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Filing date: **04/12/2016**

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

Proceeding	91224569
Party	Plaintiff Traxxas LP
Correspondence Address	GREGORY W CARR CARR LAW FIRM PLLC 6170 RESEARCH ROAD SUITE 111 FRISCO, TX 75033 UNITED STATES gcarr@carrip.com, trademarks@carrip.com
Submission	Other Motions/Papers
Filer's Name	Gregory W. Carr
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Signature	/Gregory W. Carr/
Date	04/12/2016
Attachments	Motion to Suspend Pending Disposition of Civil Action filed on 04-12-2016.pdf(160905 bytes) Exhibit A.pdf(1120881 bytes)

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

TRAXXAS LP,	§	Opposition No.: 91224569
	§	
Opposer	§	
	§	
v.	§	
	§	
Kidztech Toys Manufacturing Limited,	§	Application Serial No.: 86537763
	§	
Applicant.	§	

**OPPOSER’S MOTION TO SUSPEND PENDING
DISPOSITION OF CIVIL ACTION**

Pursuant to TBMP § 510.02 and 37 C.F.R. § 2.117(a), Opposer, Traxxas LP (“Traxxas”) moves that this instant opposition proceeding be suspended pending final determination of a pending civil action involving Traxxas and Applicant, Kidztech Toys Manufacturing Limited (“Kidztech”), which will have a direct bearing on this proceeding.

In support of this Motion, Traxxas states the following:

1. On April 8, 2016, Traxxas commenced a civil action, captioned as *Traxxas, L.P. v. Kidztech Toys Manufacturing LTD.*, in the United States District Court for the Eastern District of Texas (Civ. Action No. 6:16-cv-317) (the “Civil Action”). A copy of the Original Complaint from the Civil Action is attached as Exhibit A.

2. The Original Complaint seeks resolution of issues in common with those in the instant proceeding. Specifically, in the Civil Action, Traxxas asserts claims of and seeks relief for trademark infringement, unfair competition, dilution, and unjust enrichment under both federal and state law arising, *inter alia*, from use of the TOPMAXX RACING (Stylized) designation that is the subject of the application opposed in this proceeding. Determination of the Civil Action will implicate issues of priority and likelihood of confusion as to the designation TOPMAXX RACING (Stylized) which form the basis for the instant proceeding.

3. Additionally, however, the Civil Action seeks relief for use of the TOPMAXX RACING designation unavailable to Traxxas in this proceeding.

4. In sum, the issues for determination in this proceeding are squarely before the district court in the Civil Action. The district court's determination of such issues will be binding upon the Board. The Civil Action is required to protect related interests of Traxxas beyond the scope of this proceeding.

In view of the foregoing, Traxxas respectfully requests that the Board exercise its discretion to suspend the instant proceeding pending final determination of the Civil Action.

Dated: April 12, 2016

Respectfully submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
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Suite 111
Frisco, Texas 75033
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Email: gcarr@carrlp.com

CERTIFICATE OF SERVICE

This is to certify that on April 12, 2016 a true and correct copy of this OPPOSER'S MOTION TO SUSPEND PENDING DISPOSITION OF CIVIL ACTION was submitted electronically via ESTTA to the Trademark Trial and Appeal Board and is being served as agreed upon via designated email to P. Jay Hines, of Muncy, Geissler, Olds and Lowe, P.C., 4500 Legato Road, Suite 310, Fairfax, VA 22033, sent to the addresses noted below:

mailroom@mg-ip.com; and
jh@mg-ip.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

TRAXXAS, L.P.,

Plaintiff,

v.

**KIDZTECH TOYS
MANUFACTURING LTD.,**

Defendant.

§
§
§
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§

Civil Action No. 6:16-cv-317

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, DILUTION, AND UNJUST ENRICHMENT**

COMES NOW Plaintiff Traxxas, L.P. and files this Original Complaint for Trademark Infringement, Unfair Competition, Dilution, and Unjust Enrichment against Defendant Kidztech Toys Manufacturing Ltd., alleging as follows:

I. NATURE OF THE SUIT

1. This is a claim for infringement of a federally registered trademark, unfair competition, and dilution arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and related claims for trademark dilution under Texas Business and Commerce Code § 16.103 and trademark infringement, unfair competition, and unjust enrichment under Texas common law.

