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

Proceeding	92048260
Party	Plaintiff i play. inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____)	
i play. inc.,)	
a North Carolina corporation,)	
)	Cancellation No. 92048260
Cancellation)	
Petitioner,)	
)	
v.)	Registration No. 2,923,675
)	International Class 28
INTERNATIONAL PLAYTHINGS, INC.,)	
a Delaware Corporation,)	
)	
Registrant.)	
_____)	

BRIEF OF CANCELLATION PETITIONER

i play. inc.

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BRIEF OF CANCELLATION PETITIONER

I. Statement of Case.

Cancellation Petitioner's applications Serial Nos. 78/791,447 and 78/791,467 for registration of  (also referred to herein as I PLAY. (and Design)) and I PLAY. were finally refused by the Trademark Examining Attorney under Section 2(d) of the Trademark Act on the asserted basis of likelihood of confusion with the mark of Registrant's Reg. No. 2,923,675,  (also referred to herein as I PLAY (and Design)).

The identified goods in Cancellation Petitioner's applications Serial Nos. 78/791,447 and 78/791,467, in international class 25, are "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers." The identified goods in Registrant's

Reg. No. 2,923,675, in international class 28, are "educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles."

Cancellation Petitioner subsequently filed a Petition for Cancellation against Registration No. 2,923,675 owned by International Playthings, Inc.

On October 16, 2007, when the Petition for Cancellation was filed, the name of Cancellation Petitioner was Family Clubhouse, Incorporated d/b/a i play. A name change to i play. inc. was effective March 18, 2008 (Præcipe filed August 7, 2008).

Cancellation Petitioner asserts prior use of the mark I PLAY. on the products identified in its applications, as well as on other products geared towards infants and young children. Additionally, Cancellation Petitioner asserts prior use of I PLAY. as a trade name.

II. The Record Before The Board.

The record before the Board consists of the pleadings, the file of Registrant's Reg. No. 2,923,675 of I PLAY (and Design), and the following testimony and evidence submitted by the parties:

Cancellation Petitioner's Notices of Reliance

1. Cancellation Petitioner's Notice of Reliance (filed 9/5/2008) on the files of Cancellation Petitioner's pending and suspended applications Ser. Nos. 78/791,447 and 78/791,467 for registration of I PLAY. (and Design) and I PLAY.
2. Cancellation Petitioner's Notice of Reliance (filed 10/2/2008) on a letter from the U.S. Consumer Product Safety Commission dated September 30, 2008.
3. Cancellation Petitioner's testimony deposition of Becky Cannon taken August 20, 2008 and exhibits (filed 9/25/2008).
4. Cancellation Petitioner's rebuttal testimony deposition of Emi Kubota taken March 5, 2009 and exhibits (filed 4/3/2009).

Registrant's Testimony and Evidence

1. Registrant's testimony deposition of Michael J. Varda taken January 21, 2009 and exhibits (filed 2/13/2009).

A. Cancellation Petitioner's Testimony and Evidence.

1. Cancellation Petitioner's Notices of Reliance.

Cancellation Petitioner relies on the files of Cancellation Petitioner's pending applications Ser. Nos. 78/791,447 and 78/791,467 for registration of  I PLAY. (and Design) and I PLAY., respectively. Those applications were filed under Trademark Act Section 1(a) claiming a date of first use "at least as early as 02/08/1996." In each case, the identified goods are "children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers."

In each case, in a final action mailed April 26, 2007, registration was refused under Trademark Act Section 2(d) on the asserted basis of likelihood of confusion with the mark of Registrant's Reg. No. 2,923,675, . In Office Actions mailed October 4, 2007, the final refusals were continued. Action on Cancellation Petitioner's two applications has been suspended pending the disposition of the subject cancellation proceeding.

