control of your agents, wherever located, including, but not limited to, your documents placed in storage facilities and documents in the possession of any employee, agent, representative, or person acting or purporting to act on your behalf. A document is deemed to be in your possession, custody, or control if it is in your actual possession or custody, or if it is in the custody of another person and you own the document in whole or in part, or have a legal right to obtain it, or have any express or implied understanding that you may use, inspect or copy such document, or as a practical matter, ought to be able to do so.

2. If you object to any request for production, you must state specifically the legal or factual basis for the objection and the extent to which you are refusing to comply with the request for production. You must comply with that part of the request for production to which you have no objection.

3. These requests for production are to be regarded as continuing requests pursuant to Rule 26(e) of the Federal Rules of Civil Procedure. Prompt supplemental production is required if you locate, or obtain possession, custody, or control of, additional responsive documents at any time during the pendency of these opposition proceedings.

4. Unless specifically defined herein, all words and terms used herein shall be construed and interpreted according to ordinary custom, usage, and meaning.

5. As used herein, the terms “you” and “your” refer to Applicant Mario Jones, including, when appropriate, Applicant’s agents, employees, representatives, and attorneys.

6. As used herein, the term “SUPAH MARRIO mark” or “the mark SUPAH MARRIO” refers to the mark that is the subject of Trademark Application No. 86/283,191, and includes the mark presented in standard characters, presented in a stylized format, combined with additional words, and/or combined with a design element.

7. As used herein, the term “Nintendo” refers to Opposer Nintendo of America Inc., including, when appropriate, Nintendo’s predecessors, agents, employees, representatives, affiliates, and attorneys.

8. The term “document” is used herein in its broadest sense and includes every writing or record of every type, including electronically stored information, that is in your possession, custody, or control. “Documents” include, but are not limited to, notes, letters, e-mails, instant messages, text messages, voice mail messages, images, web site pages, social media transmissions, photographs, reports, charts, drawings, audio recordings, and video recordings.

9. The term “communication” is used herein in its broadest sense and means the transmission, sending, or receipt of information of any kind by or through any means, including in face-to-face interactions, in tangible writings, through social media, and by telephone, e-mail, instant message, and text message.

10. The words “and” and “or” shall be construed either disjunctively or conjunctively as necessary to make the interrogatory inclusive rather than exclusive.

11. The word “any” shall be understood to encompass the word “all.”

12. The past tense shall be construed to include the present tense, and vice versa, to make the interrogatory inclusive rather than exclusive.

13. The singular shall be construed to include the plural, and vice versa, to make the interrogatory inclusive rather than exclusive.

14. In responding to these requests for production, please restate the text of each request before your written response thereto.

REQUESTS FOR PRODUCTION

REQUEST NO. 15:

A copy of each of the “tv commercials running under” the SUPAH MARRIO mark “on Black Entertainment Television (B.E.T.),” as identified in your responses to Interrogatory Nos. 10 and 11 in Opposer’s First Set of Interrogatories.

REQUEST NO. 16:

A copy of each of the “tv commercials running under” the SUPAH MARRIO mark “on M.T.V. Channel,” as identified in your responses to Interrogatory Nos. 10 and 11 in Opposer’s First Set of Interrogatories.

REQUEST NO. 17:

If you contend that you do not have a copy of one or more of the television commercials identified in your responses to Interrogatory Nos. 10 and 11 in Opposer’s First Set of Interrogatories, please produce photographs, screen captures, or other documents sufficient to show the content of each such commercial.

REQUEST NO. 18:

All documents reflecting, evidencing, or constituting communications between you and any third party concerning the television commercials identified in your responses to Interrogatory Nos. 10 and 11 in Opposer’s First Set of Interrogatories.

REQUEST NO. 19:

All documents, including e-mails, text messages, and social media posts, reflecting, evidencing, or discussing your intention to use the SUPAH MARRIO mark in connection with live performances by a musical band.

REQUEST NO. 20:

All documents referring to, reflecting, or evidencing actions you have taken in preparation for using the SUPAH MARRIO mark in connection with live performances by a musical band.