II. THE PARTIES

2. Plaintiff **Traxxas, L.P.** (“Traxxas”) is a Texas limited partnership that maintains its principal place of business in McKinney, Texas.

3. Defendant **Kidztech Toys Manufacturing Ltd. (“Kidztech”)** is a limited liability company incorporated in Hong Kong that does business in Texas, directly or through intermediaries, and maintains its principal place of business in Hong Kong.

III. JURISDICTION AND VENUE

4. Pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a), this Court has subject matter jurisdiction over the federal trademark infringement, unfair competition, and dilution claims because those claims arise under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

5. Pursuant to 28 U.S.C. § 1367(a), this Court has subject matter jurisdiction over the state trademark infringement, unfair competition, trademark dilution, and unjust enrichment claims because those claims arise from the same nucleus of operative facts as the federal trademark infringement, unfair competition, and dilution claims.

6. This Court has specific personal jurisdiction over Kidztech pursuant to due process and the Texas Long Arm Statute because Kidztech, directly or through intermediaries, has conducted and does conduct substantial business in this forum, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(d) for the reasons set forth above. Furthermore, venue is proper because Kidztech, directly or through intermediaries,

sells and offers to sell infringing products to persons in this District, as discussed below. Each of Kidztech's infringing acts in this District gives rise to proper venue.

IV. BACKGROUND

A. Traxxas and Its Trademarks

8. Traxxas was started in 1986 and has grown to become the number-1 selling name in Ready-To-Run nitro and electric model vehicles for the last 30 years running.

9. Since at least September 12, 1986, Traxxas has continuously used the standard characters "TRAXXAS" (the "TRAXXAS Mark") in interstate commerce to identify, advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

10. On February 6, 2007, the United States Patent and Trademark Office duly and legally issued to Traxxas United States Trademark Registration No. 3,205,399, which comprises the standard characters "TRAXXAS" as applied to radio-controlled model vehicles and parts therefor in International Class 028.

11. Traxxas' right to use its TRAXXAS Mark has become incontestable.

12. In 1999, Traxxas launched the T-Maxx, the first nitro radio-controlled model vehicle with a true forward/reverse transmission.

13. Since at least November 28, 1999, Traxxas has continuously used the standard characters "T-MAXX" (the "T-MAXX Mark") in interstate commerce to identify, advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

14. On November 7, 2006, the United States Patent and Trademark Office duly and legally issued to Traxxas United States Trademark Registration No. 3,169,710 (the "T-MAXX Registration"), which comprises the standard characters "T-MAXX" as applied to radio-

controlled model vehicles and parts therefor in International Class 028. A true and correct copy of the T-MAXX Registration is attached hereto as Exhibit A.

15. Traxxas' right to use its T-MAXX Mark has become incontestable.

16. Since at least December 1999, Traxxas has continuously used the standard characters "MAXX" (the "MAXX Mark") in interstate commerce to identify, advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

17. On January 2, 2007, the United States Patent and Trademark Office duly and legally issued to Traxxas United States Trademark Registration No. 3,191,106 (the "MAXX Registration"), which comprises the standard characters "MAXX" as applied to radio-controlled model vehicles and parts therefor in International Class 028. A true and correct copy of the MAXX Registration is attached hereto as Exhibit B.

18. Traxxas' right to use its MAXX Mark has become incontestable.

19. Since at least December 4, 2000, Traxxas has continuously used the standard characters "E-MAXX" (the "E-MAXX Mark") in interstate commerce to identify, advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

20. On May 12, 2009, the United States Patent and Trademark Office duly and legally issued to Traxxas United States Trademark Registration No. 3,619,270 (the "E-MAXX Registration"), which comprises the standard characters "E-MAXX" as applied to radio-controlled model vehicles and parts therefor in International Class 028. A true and correct copy of the E-MAXX Registration is attached hereto as Exhibit C.

