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Filing date: **12/18/2017**

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

Proceeding	91237628
Party	Defendant Cloanto Corporation
Correspondence Address	GORDON E. R. TROY, ESQ. GORDON E. R. TROY, PC PO BOX 1180 SHELBURNE, VT 05482 Email: uspto@webtm.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Gordon E. R. Troy
Filer's email	uspto@webtm.com
Signature	/Gordon E. R. Troy/
Date	12/18/2017
Attachments	Motion To Suspend Pending Disposition of Civil Action.pdf(273613 bytes)

United States Patent and Trademark Office
Trademark Trial and Appeal Board

Our Ref: Cloanto v. Hyperion

In re Trademark Application
Trademark: AMIGA
Serial No. 87287078
Published: May 9, 2017
Opposition Filing Date: November 5, 2017

Hyperion Entertainment C.V.B.A., Opposer, - against - Cloanto Corporation, Applicant.	**Opposition No.** 91237628

APPLICANT'S MOTION TO SUSPEND PENDING DISPOSITION OF CIVIL ACTION

Pursuant to Rule 37 C.F.R. § 2.117(a) and TBMP § 510.02, Applicant Cloanto Corporation ("Cloanto") moves that the instant opposition proceeding be suspended pending the final determination of a pending civil action against Opposer Hyperion Entertainment C.V.B.A., which action will have a direct bearing on this proceeding.

In support of this motion, Cloanto states the following:

1. On December 14, 2017, Cloanto commenced a civil action, captioned "Cloanto Corporation v. Hyperion Entertainment C.V.B.A.," in the United States District Court for the Northern District of New York (Civ. No. 5:17-cv-1353-LEK-ATB) (the "Civil Action"). A copy of the Complaint from the Civil Action is attached as Exhibit 1.

2. The Complaint alleges, among other things, issues in common with those in the instant proceeding. In the Civil Action, Cloanto seeks, among other relief, a determination of the Court that:

(a) Cloanto is the rightful owner of the AMIGA mark; and (b) Opposer is not the rightful owner of, and has no right to register, either of the marks covered by the applications cited in this Opposition, i.e., Application Serial No. 87329448 for AMIGAONE, and Application Serial No. 87329431 for AMIGAOS. Cloanto also has asked the U.S. District Court, Northern District of New York, to certify an order to the TTAB, directing that this Opposition be denied.

3. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action that may be dispositive of or have bearing on the Board case. *Trademark Rule 2.117(a).* Since the issues for determination in this proceeding are squarely before the United States District Court for the Northern District of New York in the Civil Action, and the District Court's determination of such issues will be binding upon the Board, Cloanto respectfully requests that the TTAB exercise its discretion to suspend the instant proceeding pending final determination of the Civil Action.

4. Furthermore, suspending this proceeding pending the final determination of the Civil Action will serve the interests of judicial economy.

Dated: December 18, 2017

Respectfully submitted:
GORDON E. R. TROY, PC
/s/ Gordon E. R. Troy, Esq.
By:_____

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United States Patent and Trademark Office
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of December, 2017, the foregoing **Applicant's Motion To Suspend Pending Disposition Of Civil Action** was served on Opposer, via FedEx, 2 Day Delivery on December 18, 2017, prepaid:

Rex A. Donnelly
RatnerPrestia
1007 Orange Street, Suite 205
Wilmington, DE 19801

And via email to: **tmde@ratnerprestia.com radonnelly@ratnerprestia.com**

/s/ Gordon E. R. Troy, Esq.

Gordon E. R. Troy, *Attorney for Applicant*

United States Patent and Trademark Office
Trademark Trial and Appeal Board

Our Ref: Cloanto v. Hyperion

In re Trademark Application
Trademark: AMIGA
Serial No. 87287078
Published: May 9, 2017
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Hyperion Entertainment C.V.B.A.,

Opposer,

- against -

Cloanto Corporation,

Applicant.