In the Office Actions mailed April 26, 2007 responding to applicant's communications filed January 26, 2007, the Trademark Examining Attorney well stated grounds for refusal under Trademark Act Section 2(d) on the basis of likelihood of confusion. Under the heading "Comparison of the Marks," the Trademark Examining Attorney pointed out, among other things, that "[t]he applicant's mark, I PLAY., is nearly identical to the literal portion of the registrant's mark, I PLAY, in sound, appearance, meaning and connotation."

Under the heading "Comparison of the Goods and/or Services," the Trademark Examining Attorney stated, among other things:

"The applicant's goods are 'children's and infants' cloth bibs; children's headwear; infantwear; non-disposable swim diapers' in International Class 025. The registrant's goods are 'educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles' in International Class 028.

"Both the applicant and registrant's goods are geared toward infants and young children and are frequently sold through the same channels of trade. In the initial Office action, the examining attorney attached various Internet websites that showed retail stores that featured and sold both the applicant and

registrant's goods. The examining attorney concluded that because the marks are similar and the goods are related, it is likely that consumers would believe that the goods emanate from a common source."

Consistent with the analysis quoted above, with the initial Office Action mailed July 10, 2006 the Trademark Examining Attorney included as examples a number of internet websites featuring and selling goods of both the Cancellation Petitioner and the Registrant herein.

Cancellation Petitioner additionally relies upon a letter from the U.S. Consumer Product Safety Commission dated September 30, 2008 as evidence of actual confusion. That letter, with a subject heading "Re: X0860410A" is addressed to Cancellation Petitioner i play., but forwards a consumer complaint regarding one of Registrant International Playthings' products. Actual confusion by a U.S. government agency is evidenced, as well as potential damage to the reputation of Cancellation Petitioner.

2. Cancellation Petitioner's Testimony.

Cancellation Petitioner took the testimony deposition of Becky Cannon, the owner and president of i play. inc. (Cannon Dep. p. 5).

Cancellation Petitioner developed the mark I PLAY. in 1995 (Cannon Dep. pp. 5-6, Exhibit 1), and has been using I PLAY. as a mark continuously since February of 1996 on an expanding line of children's and infants' products, beginning with swim diapers. Cancellation Petitioner's earlier Reg. No. 2,115,786 of I PLAY. (and Design), registered November 25, 2007, unintentionally lapsed for failure to file an acceptable Section 8 Declaration, around the time Cancellation Petitioner's previous attorney died (Cannon Dep.

pp. 6-7, Exhibit 2). (Cancellation Petitioner's applications Ser. Nos. 78/791,447 and 78/791,467 in part are intended to replace the unintentionally-lapsed registration.)

By the time of the 2000 catalog year, prior to the December 5, 2001 filing date of the application which matured into Registrant's Reg. No. 2,923,675, Cancellation Petitioner was using I PLAY. as a mark on a variety of children's and infants' products, including swim diapers, hats, swim trunks, t-shirts and tops, beach balls, capes, nursery gear (e.g. changing pads, sheets and blankets), bibs, mitts, and booties, coveralls, playsuits, play pants. Catalog sheets, price lists and catalogs for 1996-1998, 1999 and 2000 were introduced into evidence (Cannon Dep. pp. 8-9, Exhibits 4-6). Those Exhibits additionally evidence use of I PLAY. as a trade name.

Cancellation Petitioner's product line and catalog size continued to expand in subsequent years. Catalogs for 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008 were introduced into evidence, showing ever-expanding use of I PLAY. as a trademark (Cannon Dep. pp. 9-12, Exhibits 7-15). In addition Cancellation Petitioner has used its I PLAY. mark on products which can be considered "toys," such as a teddy bear, soft bath toys, and security blankets (Cannon Dep. pp. 30-31), in addition to beach balls.

Various examples of product packaging including hang tags consistent with the catalogs were introduced into evidence (Cannon Dep. pp. 12-13, Exhibits 16, 17).

Cancellation Petitioner correspondingly has spent increasing amounts on advertising, mostly for I PLAY.-branded products. For years prior to 2004, Ms. Cannon testified that approximately \$20,000 was spent on advertising each year. Computer printouts were introduced evidencing advertising expenses of \$34,106 in 2004, \$43,418 in 2005, \$60,038 in

2006, \$61,386 in 2007, and \$27,048 in 2008, up to July 9, 2008 (Cannon Dep. pp. 15, 16, Exhibit 19).