21. Traxxas' right to use its E-MAXX Mark has become incontestable.

22. Since at least July 17, 2009, Traxxas has continuously used the standard characters "MINI MAXX" (the "MINI MAXX Mark") in interstate commerce to identify,

advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

23. On October 13, 2009, the United States Patent and Trademark Office duly and legally issued to Traxxas United States Trademark Registration No. 3,697,101 (the “MINI MAXX Registration”), which comprises the standard characters “MINI MAXX” as applied to radio-controlled model vehicles and parts therefor in International Class 028. A true and correct copy of the MINI MAXX Registration is attached hereto as Exhibit D.

24. Traxxas’ right to use its MINI MAXX Mark has become incontestable.

25. Since at least October 30, 2015, Traxxas has continuously used the standard characters “X-MAXX” (the “X-MAXX Mark”) in interstate commerce to identify, advertise, and promote its radio-controlled model vehicles and parts therefor to the consuming public.

26. On August 21, 2015, Traxxas filed with the United States Patent and Trademark Office Trademark Application No. 86/733,525 for the standard characters “X-MAXX” as applied to radio-controlled model vehicles and parts therefor in International Class 028.

27. The TRAXXAS Mark, on one hand, and the T-MAXX Mark, the MAXX Mark, the E-MAXX Mark, the MINI MAXX Mark, and the X-MAXX Mark (collectively, the “Traxxas MAXX Marks”), on the other hand, each contain the standard characters “XX.”

28. As a result of Traxxas’ long use and promotion of the Traxxas MAXX Marks, the Traxxas MAXX Marks have become distinctive to designate Traxxas, to distinguish Traxxas and its products from those of others, and to distinguish the source or origin of Traxxas’ products. As a result of these efforts by Traxxas, the consuming public in Texas and throughout the United States widely recognizes and associates the Traxxas MAXX Marks with Traxxas.

29. As a result of Traxxas' long use and promotion of the Traxxas MAXX Marks in Texas and elsewhere, Traxxas has acquired valuable common law rights in the Traxxas MAXX Marks.

30. The Traxxas MAXX Marks are famous pursuant to 15 U.S.C. § 1125(c) and Texas Business and Commerce Code § 16.103.

B. Kidztech's Infringing Activities

31. Kidztech, directly or through intermediaries, sells, offers for sale, distributes, and advertises radio-controlled model vehicles under the names "TOPMAXX," "TOPMAXX RACING," and "GEARMAXX" (the "Infringing Marks"). Examples of Kidztech's use of the Infringing Marks are attached hereto as Exhibits E and F.

32. Kidztech is using the Infringing Marks in commerce.

33. Kidztech, directly or through intermediaries, purposefully and voluntarily places products bearing the Infringing Marks into the stream of commerce with the expectation that they will be purchased by consumers in this District.

34. Kidztech's products bearing the Infringing Marks are sold and offered for sale in this District.

35. Kidztech is not affiliated with or sponsored by Traxxas and has not been authorized by Traxxas to use the Traxxas MAXX Marks or any confusingly similar marks.

36. On February 18, 2015, Kidztech filed with the United States Patent and Trademark Office Application Serial No. 86/537,763 (the "TOPMAXX RACING Application") for the following stylized word mark as applied to "Toys, namely, construction toys, electric action toys, electronic learning toys; radio controlled toy vehicles; scale model vehicles; toy vehicles; remote control toys, namely, cars, race cars, airplanes[]; games, namely, card games,

board games, chess games; mechanical, electronic and electromechanical toys, namely, mechanical action toys; electronic hand-held toys and games, namely, hand-held electronic games adapted for use with television receivers only; outdoor toys, namely, outdoor activity game equipment sold as a unit comprising sports balls for playing games” in International Class 028:



37. On October 27, 2015, Traxxas filed in the United States Patent and Trademark Office a Notice of Opposition to the TOPMAXX RACING Application on the grounds of priority and likelihood of confusion, citing the T-MAXX Registration, the MAXX Registration, the E-MAXX Registration, and the MINI MAXX Registration. A true and correct copy of Traxxas’ Notice of Opposition is attached hereto as Exhibit G.

38. On December 18, 2015, Traxxas filed in the United States Patent and Trademark Office its First Amended Grounds for Opposition. A true and correct copy of Traxxas’ First Amended Grounds for Opposition is attached hereto as Exhibit H.

39. At least through filing its Notice of Opposition to the TOPMAXX RACING Application, Traxxas has notified Kidztech of Traxxas’ rights in the Traxxas MAXX Marks.