Opposition No. 91237628

EXHIBIT A

COMPLAINT FOR TRADEMARK AND COPYRIGHT INFRINGEMENT, AND DECLARATORY RELIEF

United States District Court for the Northern District of New York
Civ. No. 5:17-cv-1353-LEK-ATB

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLOANTO CORPORATION

Plaintiff,

- against -

HYPERION ENTERTAINMENT C.V.B.A.,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK INFRINGEMENT

DEMAND FOR JURY TRIAL

Civil Action No.: 5:17-cv-1353 (LEK/ATB)

COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK INFRINGEMENT

Plaintiff Cloanto Corporation ("Cloanto"), by its attorneys, Gordon E. R. Troy, PC, as and for its Complaint, alleges:

STATEMENT OF THE CASE

1. This is an action for copyright infringement, trademark infringement, unfair competition, and declaratory and injunctive relief under the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq*., the Lanham Act, 15 U.S.C. § 1119 and § 1125(a), based on Defendant's unlawful appropriation, exploitation, and commercial distribution and use of

Plaintiff's AMIGA Kickstart ROM, Version 1.3 computer code (hereinafter "Kickstart 1.3"), and Defendant's unlawful appropriation and use of the AMIGA trademark.

2. Plaintiff further seeks an order from this Court (a) pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), declaring that Defendant is not the rightful owner of, and has no right to register, the marks AMIGAONE, AMIGAOS and the so-called "Boing Ball" design mark, which are the subject of pending applications in the United States Patent and Trademark Office ("USPTO"), Application Nos. 87329448, 87329431, and 87329469, respectively, and (b) directing the USPTO, Trademark Trial and Appeal Board ("TTAB"), to deny Defendant's Notice of Opposition No. 91237628, filed on November 6, 2017, opposing registration by Plaintiff of the AMIGA trademark.

THE PLAINTIFF

3. Plaintiff Cloanto Corporation is a corporation organized and existing under the laws of the State of Nevada, with an address at 5940 S. Rainbow Blvd., Suite 400 #67834, Las Vegas, NV 891187-2507.

4. Since 1997, Plaintiff is the world leader in software that allows modern hardware and operating systems to emulate legacy AMIGA hardware and to run AMIGA operating systems ("Amiga OS's") prior to Amiga OS 4, as well as AMIGA applications and games.

5. Since 1999, Plaintiff has operated the website, www.amigaforever.com, selling its own emulation software, cross-platform networking software, and native AMIGA software.

THE DEFENDANT

6. Upon information and belief, defendant Hyperion Entertainment C.V.B.A. is a limited liability cooperative company organized and existing under the laws of Belgium, with an

address at Avenue de Tervueren 34, Brussels 1040, Belgium.

JURISDICTION AND VENUE

7. Subject matter jurisdiction over the copyright and trademark claims is conferred upon the Court pursuant to the United States Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the "Copyright Act"), the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338, 1367 and 2201 (the Federal Declaratory Judgment Act).

8. Venue is proper pursuant to 28 U.S.C. §§ 1391 because a substantial part of the events or omissions giving rise to the claims in this Complaint occurred in this district. In addition, Defendant willfully infringed on Plaintiff's copyright and trademark in this district, causing harm that the Defendant knew was likely to be suffered in this district.

FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS

9. Pursuant to copyright assignments in 2011 and 2012, Plaintiff acquired ownership of the copyright in and to Kickstart 1.3, an AMIGA program whose copyright was registered on September 6, 1991, TX0003282574.

10. Kickstart 1.3 may be used to run a majority of AMIGA games created and sold prior to 1994, and some of them cannot run without it.

11. In or around 1997, Plaintiff's predecessor-in-interest entered into an agreement with a predecessor of Amiga, Inc., called Amiga International,[1] whereby Plaintiff was granted the worldwide, perpetual right and license: (a) to copy, distribute, market and sell the object code of all then-existing Amiga OS's, including OS 0.7 through OS 3.1 (and including subsequent

[1] The Amiga assets were transferred in or around late 1999 to Amiga, Inc., a Washington corporation, and in or around 2003 or 2004, Amiga, Inc., a Delaware corporation.

updates),[2] in connection with Plaintiff's emulation software and all "classic" AMIGA applications and games; and (b) to use the AMIGA name and trademark, and the Boing Ball Mark, in connection with all of the foregoing. The Agreement required payment by Cloanto of approximately 20,000 Deutschmarks (the "Contract Payment"), payable in quarterly sums related to Cloanto's sales until satisfied.

12. By 1999, when the Amiga assets were transferred to Amiga, Inc. (Washington), Cloanto had paid nearly all of the Contract Payment. At that point, Cloanto and Amiga's principal, Bill McEwan, negotiated and entered into an agreement whereby Cloanto granted to Amiga the right to include Cloanto's Personal Paint software in Amiga's upcoming OS 4 in satisfaction of the remainder of the Contract Payment.