A representative sampling of invoices for each year 1996 through 2008 were introduced into evidence, representing sales of I PLAY.-branded products (Cannon Dep. pp. 16-17, Exhibit 20).

Evidence of sales was introduced, the majority for I PLAY.-branded products. The yearly totals were \$920,000 for 1996; \$1,366,000 for 1997; \$1,451,000 for 1998; \$2,113,000 for 1999; \$2,011,000 for 2000; \$2,846,000 for 2001; \$2,873,000 for 2002; \$3,264,000 for 2003; \$4,700,000 for 2004; \$7,442,000 for 2005; \$5,886,000 for 2006; and \$7,654,000 for 2007 (Cannon Dep. pp. 17-18, Exhibit 21).

Registrant in more recent years has been attending at least one of the same trade shows as Cancellation Petitioner, with both companies promoting I PLAY.- or I PLAY-branded products at the same trade show. Cancellation Petitioner attended the Juvenile Products Merchants Association (JPMA) trade show at least as early as 1996, promoting I PLAY.-branded products, and has attended JPMA every year since then up until 2007. JPMA no longer exists, and has been replaced by the All Baby and Child Show (ABC) (Cannon Dep. pp. 14-15, Exhibit 18). The JPMA, now ABC, show is the main trade show which Cancellation Petitioner attends (Cannon Dep. p. 20). Beginning September 2008, Registrant International Playthings also attended the ABC show (Cannon Dep. pp. 19-21, Exhibit 23). Exhibit 23 is a website printout of the "ABC Kids Expo[®]" show September 7-11, 2008 at the Las Vegas Convention Center. The first page of Exhibit 23 states: "The ABC Kids Expo is the primary trade show for the juvenile products industry." The last page of Exhibit 23 lists Registrant International Playthings, Inc. as an exhibitor, and lists iPlay as

one of the brands. On the previous page of Exhibit 23 is Cancellation Petitioner's listing under the company name i play., again at the same trade show.

There are internet websites selling products which include a "Shop by Brand" function. Invoking this function for "I PLAY" returns product listings for both Registrant's and Cancellation Petitioner's products intermixed on the same page, as though they are all from the same company (Kubota Dep. pp. 5-9, Exhibits 26-30).

More particularly, Exhibit 27 is a printout from the www.toysrus.com website.

Quoting from Kubota Deposition pages 6 and 7:

"So on Page 4 of Exhibit 27 you have sorted by best selling items, which is the default way that they come up on the website. The first four items across the top row are all I-Play branded items by i play. inc. So you can see there's a 10-pack of bibs, a two-pack of scoop bibs, another 10-pack of bibs and a brother-sister set.

"Then the next item on the next row, so on the second row, is an I-Play Tummy Time Prop & Play Mat, which I believe is manufactured by International Playthings. It's not a product of i play. inc.'s. Surrounding that -- following that are then three other types of bibs all manufactured by i play. inc.

"On the following page, again, the next row begins with a set of bowling pins that I believe are manufactured by International Playthings. And then the three next items are all I-Play by i play. inc. items. So that pretty much covers that exhibit.

"And then the last page of that exhibit is the -- just the summary slide to show -- it just shows that when I clicked on "shop by brand, I-Play," it gave me two items side by side, an I-Play item by i play. inc. and an I-Play item by International Playthings. So that is 27."

Similarly, with reference to Exhibit 29, which is from the www.amazon.com website, from Kubota Deposition pages 8 and 9:

"So Exhibit 29 is when I clicked through on the first listing of I-Play and it comes up -- it's the capital I, space, capital P. And then it says, "Did you mean: iplay," all lower case, all one word. So these items are actually numbered so we can go through 1 through 7 items listed on this page are all I-Play branded items manufactured by International Playthings.