40. Traxxas has made numerous attempts to resolve this dispute with Kidztech prior to filing this lawsuit.

C. Effect of Kidztech’s Infringing Activities

41. Kidztech’s unauthorized use of the Infringing Marks is likely to cause confusion, to cause mistake, or to deceive customers and potential customers of the parties, at least as to

some affiliation, connection, or association of Kidztech with Traxxas, or as to the origin, sponsorship, or approval of Kidztech's products by Traxxas.

42. Kidztech's unauthorized use of the Infringing Marks falsely designates the origin of its products and falsely and misleadingly describes and represents facts with respect to Kidztech and its products.

43. Kidztech's unauthorized use of the Infringing Marks enables Kidztech to trade on and receive the benefit of goodwill built up at great labor and expense by Traxxas over many years, and to gain acceptance for its products not solely on their own merits, but on the reputation and goodwill of Traxxas, its Traxxas MAXX Marks, and its products.

44. Kidztech's unauthorized use of the Infringing Marks is likely to cause dilution of the famous Traxxas MAXX Marks.

45. Kidztech's unauthorized use of the Infringing Marks unjustly enriches Kidztech at Traxxas's expense. Kidztech has been and continues to be unjustly enriched, obtaining a benefit from Traxxas by taking undue advantage of Traxxas and its goodwill.

46. Specifically, Kidztech has taken unfair advantage of Traxxas by trading on and profiting from the goodwill in the Traxxas MAXX Marks developed and owned by Traxxas, resulting in Kidztech wrongfully obtaining a monetary and reputational benefit for its own business and products.

47. Kidztech's unauthorized use of the Infringing Marks removes from Traxxas the ability to control the nature and quality of products provided under the Traxxas MAXX Marks and places the valuable reputation and goodwill of Traxxas in the hands of Kidztech, over whom Traxxas has no control.

48. Unless these acts of Kidztech are restrained by this Court, these acts will continue and will continue to cause irreparable injury to Traxxas and to the public for which there is no adequate remedy at law.

V. CLAIMS

A. Federal Trademark Infringement

49. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

50. Kidztech's acts complained of herein constitute infringement of Traxxas's federally registered Traxxas MAXX Marks in willful violation of 15 U.S.C. § 1114(1).

B. Federal Unfair Competition

51. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

52. Kidztech's acts complained of herein constitute unfair competition in violation of 15 U.S.C. § 1125(a).

C. Federal Trademark Dilution

53. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

54. Kidztech's acts complained of herein constitute dilution of Traxxas's famous Traxxas MAXX Marks in willful violation of 15 U.S.C. § 1125(c).

D. Texas Trademark Infringement

55. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

56. Kidztech's acts complained of herein constitute trademark infringement in violation of Texas state common law.

E. Texas Unfair Competition

57. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

58. Kidztech's acts complained of herein constitute unfair competition in violation of Texas state common law.

F. Texas Trademark Dilution

59. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

60. Kidztech's acts complained of herein constitute dilution of Traxxas's famous Traxxas MAXX Marks in willful violation of Texas Business and Commerce Code § 16.103.

G. Texas Unjust Enrichment

61. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

62. Kidztech's acts complained of herein constitute unjust enrichment of Kidztech at Traxxas's expense in violation of Texas state common law.

VI. DAMAGES

63. Traxxas repeats and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

64. Kidztech's acts complained of herein have damaged Traxxas in an amount to be proven at trial, but no less than Kidztech's profits under 15 U.S.C. § 1117(a).

65. Kidztech's acts complained of herein have been deliberate, willful, intentional, or in bad faith, with full knowledge and conscious disregard of Traxxas's rights in the Traxxas MAXX Marks, and with intent to cause confusion, to trade on Traxxas's goodwill in the Traxxas MAXX Marks and on the recognition of Traxxas's famous Traxxas MAXX Marks, and/or to harm the reputation of the Traxxas MAXX Marks. In view of the egregious nature of Kidztech's acts, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

VII. PRAYER FOR RELIEF

Traxxas respectfully requests the following relief:

- a. A judgment in favor of Traxxas that Kidztech has infringed the Traxxas MAXX Marks under federal and Texas state common law, as described herein;
- b. A judgment in favor of Traxxas that Kidztech has unfairly competed with Traxxas under federal and Texas state common law, as described herein;
- c. A judgment in favor of Traxxas that Kidztech has diluted Traxxas's famous Traxxas MAXX Marks under federal and Texas state common law, as described herein;
- d. A judgment in favor of Traxxas that Kidztech has been unjustly enriched at Traxxas' expense under Texas state common law, as described herein;
- e. A permanent injunction:
 - (1) enjoining Kidztech, its officers, directors, agents, subsidiaries, employees, successors, and assigns, and all persons acting in privity, concert, or participation with it, from using the Traxxas MAXX Marks and any other mark or design that is confusingly similar to or likely to cause dilution of the Traxxas MAXX Marks (including but not limited to the Infringing

Marks), and from any attempt to retain any part of the goodwill misappropriated from Traxxas;

- (2) requiring Kidztech, its officers, directors, agents, subsidiaries, employees, successors, and assigns, and all persons acting in privity, concert, or participation with it, to deliver up and destroy all products bearing the Infringing Marks, as well as all signage, advertisements, commercials, Internet postings and advertisements, and any other material bearing or using the Infringing Marks or any other mark or design that is confusingly similar to or likely to cause dilution of the Traxxas MAXX Marks; and
- (3) requiring Kidztech to file with this Court and to serve upon Traxxas, within thirty days after the entry and service on Kidztech of the injunction, a report in writing and under oath setting forth in detail the manner and form in which Kidztech has complied with the injunction;

f. A judgment and order directing an accounting to determine Kidztech's profits resulting from the activities complained of herein, including Kidztech's profits for any continuing post-verdict or post-judgment activities, and that such profits be paid over to Traxxas, increased as the Court finds to be just under the circumstances of this case;

g. A judgment and order requiring Kidztech to pay Traxxas its damages sustained as a result of Kidztech's activities described herein, including supplemental damages for any continuing post-verdict or post-judgment activities with an accounting as needed, and that such damages be trebled;

h. A judgment and order requiring Kidztech to pay Traxxas its costs, expenses, and pre-judgment and post-judgment interest;

- i. A judgment and order requiring Kidztech to pay Traxxas its reasonable attorneys' fees; and
- j. Such other and further relief as the Court deems just and proper.

VIII. JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Traxxas requests a jury trial of all issues triable of right by a jury.

Dated: April 8, 2016

Respectfully Submitted,

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
bdavis@bdavisfirm.com
Debra Coleman (Of Counsel)
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Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661

Counsel for Plaintiff Traxxas, L.P.

Exhibit A

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38, and 50

Reg. No. 3,169,710

United States Patent and Trademark Office

Registered Nov. 7, 2006

**TRADEMARK
PRINCIPAL REGISTER**

T-MAXX

TRAXXAS LP (TEXAS LIMITED PARTNERSHIP)
1100 KLEIN ROAD
PLANO, TX 75074

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: RADIO-CONTROLLED MODEL VEHICLES
AND PARTS THEREFOR, IN CLASS 28 (U.S. CLS. 22,
23, 38 AND 50).

SN 78-533,121, FILED 12-15-2004.

FIRST USE 11-28-1999; IN COMMERCE 12-23-1999.

JASON ROTH, EXAMINING ATTORNEY

Exhibit B

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

Reg. No. 3,191,106

United States Patent and Trademark Office

Registered Jan. 2, 2007

**TRADEMARK
PRINCIPAL REGISTER**

MAXX

TRAXXAS LP (TEXAS LIMITED PARTNERSHIP)
1100 KLEIN ROAD
PLANO, TX 75074

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: RADIO-CONTROLLED MODEL VEHICLES
AND PARTS THEREFOR, IN CLASS 28 (U.S. CLS. 22,
23, 38 AND 50).

SER. NO. 78-533,111, FILED 12-15-2004.

FIRST USE 12-0-1999; IN COMMERCE 12-0-1999.