13. Plaintiff has used the AMIGA trademark and Boing Ball Mark continuously in commerce in the United States since 1997.

14. Plaintiff has used the AMIGA trademark substantially exclusively in commerce in the United States since 2012. As the result of such substantially exclusive use, Plaintiff is deemed to be the owner of the AMIGA trademark.

15. On or about September 30, 2009, Amiga, Inc., the former owner of the AMIGA trademark (i.e., the now-cancelled U.S. Reg. Nos., 2802748 and 1401045), together with other parties-in-interest, entered into a Settlement Agreement (the "Settlement Agreement") with Defendant, whereby Defendant was granted the following rights under Section 1, without prejudice to any "Existing License Agreements:"

(a) the right of sole ownership in Amiga OS 4, except to the extent that its source code incorporated that of Amiga OS 3.1;

[2] Amiga OS 4, which was based on Amiga OS 3.1, was developed by Defendant's predecessor in the mid-2000s under contract with Amiga, Inc.'s predecessor.

(b) an exclusive (but subject to the rights granted to Plaintiff), perpetual, worldwide and royalty-free, transferable right and license to Amiga OS 3.1 for certain purposes; and

(c) solely for purposes of marketing and distributing Amiga OS 4 and any hardware required or desired to operate it, (i) an exclusive, perpetual, worldwide and royalty-free, transferable right and license to use the marks AMIGAOS, AMIGA OS, AMIGAONE, AND AMIGA ONE (the "Exclusive Licensed Marks"), and (ii) a non-exclusive, perpetual, worldwide and royalty free right and license to use the Boing Ball Mark. (The Exclusive Licensed Marks and Boing Ball Mark are collectively referred to herein as the "Hyperion Licensed Marks").

16. The Settlement Agreement did not grant to Defendant any right in any AMIGA software created or distributed prior to 1994.

17. The Settlement Agreement did not grant to Defendant any right, exclusive or non-exclusive, to use the mark AMIGA.

18. The Settlement Agreement granted to Defendant the right to use the Hyperion Licensed Marks only in connection with Amiga OS 4, and not with Amiga OS 3.1 or any prior Amiga OS.

19. Upon information and belief, the reason why Defendant was not granted any right to use the Hyperion Licensed Marks – or any other AMIGA trademark – in connection with Amiga OS 3.1 was to limit use of Amiga OS 3.1 to developing and improving Amiga OS 4. In other words, the limited grant of trademark rights in the Settlement Agreement prevents Defendant from lawfully selling or distributing Amiga OS 3.1 (or any prior OS), or developing and commercializing emulation software for running Amiga OS 3.1 (or any prior OS).

20. However, in a bad faith attempt to circumvent the contractual limitations on the grant of rights in the Settlement Agreement, Defendant recently began selling Amiga OS 3.1 under the misleading name, "New Hyperion 3.1 Kickstart ROM."

21. Plaintiff's affiliated company, Cloanto Italia srl, was not a party to the Settlement Agreement.

22. Although neither Plaintiff nor its predecessor was a signatory to the Settlement Agreement, and Plaintiff is therefore not bound by it, section 2 of that agreement purports to prevent any licensee of Amiga, Inc. (including, purportedly, Plaintiff), from challenging in any action "Hyperion's use, marketing, licensing or sublicensing of the AMIGA OS 3.1 or AmigaOS 4 operating system, or "Hyperion's use" of the Hyperion Licensed Marks, "unless the challenged activity constitutes a material breach of this Agreement."

23. Section 2 of the Settlement Agreement also prevents Defendant from "challenging ... (iii) the use and/or ownership of any "Amiga" trademark (other than [the Hyperion Licensed Marks]) by … any licensee ... unless the challenged activity constitutes a material breach of this Agreement by ... a licensee of the licenses granted to Hyperion pursuant to this Agreement."

24. Upon information and belief, section 2 of the Settlement Agreement did not intend to expand the grant of rights to Defendant by allowing Defendant to market, license or sublicense Amiga OS 3.1. Rather, read in conjunction with the limited grant of trademark rights in section 1(c) of the Settlement Agreement, section 2 must refer to Defendant's use of Amiga OS 3.1, and its use, marketing, licensing or sublicensing of Amiga OS 4.

Defendant' Copyright Infringement of Kickstart 1.3.

25. In or around 2016, Defendant began distributing, marketing and selling, and continues to distribute, market and sell, in this district and elsewhere, CD-ROMs with various

editions of Amiga OS 4.1, each of which includes Plaintiff's Kickstart 1.3 (the "Infringing CD-ROMs").