REQUEST NO. 21:

All documents reflecting, evidencing, or constituting communications between you and any third party from January 1, 2008 to the present concerning any live musical performance by you, whether performed under the SUPAH MARRIO mark or any other name or mark.

REQUEST NO. 22:

Advertising, marketing materials, photographs, or other documents showing your use of the SUPAH MARRIO mark in connection with the November 2008 live musical performance identified in your responses to Interrogatory Nos. 5 and 12 in Opposer's First Set of Interrogatories.

REQUEST NO. 23:

All documents created, sent, or received between January 1, 2008 and the present, including e-mails, text messages, and social media posts, in which you referred to yourself, or a third party referred to you, as "Supah Marrio."

REQUEST NO. 24:

All documents reflecting, evidencing, or constituting communications between you and any third party concerning the musical recording referenced in the May 6, 2014 invoice attached hereto as Exhibit A, which you produced with your Initial Disclosures.

REQUEST NO. 25:

All documents reflecting, evidencing, or constituting communications between you and any third party concerning the musical recording referenced in the May 27, 2015 invoice attached hereto as Exhibit B, which you produced with your Initial Disclosures.

REQUEST NO. 26:

Documents sufficient to show the lyrics for any songs or musical compositions you have performed under the mark SUPAH MARRIO, including drafts of such lyrics.

REQUEST NO. 27:

All documents identified in your responses to Nintendo's Second Set of Interrogatories, served concurrently herewith.

Dated: March 16, 2016

BRYAN CAVE LLP



Katherine Keating

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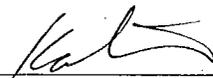
Attorneys for NINTENDO OF AMERICA INC.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS has been served on Applicant Mario Jones by mailing said copy on March 16, 2016, via First Class Mail, postage prepaid, and by sending for overnight delivery via FedEx on March 16, 2016, to:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

Executed on March 16, 2016, at San Francisco, California.



Katherine Keating

EXHIBIT C

Keating, Katherine

From: Kristopher Kiel <kriski09@noa.nintendo.com>
Sent: Saturday, April 23, 2016 10:31 AM
To: mariojones25@yahoo.com
Subject: SUPAH MARRIO Trademark Opposition

Mr. Jones,

We again wanted to follow-up with you on your trademark filing and opposition proceedings. Despite repeated attempts to discuss a possible resolution of these matters with you and to arrange the logistics for your deposition, we have had no response from you. If your silence means that you have decided not to participate in the proceedings, please let us know so that we can arrange withdrawal of your application and dismissal of the opposition. Otherwise, we need your cooperation in the discovery process to move the opposition to a resolution on the merits.

As you know, the Trademark Board has granted an extension of the discovery period in the opposition. This extension was granted in part to allow more time to arrange for your deposition. We have reached out to you many times on this issue, but to date you have not responded. We are reaching out again, as we need to take your deposition before the close of fact discovery, which is now May 28. Please let us know dates between now and May 28 that you can be available for your deposition. If you remain interested in in your application, we expect to hear back from you no later than Friday, April 29.

We also note that the deadline for you to respond to our most recent set of written discovery, which includes requests that you provide additional documents and answer additional interrogatory questions, was April 20. We have not received them. Please confirm that you have mailed these responses to us.

As we've noted before, we think that there is a good chance that we could come to a mutual agreement if only you would be willing to talk. But, one way or another, we need to move this matter forward. Again, please let me know a good time I can call you, and the best number to reach you.

I look forward to hearing from you.

Best,
Kristopher Kiel

Senior Corporate Counsel
Nintendo of America Inc.

EXHIBIT D

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

NINTENDO OF AMERICA INC.,

Opposer,

v.

MARIO JONES,

Applicant.

Opposition No. 91,221,324

Serial No.: 86/283,191

Mark: SUPAH MARRIO

Filed: May 16, 2014

Published: December 2, 2014

Class: 41

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Section 404 of the Trademark Trial and Appeal Board Manual of Procedure, Opposer Nintendo of America Inc. ("Nintendo") will take the deposition upon oral examination of Applicant Mario Jones commencing on May 27, 2016 at 10:00 a.m. at Regus Business Center, 8403 Colesville Road, Suite 1100, Silver Spring, Maryland 20910.