"Then item number 8 is a three-pack of bibs manufactured by i play. inc., and then again after that it continues on with more International Playthings I-Play brand items. So the last page here again is a summary slide and it shows those two items side by side, the International Playthings iPlay Activity Ark and the I Play three-pack of bibs. And that is Exhibit 29."

B. Registrant's Testimony and Evidence.

1. Registrant's Testimony.

Registrant took the testimony deposition of its president, Michael J. Varda. Varda testified that Registrant does not sell babywear, infantwear, children's bibs, children's headwear nor non-disposable swim diapers (Varda Dep. pp. 7, 8). Varda testified that, on product packaging, the International Playthings corporate name appears along with the I PLAY trademark (Varda Dep. pp. 12-13). Varda testified as to channels of trade (Varda Dep. pp. 13-15), including a statement that he does not believe Registrant's I PLAY products are sold in BabiesRUs (Varda Dep. p. 15). (That statement is directly controverted by Cancellation Petitioner's Kubota testimony pages 5-7, Exhibits 26 and 27.) Varda testified regarding trade journals and magazines where Registrant advertises its I PLAY brand products (Varda Dep. pp. 16-18). Varda also testified that there are magazines where Registrant does

not advertise (Varda Dep. pp. 19-20), apparently with reference to Cancellation Petitioner's earlier testimony (Canon Dep. pp. 23-25) as to where Cancellation Petitioner has advertised.

On cross-examination, Varda admitted being aware of Cancellation Petitioner's prior use and registration of I PLAY. as a trademark for swim diapers when Registrant was introducing the mark I PLAY (Varda Dep. pp. 56-57).

III. Issue.

Whether there is a likelihood of confusion from the use of Registrant's I PLAY (and Design) mark in connection with the "educational toys" identified in Reg. No. 2,923,675 in view of Cancellation Petitioner's prior use of I PLAY. and I PLAY. (and Design) in connection with infants' and children's products including swim diapers, hats, swim trunks, t-shirts and tops, beach balls, capes, nursery gear (e.g. changing pads, sheets and blankets), bibs, mitts, and booties, coveralls, playsuits, play pants, and in view of Cancellation Petitioner's prior use of I PLAY. as a trade name.

IV. Argument.

A. Priority of Use.

Cancellation Petitioner's priority of use of its trademark I PLAY. on its infant and babywear products is well established by the evidence, and does not appear to be a contested issue in the case.

B. Likelihood of Confusion.

Registrant's I PLAY (and Design) mark so resembles Cancellation Petitioner's previously-used I PLAY. and I PLAY (and Design) marks, and prior use of I PLAY. as a

trade name, as to be likely, when applied to Registrant's goods, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act.

Where, as here, the Board must decide the issue of likelihood of confusion, the Board must consider the relevant factors as set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ 2d 1201 (Fed. Cir. 2003). See, also: In re E.I. Du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), and Recot, Inc. v. Becton, 215 F.3d 1322, 54 USPQ 2d 1894 (Fed. Cir. 2000). Those factors comprise:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
2. The similarity or dissimilarity and nature of the goods described in the application or registration or in connection with which a prior mark is used;
3. The similarity or dissimilarity of established, likely to continue trade channels;
4. The conditions under which buyers to whom sales are made, i.e., "impulse" versus careful, sophisticated purchasers;
5. The fame of the prior mark;
6. The number and nature of similar marks in use on similar goods;
7. The nature and extent of any actual confusion;
8. The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion;
9. The variety of goods on which the mark is or is not used;
10. The market interface between the applicant and owner of a prior mark;

11. The extent to which applicant has a right to exclude others from use of its mark on its goods;
12. The extent of potential confusion; and
13. Any other established fact probative of the effect of use.

Not all of these "DuPont" factors may be relevant or of equal weight in a particular case. See: In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ 2d 1531 (Fed. Cir. 1997).

Again, in the present case, there is apparently no actual issue regarding Cancellation Petitioner's prior use of its I PLAY. mark. Registrant has introduced no contrary evidence, nor in any way challenged Cancellation Petitioner's priority of use. Rather, Registrant's defense appears to be based on a position that the goods are sufficiently different.