26. Upon information and belief, Amiga On The Lake, LLC, the business through which Defendant sells the Infringing CD-ROMs in the United States, is located in this district and maintains an address at 296 E. 2nd Street, Oswego, New York 13126.

27. Defendant never acquired any right to copy, distribute or sell Kickstart 1.3.

28. Plaintiff never authorized Defendant to copy, distribute or sell Kickstart 1.3.

29. Defendant willfully and intentionally infringed Plaintiff's copyrights by making copies of, and distributing and selling the Infringing CD-ROMs, as well as offering and selling Kickstart 1.3 as a download.

30. Defendant's copying, distribution and sale of Plaintiff's Kickstart 1.3 also constitutes a breach by Defendant of the Settlement Agreement.

Defendant's Trademark Infringement of the AMIGA Trademark.

31. Kickstart 1.3 displays the AMIGA trademark when users access that program until a bootable medium containing the disk-based portion of Amiga OS 1.3 (or lower) is inserted. Kickstart 1.3 does not function with the disk-based portion of either Amiga OS 4 or Amiga OS 3.1.

32. Defendant's use of the AMIGA trademark in conjunction with Kickstart 1.3 constitutes infringement on Plaintiff's rights in that mark, as well as a breach of the Settlement Agreement.

Defendant's Opposition to Plaintiff's Application for AMIGA, and its Attempt to Register AmigaOne, AmigaOS and the Boing Ball Mark in the USPTO.

33. On January 2, 2017, Plaintiff filed on an intent-to-use basis, Application Serial No. 87287078, for AMIGA, covering "Computer game programs; Computer game software downloadable from a global computer network; Computer hardware; Computer hardware and computer peripherals; Computer operating programs; Computer operating software; Computer operating systems; Computer programs for video and computer games; Computer software for emulating computer hardware, emulating computer operating systems on personal computers and mobile devices and instructional user guides sold as a unit; Computer software for emulating computer hardware, emulating computer operating systems on personal computers and mobile devices that may be downloaded from a global computer network; Computer software for emulating computer hardware, emulating computer operating systems on personal computers and mobile devices; Computer software platforms for emulating computer hardware and computer operating systems; Computer software, namely, game engine software for video game development and operation; Computer software for emulating computer hardware and computer operating systems that may be downloaded from a global computer network; Digital media, namely, pre-recorded video cassettes, digital video discs, digital versatile discs, downloadable audio and video recordings, DVDs, and high definition digital discs featuring software, games, music, videos, text, ebooks; Downloadable computer game software via a global computer network and wireless devices" in Class 9 (the "'078 Application").

34. Plaintiff's'078 Application was published for opposition on May 9, 2017. Defendant obtained a 90-day extension to file a Notice of Opposition and then requested, and

was granted by Plaintiff, an additional 60-day extension, the maximum extension permissible by the TTAB.

35. On November 6, 2017, Defendant filed Opposition No. 91237628, claiming that Plaintiff's applied-for AMIGA trademark was confusingly similar to two of the Hyperion Licensed Marks, AMIGAONE (Application Serial No. 87329448) and AMIGAOS (Application Serial No. 87329431), both filed on an intent-to-use basis on February 8, 2017, a month after Plaintiff's '078 Application.

36. Also on February 8, 2017, Defendant filed Application Serial No. 87329469 for the Boing Ball Mark on an intent-to-use basis.

37. Plaintiff has used the Boing Ball Mark since 1997. The Settlement Agreement did not grant Defendant any rights to register the Hyperion Licensed Marks. Solely in connection with Amiga OS 4, Defendant was granted (i) the limited exclusive right to use AMIGAONE and AMIGAOS, and (ii) the limited non-exclusive right to use the Boing Ball Mark. Neither of the foregoing grant of rights included the right to claim ownership of, or registration of any of the Hyperion Licensed Marks.

AS AND FOR A FIRST CAUSE OF ACTION
Copyright Infringement
(17 U.S.C. §§ 501 *et seq.*)

38. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 37 of this Complaint.

39. Defendant's copying, offering for sale, distribution and sale of Kickstart 1.3 without Plaintiff's permission constitute copyright infringement under 17 U.S.C. § 501, *et seq*.