PLEASE TAKE FURTHER NOTICE that such deposition will be recorded by stenographer and will take place before a person authorized by law to administer oaths.

Nintendo reserves the right to use real-time reporting during the deposition.

BRYAN CAVE LLP



Katherine Keating

Dated: May 13, 2016

560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
katherine.keating@bryancave.com
Telephone: (415) 268-2000
Facsimile: (415) 268-1999

Jill J. Chalmers
90 South Cascade Avenue, Suite 1300
Colorado Springs, CO 80903
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Telephone: (719) 473-3800
Facsimile: (719) 633-1518

Attorneys for NINTENDO OF AMERICA INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF DEPOSITION has been served on Applicant Mario Jones by sending for overnight delivery via FedEx on May 13, 2016, and also by sending via First Class Mail, postage prepaid, on March 13, 2016, to the following address:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

Executed on May 13, 2016, at San Francisco, California.



Katherine Keating

EXHIBIT E

Keating, Katherine

From: Keating, Katherine
Sent: Friday, May 13, 2016 5:01 PM
To: mariojones25@yahoo.com
Subject: SUPAH MARRIO Trademark Opposition Proceedings
Attachments: Ntc of Deposition-M.Jones.PDF

Importance: High

Dear Mr. Jones,

We have not received any responses to our repeated attempts to contact you by phone and e-mail. This has left us unable to confer with you on your responses to our first set of discovery responses and unable to work with you to find a mutually agreeable date for your deposition.

We have had no choice but to set the deposition date without your input. Attached is a Notice of Deposition for your deposition, to be held on **May 27, 2016** at 10:00 a.m. at Regus Business Center, 8403 Colesville Road, Suite 1100, Silver Spring, Maryland 20910. If you will be unable to appear on that date, we need to hear from you immediately.

In addition, we have not received your responses to the second set of written discovery requests (interrogatories and requests for production), sent to you in March. As explained in the April 23 e-mail to you from Nintendo Senior Corporate Counsel Kristopher Kiel, your responses were due on April 20. We need to have your responses before we take your deposition so that we have an opportunity to ask you face-to-face questions about the information in your responses.

If we have not received your responses to the second set of written discovery requests by 5:00 p.m. Eastern time on **Tuesday, May 17**, we will take that to mean that you do not intend to respond to the discovery requests, and we will have to ask the Board to intervene so that we will have the information we need when we take your deposition on May 27.

We remain open to discussing possibilities for resolving this matter in a phone call. Otherwise, we need to complete discovery so that we can move forward to a decision in this case.

Please do not hesitate to call me at (415) 268-1972 to discuss the deposition, your discovery responses, and/or a possible resolution of these proceedings.

Sincerely,
Katherine Keating

 **Katherine Keating**
Counsel

T: +1 415 268 1972 F: +1 415 430 4372

BRYAN CAVE LLP 560 Mission Street, 25th Floor, San Francisco, CA 94105-2994

katherine.keating@bryancave.com

bryancave.com | A Global Law Firm

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION FOR AN ORDER COMPELLING RESPONSES TO SECOND SET OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION** and **DECLARATION OF KATHERINE KEATING IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER COMPELLING RESPONSES TO SECOND SET OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION** has been served on Applicant Mario Jones by sending said copy for overnight delivery via FedEx on May 19, 2016, and also by mailing said copy on May 19, 2016, via First Class Mail, postage prepaid to:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

I further certify that I e-mailed a true and complete copy of the foregoing **OPPOSER'S MOTION FOR AN ORDER COMPELLING RESPONSES TO SECOND SET OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION** and **DECLARATION OF KATHERINE KEATING IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER COMPELLING RESPONSES TO SECOND SET OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION** to Applicant Mario Jones on May 19, 2016, by sending said copy to his e-mail address of record:

mariojones25@yahoo.com

Executed on May 19, 2016, at San Francisco, California.

/katherine keating/
Katherine Keating