LOURDES AYALA, EXAMINING ATTORNEY

Exhibit C

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

Reg. No. 3,619,270

United States Patent and Trademark Office

Registered May 12, 2009

**TRADEMARK
PRINCIPAL REGISTER**

E-MAXX

TRAXXAS MANAGEMENT, LLC (TEXAS LIMITED LIABILITY COMPANY)
1100 KLEIN ROAD
PLANO, TX 75074

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: RADIO-CONTROLLED MODEL VEHICLES AND PARTS THEREFOR, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

SER. NO. 77-587,094, FILED 10-7-2008.

FIRST USE 12-4-2000; IN COMMERCE 12-4-2000.

JILL PRATER, EXAMINING ATTORNEY

Exhibit D

United States of America

United States Patent and Trademark Office

MINI MAXX

Reg. No. 3,697,101 TRAXXAS LP (TEXAS LIMITED PARTNERSHIP)
Registered Oct. 13, 2009 1100 KLEIN ROAD
PLANO, TX 75074

Int. Cl.: 28 FOR: RADIO CONTROLLED SCALE MODEL VEHICLES EQUIPPED WITH AN ELECTRIC MOTOR OR AN INTERNAL COMBUSTION ENGINE, AND A WIRELESS CONTROL SIGNAL RECEIVER MOUNTED ON THE VEHICLE ENABLING REMOTE CONTROL OF VEHICLE SPEED AND STEERING, AND PARTS THEREFOR, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

TRADEMARK
PRINCIPAL REGISTER

FIRST USE 7-17-2009; IN COMMERCE 7-17-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MINI", APART FROM THE MARK AS SHOWN.

SN 78-274,583, FILED 7-15-2003.

KATHLEEN M. VANSTON, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

Exhibit E

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Exhibit F



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Exhibit G

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA704722**Filing date: **10/27/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Traxxas LP
Granted to Date of previous extension	11/14/2015
Address	6250 Traxxas Way McKinney, TX 75070 UNITED STATES
Attorney information	GREGORY W CARR CARR LAW FIRM PLLC 6170 RESEARCH ROAD SUITE 111 FRISCO, TX 75033 UNITED STATES gcarr@carrip.com, trademarks@carrip.com Phone:214.760.3000

Applicant Information

Application No	86537763	Publication date	09/15/2015
Opposition Filing Date	10/27/2015	Opposition Period Ends	11/14/2015
Applicant	KIDZTECH TOYS MANUFACTURING LIMITED ROOM 1201, 12/F, INTER-CONTINENTAL PLAZA KOWLOON, HONG KONG		

Goods/Services Affected by Opposition

Class 028. First Use: 2013/10/00 First Use In Commerce: 2013/10/00

All goods and services in the class are opposed, namely: Toys, namely, construction toys, electric action toys, electronic learning toys; radio controlled toy vehicles; scale model vehicles; toy vehicles; remote control toys, namely, cars, race cars, airplanes,; games, namely, card games, board games, chess games; mechanical, electronic and electromechanical toys, namely, mechanical action toys; electronic hand-held toys and games, namely, hand-held electronic games adapted for use with television receivers only; outdoor toys, namely, outdoor activity game equipment sold as a unit comprising sports balls for playing games

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3169710	Application Date	12/15/2004
Registration Date	11/07/2006	Foreign Priority	NONE

		Date	
Word Mark	T-MAXX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/11/28 First Use In Commerce: 1999/12/23 Radio-controlled model vehicles and parts therefor		
U.S. Registration No.	3191106	Application Date	12/15/2004
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	MAXX		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Radio-controlled model vehicles and parts therefor		

U.S. Registration No.	3619270	Application Date	10/07/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE

Word Mark	E-MAXX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2000/12/04 First Use In Commerce: 2000/12/04 radio-controlled model vehicles and parts therefor		

U.S. Registration No.	3697101	Application Date	07/15/2003
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	MINI MAXX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2009/07/17 First Use In Commerce: 2009/07/17 radio controlled scale model vehicles equipped with an electric motor or an internal combustion engine, and a wireless control signal receiver mounted on the vehicle enabling remote control of vehicle speed and steering, and parts therefor

Attachments	TRAX 3105018 Grounds For Opposition.pdf(51660 bytes) 78533121#TMSN.png(bytes) 78533111#TMSN.png(bytes) 77587094#TMSN.png(bytes) 78274583#TMSN.png(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gregory W. Carr/
Name	GREGORY W CARR
Date	10/27/2015

As grounds for this Opposition, Opposer alleges:

1. Traxxas LP, (“Opposer”) has since at least November 28, 1999, used and continues to use the mark “T-MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark T-MAXX on November 7, 2006 (Reg. No. 3169710) for the same goods after making an application for registration on December 15, 2004. Opposer’s right to use its T-MAXX mark has become incontestable.