40. Defendant' acts of copyright infringement were willful.

41. As a consequence of Defendant's copyright infringement as alleged in this

Complaint, Plaintiff has suffered and will continue to suffer damages in an amount to be determined at trial. In addition, unless Defendant is restrained from engaging in its infringing conduct, Plaintiff will be irreparably harmed.

42. Because the copyright of Kickstart 1.3 was registered long prior to the commencement of Defendant's infringing conduct, Plaintiff is entitled to statutory damages and legal fees.

AS AND FOR A SECOND CAUSE OF ACTION
Common Law Trademark Infringement

43. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 42 of this Complaint.

44. Defendant has knowingly and willfully used the AMIGA trademark to which Plaintiff has exclusive rights, in an unlawful effort to create the false impression that Defendant has the right to use that trademark, as well as to appropriate to itself the goodwill associated with the AMIGA trademark.

45. Defendant's unlawful acts in appropriating the aforesaid exclusive rights of Plaintiff were and are intended to capitalize on Plaintiff's goodwill for Defendants' own pecuniary gain

46. Defendant's unlawful use of the AMIGA trademark is (a) calculated to confuse, deceive and mislead consumers into believing that the Infringing CD-ROMs originated or are authorized by Plaintiff, and (b) have likely caused and are likely to continue to cause confusion as to the source of the Infringing CD-ROMs, to Plaintiff's detriment.

47. Defendant's acts complained of herein constitute unfair competition which, unless enjoined by the Court, will result in (a) damage to and destruction and/or diversion of Plaintiff's goodwill in the AMIGA trademark, and (b) unjust enrichment of Defendant,

AS AND FOR A THIRD CAUSE OF ACTION
Unfair Competition
15 U.S.C. § 1125(a); Lanham Act § 43(a))

48. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 47 of this Complaint.

49. The conduct of Defendant complained of in this Complaint constitutes the use of symbols or devices, or a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, mistake or deception regarding the rights of Plaintiff and Defendant in and to the use of the AMIGA trademark, and to the distribution and sale of AMIGA legacy operating systems and applications.

50. While Plaintiff has the right to use, and has continuously used, the AMIGA trademark in commerce in the United States since 1997, Defendant has no rights whatsoever to use the AMIGA trademark, its rights being entirely limited to the Hyperion Licensed Marks, and then only in connection with the distribution and sale of Amiga OS 4.

51. Defendant has always been aware that it has no rights to use the AMIGA trademark and, in fact, avoided doing so until it began copying, distributing and selling Plaintiff's copyrighted Kickstart 1.3.

52. Plaintiff has, since 1997, distributed and sold Amiga OS 3.1 together with its emulation software, and was granted the use of the AMIGA trademark in connection therewith. By contrast, Defendant was not granted the right to distribute or sell Amiga OS 3.1, or use the AMIGA trademark or even the Hyperion Licensed Marks in connection with any use of Amiga OS 3.1, and is now distributing Amiga OS 3.1 as a falsely designated "Hyperion" operating system, making it appear to the public that Defendant is the owner and source of Amiga OS 3.1.

53. Furthermore, by distributing Kickstart 1.3, which displays the AMIGA trademark to users, Defendant has falsely presented itself as authorized to use the AMIGA trademark.

54. Defendant's conduct was undertaken willfully and with intent to cause confusion, mistake and deception on the part of the public.

55. By engaging in the acts and omissions complained of in this Compalint, Defendant has substantially damaged Plaintiff's business reputation and good will.

56. Defendant's conduct has caused and, unless enjoined, will continue to cause irreparable harm and injury to Plaintiff's business reputation and good will for which there is no adequate remebedy at law.

57. Defendant's conduct has also caused and, unless enjoined, will continue to cause inevitable public confusion for which there is no adequate remedy at law.

58. Pursuant to 15 U.S.C. § 1116, Plaintiff is entitled to injunctive relief to enjoin Defendant from using the AMIGA trademark and the false "Hyperion" designation.

59. Pursuant to 15 U.S.C. § 1117, Plaintiff is entitled to recover damages in an amount to be determined at trial.

60. Defendant's acts of unfair competition as alleged herein constitute an exceptional case and were undertaken willfully, thereby entitling Plaintiff to receive three times its actual damages and to an award of attorneys' fees under 15 U.S.C. §§ 1117(a) and (b).

AS AND FOR A FOURTH CAUSE OF ACTION
For an Order Directing the USPTO to Deny Opposition No. 91237628

61. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 60 of this Complaint.