On the basis that priority is not in dispute, Cancellation Petitioner discusses the pertinent DuPont factors as follows:

1. Similarity or Dissimilarity of the Marks.

This factor clearly favors Cancellation Petitioner, and does not seriously appear to even be in dispute. The word portions I PLAY. and I PLAY of Cancellation Petitioner's and Registrant's marks are virtually identical, and the word portions are the dominant portions of the marks. Moreover, the logo forms  and  have a certain similarity.

2. Similarity or Dissimilarity of the Respective Goods.

This factor goes to the heart of the issues in this case, and favors Cancellation Petitioner. The goods of both parties are geared towards infants and young children. The goods of the parties are part of the juvenile products industry (Cannon Dep. p. 20, Exhibit 23). Characterizing Registrant's identified "toys" as "educational" does not diminish the fact that they are geared towards infants and children. "Educational" toys are more likely

to be selected by parents, along with Cancellation Petitioner's products, in contrast to other categories of toys which perhaps are more likely to be selected by children themselves.

3. Similarity or Dissimilarity of Established, Likely to Continue Trade Channels.

This factor similarly favors Cancellation Petitioner. Registrant's registration is not restricted to any particular trade channel or class of customer.

Although Registrant has provided examples where goods of the parties are being sold in different retail channels and advertised in different trade publications, Cancellation Petitioner has demonstrated that the goods of the respective parties are also sold in the same retail channels, and in at least one case the parties attend the same trade show, the important ABC Kids Expo (Cannon Dep. pp. 20, 21). Thus, the goods of both parties are sold through at least some of the same retail outlets, even identified as the same brand name "I PLAY" (Kubota Dep. pp. 5-9, Exhibit 26-30). Moreover, the Trademark Examining Attorney in Cancellation Petitioner's applications Ser. Nos. 78/791,447 and 78/791,467 cited as examples a number of internet websites featuring and selling goods of both parties.

Given the lack of any meaningful restriction in Registrant's registration, and given the evidence showing the actual identity and overlap of trade channels, this factor favors Cancellation Petitioner.

4. Impulse Versus Careful/Sophisticated Purchasing.

This factor favors Cancellation Petitioner. There is no evidence that the decision to purchase Registrant's goods or Cancellation Petitioner's goods is a particularly sophisticated one. Both Cancellation Petitioner's goods and those of Registrant are offered to the general public, and neither are particularly expensive products.

5. Fame of the Prior Mark.

This factor is neutral. However, a situation of reverse confusion may be developing as in Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co., 561 F.2d 1365, 195 USPQ 417 (10th Cir. 1977), representing a particular risk to the prior user, Cancellation Petitioner, as well as detriment to the public.

6. The Number and Nature of Similar Marks In Use On Similar Goods.

This factor favors Cancellation Petitioner. There is evidence in the Record of minimal use by third parties of I PLAY, but not on goods similar to or related to the goods of Cancellation Petitioner and Registrant.

7. The Nature and Extent of Any Actual Confusion.

This factor favors Cancellation Petitioner. There is evidence of both actual confusion by consumers (Cannon Dep. p. 19, Exhibit 22), and by a U.S. government agency (letter from U.S. Consumer Product Safety Commission dated September 30, 2008).

V. Cancellation Petitioner's Statement of Objections.

Cancellation Petitioner objects to the admission of a document proffered twice by Registrant, the first time during the cross-examination of Becky Cannon during her testimony deposition on August 20, 2008 (part of Exhibit 25 offered by International Playthings), and the second time during Registrant's testimony deposition of Michael J. Varda on January 21, 2009 (as Respondent's Exhibit 20), a "Trademark Co-Existence and Consent Agreement" filed by Cancellation Petitioner September 12, 2007 in both applications Ser. Nos. 78/791,447 and 78/791,467, but which did not result in the Trademark Examining Attorney withdrawing the Section 2(d) refusals in view of Reg. No. 2,923,675. Cancellation Petitioner made timely

objections to Registrant's introduction of this document on the grounds the document by its own terms states it may not be referred to or relied upon, and because it is inadmissible as part of settlement negotiations (Cannon Dep. p. 28; Varda Dep. p. 42).