2. Opposer has since at least December of 1999 used and continues to use the mark “MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark MAXX on January 2, 2007 (Reg. No. 3191106) for the same goods after making an application for registration on December 15, 2004. Opposer’s right to use its MAXX mark has become incontestable.

3. Opposer has since at least December 4, 2000, used and continues to use the mark “E-MAXX” to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Opposer registered its mark E-MAXX on May 12, 2009 (Reg. No. 3619270) for the Goods after making an application for registration on October 7, 2008. Opposer’s right to use its E-MAXX mark has become incontestable.

4. Opposer has since at least July 17, 2009, used and continues to use the mark “MINI MAXX” to identify, advertise, and promote its parts for radio controlled scale model vehicles. Opposer registered its mark MINI MAXX on October 13, 2009 (Reg. No. 3697101) for the same goods after making an application for registration on July 15, 2003. Opposer’s right to use its MINI MAXX mark has become incontestable.

5. It has come to the attention of Opposer that the entity Kidztech Toys Manufacturing Limited (“Applicant”) has applied for registration of the stylized words

“TOPMAXX Racing” (the “TOPMAXX RACING mark”), in the United States Patent and Trademark Office, as shown in U.S. Application Ser. No. 86/537,763 (the “Application”), having a filing date of February 18, 2015 and indicating an earliest use date of October 2013. As example of this mark is shown below:



The Application for the TOPMAXX RACING mark seeks registration in Class 28 for: *Toys, namely, construction toys, electric action toys, electronic learning toys; radio controlled toy vehicles; scale model vehicles; toy vehicles; remote control toys, namely, cars, race cars, airplanes,; games, namely, card games, board games, chess games; mechanical, electronic and electromechanical toys, namely, mechanical action toys; electronic hand-held toys and games, namely, hand-held electronic games adapted for use with television receivers only; outdoor toys, namely, outdoor activity game equipment sold as a unit comprising sports balls for playing games* (the “Applicant’s Goods”).

6. Applicant seeks to register the TOPMAXX RACING mark for Applicant’s Goods in International Class 028 as evidenced by the publication of the Application in the Official Gazette on September 15, 2015.

7. The TOPMAXX RACING mark is confusingly similar to Opposer’s T-MAXX, MAXX, E-MAXX, and MINI MAXX marks when the marks are viewed as a whole. The TOPMAXX RACING mark and Opposer’s T-MAXX, MAXX, E-MAXX, and MINI MAXX marks all include the term “MAXX.”

8. By virtue of Opposer's prior and senior rights arising from use of the T-MAXX, MAXX, E-MAXX, and MINI MAXX marks, the Applicant is barred from obtaining a registration of the TOPMAXX RACING mark, because the use and attempt to register by Applicant of the TOPMAXX RACING mark for the Applicant's Goods, without authorization by Opposer, creates a likelihood of confusion, under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), that there exists a common source, affiliation, and sponsorship with the goods provided by Opposer in connection with its marks T-MAXX, MAXX, E-MAXX, and MINI MAXX.

9. If Applicant is permitted to obtain the registration sought, and thereby obtain the *prima facie* exclusive right to use the TOPMAXX RACING mark in commerce for the Applicant's Goods, Opposer believes it will be harmed in that a cloud will be placed on Opposer's title in and to its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks and its right to enjoy the free and exclusive use thereof, and Opposer will be unfairly restricted in its rights to its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks. Additionally, if Applicant is permitted to obtain the registration, Opposer believes it will be harmed by the appearance of and, indeed, actual dilution or diminution of its right to oppose other applications to federally register marks confusingly similar to Opposer's TOPMAXX RACING mark and to seek relief from infringement of its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks. Further, the use of the TOPMAXX RACING mark, unauthorized by Opposer, misappropriates the goodwill of Opposer and unfairly gives the goods of Applicant a ready acceptance in the marketplace that is undeserved.