62. Defendant's Opposition is premised on two falsehoods: first, that Defendant has the right to use the AMIGA trademark, and second, that the Hyperion Licensed Marks are confusingly similar to the AMIGA trademark.

63. By entering into the Settlement Agreement with Amiga, Inc. and other parties-in-interest, Defendant accepted the distinction between the Hyperion Licensed Marks and other "Amiga" trademarks, including AMIGA alone, and also recognized Plaintiff's prior rights.

64. The Settlement Agreement expressly precludes Defendant from claiming that AMIGA is confusingly similar to the Hyperion Licensed Marks. As stated above, Defendant agreed in section 2 that it would never challenge "the use and/or ownership of any Amiga Mark (other than [the Hyperion Licensed Marks]) by any … licensee …unless the challenged activity constitutes a material breach of this Agreement …" by such licensee.

65. Registration of the AMIGA trademark by Plaintiff, even if Plaintiff were bound by the Settlement Agreement, does not constitute a breach of the Settlement Agreement, and does not – and will not – prevent Defendant from continuing to use the Hyperion Licensed Marks.

66. As stated above, the only entity that has breached the Settlement Agreement is Defendant.

67. Accordingly, in order for Plaintiff to receive complete relief of its unfair competition claims against Defendant, as well as for the sake of judicial economy, Plaintiff seeks an order from this Court directing the TTAB to deny Defendant's Opposition no. 91237628.

AS AND FOR A FIFTH CAUSE OF ACTION
For an Order Declaring that Defendant Is Not the Rightful Owner of AMIGAONE, AMIGAOS or the Boing Ball Mark.

68. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 67 of this Complaint.

69. The Settlement Agreement limited Defendant's rights in AMIGAONE, AMIGAOS, and the Boing Ball Mark to the use of those marks in connection with the commercial exploitation of Amiga OS 4.

70. Any rights in the Boing Ball Mark granted to Defendant in the Settlement Agreement were subject to Plaintiff's superior right to use that mark.

71. At no time did Defendant acquire independent rights to use AMIGAONE or AMIGAOS, which are confusingly similar to the AMIGA trademark that Plaintiff has used substantially exclusively in commerce in the United States since 2012.

72. Accordingly, Plaintiff respectfully urges this Court to find that Defendant is not the rightful owner and has no rights to the exclusive use in commerce of AMIGAONE, AMIGAOS and the Boing Ball Mark.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant as follows:

1. Granting Plaintiff a preliminary and permanent injunction enjoining Defendant, together with their respective officers, agents, servants, employees, assigns, successors and attorneys, and all other persons acting in concert with any of them, pursuant to 17 U.S.C. § 502(a) from directly or indirectly infringing in any manner on any of Plaintiff's copyrights, including without limitation Plaintiff's copyright in Kickstart 1.3;

2. Ordering the destruction or other reasonable disposition of all Infringing CD-ROMs, pursuant to 17 U.S.C. § 503;

3. Directing Defendant to account for and pay over to Plaintiff all gains and profits derived by Defendant as a consequence of their infringement of Plaintiff's copyright, pursuant to

17 U.S.C. § 504;

4. Awarding Plaintiff maximum statutory damages, pursuant to 17 U.S.C. § 504;

5. Awarding Plaintiff an increased award of statutory damages upon a finding that Defendant' infringement was committed willfully, pursuant to 17 U.S.C. § 504(c)(2);

6. Awarding Plaintiff attorneys' fees incurred in investigating, bringing and prosecuting this action;

7. Entering a preliminary and permanent injunction against Defendant from using the AMIGA trademark and falsely designating AMIGA products as its own;

8. Pursuant to 15 U.S.C. § 1117(a), awarding Plaintiff damages sufficient to compensate Plaintiff for Defendant's acts of common law infringement and unfair competition;

9. Declaring that Defendant is not the rightful owner and has no rights to the exclusive use in commerce of AMIGAONE, AMIGAOS or the Boing Ball Mark;

10. Certifying an order to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, directing the TTAB to deny Opposition No. 91237628;

11. Awarding Plaintiff the costs and disbursements of this action;

12. Awarding Plaintiff pre- and post-judgment interest on any monetary award, including any award of attorneys' fees; and

13. Awarding Plaintiff such other, further or different relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Plaintiff requests a trial by jury on all issues so triable.

Dated: December 14, 2017

Respectfully submitted:
GORDON E. R. TROY, PC
/s/ Gordon E. R. Troy, Esq.
By: _____
GORDON E. R. TROY, PC

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