

ESTTA Tracking number: **ESTTA286130**

Filing date: **05/27/2009**

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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Date	05/27/2009
Attachments	Petitioner's_Brief_in_Opposition.pdf (14 pages)(688875 bytes)

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.)	

PETITIONER'S BRIEF IN OPPOSITION TO
REGISTRANT'S MOTION TO EXTEND PERIOD
OF TIME FOR REGISTRANT TO FILE ITS TRIAL BRIEF

Petitioner, i play. inc., hereby opposes Registrant's Motion filed May 22, 2009 (received in today's mail, May 27, 2009) to extend the period of time for Registrant to file its trial brief by thirty days, from June 8, 2009 to July 8, 2009.

In support of its motion, Registrant relies upon *Societa Per Azioni Chiant Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001) ("the press of other litigation may constitute good cause to extend," quoting here from TBMP § 509.01(a), footnote 144). Registrant's motion includes a rather impressive enumeration of other litigation matters with which Registrant's attorney is involved.

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As correctly noted in Registrant's motion, Registrant did request Petitioner's consent to a 30-day extension, but that request was refused. Registrant's motion characterizes that refusal as "on the basis that the Petitioner wants to move the proceeding forward." The actual language in the undersigned's email communicating that refusal is that Petitioner is "interested in the earliest possible resolution of this controversy."

In any event, the June 8, 2009 due date for Registrant's trial brief has essentially been fixed and known for six months in advance, at least since December 9, 2009 when Registrant's consented motion filed December 3, 2008 to extend testimony periods was granted. (The brief due dates specified by 37 CFR § 2.128 are based on the date set for the close of rebuttal testimony.)

The relied-upon case, *Societa Per Azioni Chiant Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, can be distinguished. The motion in that case was opposer's motion to extend its testimony period. Presenting testimony necessarily involves coordinating the schedules of multiple people. In sharp contrast, a brief can be prepared by a single person without regard to anyone else's schedule, based on the record already developed.

Counsel for Registrant enumerates many other matters he is involved in, and asserts that as "good cause." Accompanying this paper as exhibits are two pages from the internet website of

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Lerner, David, Littenberg, Krumholz & Mentlik, LLP (ldlkm.com).

Exhibit 1 is an "Attorney Index" webpage

(http://ldlkm.com/at_index.asp), listing 58 attorneys. Exhibit 2

is a "Profile" webpage (http://ldlkm.com/fo_profile.asp) stating

that "Lerner David specializes solely in providing intellectual property counsel," and goes on to state that the firm has been

"[p]racticing no other areas of law since our founding in 1969."

With 58 attorneys in a firm exclusively practicing intellectual property law, a significant question not addressed in

Registrant's Motion is is there no one else available to prepare a brief where the due date is known six months in advance?

Registrant may contend that it could not prepare a brief until Petitioner's main brief has been filed. Even so, the time for Registrant to prepare its brief could at least have been scheduled. Moreover, the body of Petitioner's brief (17 pages) is not particularly lengthy, nor is there any particular complexity. And again, there is no need to coordinate the schedules of multiple people, as in the situation of testimony.

While not directly relevant to Registrant's current motion to extend, it is perhaps noteworthy that Registrant previously faced a motion for default judgment after filing its answer late. In that earlier situation, in Registrant's motion filed December 21, 2007 for leave to file its answer late, Registrant asserted docketing errors.

Petitioner does have a significant interest in the earliest possible resolution of this controversy. As noted on page 14 of

Cancellation No. 92048260

Cancellation Petitioner's main Brief filed May 4, 2009, a situation of reverse confusion may be developing, representing a particular risk to the prior user, Cancellation Petitioner, as well as detriment to the public.

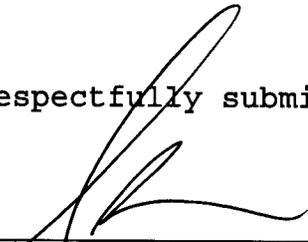
In the actual marketplace, Registrant continues to push its I PLAY-branded toys into the prior user's channels of trade, in apparent utter disregard of the exacerbating effect with regard to the issue of likelihood of confusion. As discussed in Petitioner's Brief (e.g. on page 7) beginning in September 2008, Registrant, apparently for the first time, attended the All Baby and Child Show (ABC) which is "the primary trade show for the juvenile products industry," and "is the main trade show which Cancellation Petitioner attends."

Moreover, as evidenced by Exhibit 3 accompanying this brief, Registrant continues to boldly expand its line of I PLAY-branded toys. Exhibit 3 is a press release dated 04/15/2009 announcing Registrant's "distribution of an original 'mom-made' line of educational toys under the company's iPlay brand called Peek-A-Boo Bags."

For the foregoing reasons, the Board is urged to deny Registrant's motion to extend time to file its trial brief, to the end that an early resolution of this controversy be reached. As a final comment, the Rules do not require Registrant to file a brief.

Cancellation No. 92048260

Respectfully submitted,



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Attorneys for Cancellation Petitioner
i play. inc.