Similarly, Cancellation Petitioner objects to the admission of Varda testimony, pages 40-43 regarding communications between the parties in connection with that "Trademark Co-Existence and Consent Agreement." Cancellation Petitioner made timely objections to Registrant's introduction of this material as communications towards settlement of a controversy (Varda Dep. p. 42).

Cancellation Petitioner objects to the admission of another "Settlement Agreement" between the parties, introduced during the testimony of Michael J. Varda (Varda Dep. pp. 53-55) as Respondent's Exhibit 23. Cancellation Petitioner made timely objections (Varda Dep. p. 54) on the basis the exhibit and testimony related thereto is not relevant to the subject cancellation proceeding.

Cancellation Petitioner also asserts that certain other testimony of Michael J. Varda, while perhaps admissible, is irrelevant to the issues in this case. Specifically, on pages 9-12 of the Varda deposition, Varda testified regarding goods which Registrant sells under the I PLAY trademark, and the manner in which the trademark is used on the packaging. None of that is particularly relevant. What are relevant are the mark as presented and the goods as identified in Registration No. 2,923,675.

Similarly, Varda testimony regarding channels of trade on pages 13-29 is of minimal relevance because, again, there is no meaningful restriction in Registration No. 2,923,675 regarding channels of trade.

VI. Conclusion.

This case boils down to the issue of likelihood of confusion with reference to the goods of the parties, Registrant's educational toys in view of Cancellation Petitioner's children's and infants' products, including swim diapers, hats, swim trunks, t-shirts and tops, beach balls, capes, nursery gear (e.g. changing pads, sheets and blankets), bibs, mitts, and booties, coveralls, playsuits, play pants. (Cancellation Petitioner's priority of use has never been a contested issue in the case. The respective marks I PLAY and I PLAY. are essentially identical.)

Likelihood of confusion can hardly be disputed. The parties are competing with essentially identical marks in the same industry.

Registrant adopted its I PLAY mark with at least some knowledge of Cancellation Petitioner's prior usage, but with no apparent further investigation. Over time, the parties' goods are increasingly being sold together in the same retail outlets, particularly online sales, and the parties are now even attending at least one of the same trade shows, for the juvenile products industry, promoting goods under their respective I PLAY marks.

This proceeding was initiated after the Trademark Examining Attorney finally refused Cancellation Petitioner's applications Serial Nos. 78/791,447 and 78/791,467 for registration of  and I PLAY. under Section 2(d) of the Trademark Act on the asserted basis of likelihood of confusion with the mark of Registrant's Reg. No. 2,923,675, , for reasons detailed by the Trademark Examining Attorney.

As discussed above, relevant DuPont factors clearly favor Cancellation Petitioner. Registrant's mark is simply too close to Cancellation Petitioner's previously-used marks and

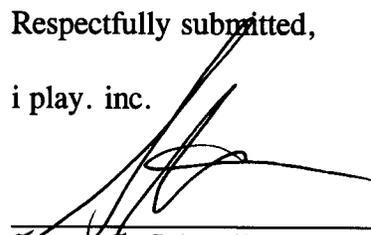
the goods are simply too closely related to allow Registrant's registration to be maintained, which would clearly be to the detriment of the public.

For all the foregoing reasons, it is submitted that the evidentiary record in this case supports a finding by the Board that the cancellation should be sustained.

Respectfully submitted,

i play. inc.

By:



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Dated: May 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **BRIEF OF CANCELLATION PETITIONER** has been served on counsel for Registrant this 4th day of May, 2009 via first class mail, postage prepaid to:

Paul H. Kochanski
Lerner David Littenberg Krumholz & Mentlik, LLP
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Attorney for Registrant



Steven C. Schnedler