Dated: May 27, 2009

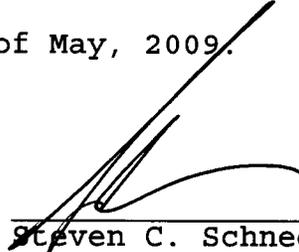
Cancellation No. 92048260

CERTIFICATE OF SERVICE

I hereby certify that the paper titled PETITIONER'S BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO EXTEND PERIOD OF TIME FOR REGISTRANT TO FILE ITS TRIAL BRIEF has been served upon Registrant's Attorney of Record by depositing a copy thereof in First Class Mail, postage prepaid and properly addressed as follows:

Paul H. Kochanski
Lerner David Littenberg Krumholz & Mentlik, LLP
600 South Avenue West, Suite 300
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This, the 27th day of May, 2009.



Steven C. Schnedler
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Profile

Our Service Philosophy

Lerner David specializes solely in providing intellectual property counsel. Practicing no other area of law since our founding in 1969, we know IP and we do it well. The firm's intellectual property attorneys and additional professionals are highly experienced, both in breadth and depth, with all intellectual property issues.

We have built a strong reputation for actively and effectively obtaining positive results for our clients - in the Patent and Trademark Office, in the courts and at the bargaining table. But it is our role as "counselors" that is of paramount importance. By providing our clients sound, practical advice, we help them make informed, intelligent choices about their business.

Members of the firm share a deep understanding of the importance of client service and furthering client business goals. With extensive experience and broad international resources, our attorneys have earned a reputation for handling intellectual property matters successfully and efficiently. At the heart of our philosophy is a belief that all intellectual property assets must work toward the satisfaction of business goals. This business-focused approach is a significant factor in our success, leading directly to many long-term relationships with our clients. They know and trust that we will never "churn" a matter, or pursue an end simply because we believe the end can be pursued successfully.

We always view business goals as paramount, and provide advice with that philosophy in mind. Both today and throughout our history, the firm has insisted on exceptionally high standards of professionalism, integrity and character.

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International Playthings Introduces Fun and Educational 'Peek-A-Boo' Line

NewswireToday - /newswire/ - **Bridgewater, NJ, United States, 04/15/2009** - **New "Peek-A-Boo Bags" and "Peek-A-Boo Pack" will join the iPlay line of toys.**

International Playthings, LLC is pleased to announce the distribution of an original "mom-made" line of educational toys under the company's iPlay brand called Peek-A-Boo Bags. The bags were designed and developed by Marcella Shumway, a creative mom from Cheyenne, Wyoming.

Shumway originally created the product in her home as a way to bring fun, education, and quiet time into the palm of a child's hand. She quickly developed her craft into a full-blown business, Peek-A-Boo Stuff, LLC. International Playthings recognizes the unique style and educational value of Peek-A-Boo Bags and will now manage the distribution of these products in North America.

"We are thrilled to welcome Peek-A-Boo Bags to the iPlay family of toys," says Sue Tice, senior brand manager for International Playthings, LLC. "Marcella Shumway has created a charming yet simple product that fits perfectly with our educational values. We are proud to distribute a product that will not only assist young learners in attaining vital skills but also allow for quiet fun."

The Peek-A-Boo Bag is a colorful squishy sack with a clear window. Youngsters can shake and squeeze the bag while trying to locate various objects. Each bag has a snap tag which lists everything to find. International Playthings is currently developing a Peek-A-Boo Pack which will include a fun Find-N-Seek book that complements the theme of the Peek-A-Boo Bag. Perfect for traveling, doctor visits, or overnights, these instructive products are sure to please parents and kids alike.

The delightful new Peek-A-Boo line of products includes:

Everything A to Z Peek-A-Boo Bag

This playful pouch includes 26 different objects—one for each letter of the alphabet. Children will learn with excitement while trying to find the Airplane, Butterfly, Car, Dolphin...all the way to Zebra!

Sugar 'N' Spice Peek-A-Boo Bag

Pretty and pink, the Sugar 'N' Spice bag includes a little girl's favorite things—a flower, dolphin, dress, star, strawberry, sunglasses, and more!

Rough 'N' Tuff Peek-A-Boo Bag

Young boys will get lost in adventure as they search through the Rough 'N' Tuff bag. Filled with an airplane, frog, guitar, dinosaur, and much more, this Peek-A-Boo Bag will stir up creativity and imagination.

Peek-A-Boo Pack

International Playthings is developing this compact educational toy to accompany the Peek-A-Boo Bags. The Peek-A-Boo Pack includes an exciting storybook and corresponding Peek-A-Boo Bag. Parent and child can interact together as mom or dad reads the book, while the child searches for items in the story. Additionally, children can independently search and learn using the object photos located at the bottom of each page (great for non-readers).

About International Playthings, LLC

Since its inception in 1967, International Playthings, LLC (intplay.com) has excelled in the delivery of innovative and entertaining products with integrity, superior play value and child developmental qualities to consumers. Over the course of its 40-year existence, International Playthings has grown to become one of the largest and most respected suppliers of quality products to the North American specialty industry.

A subsidiary of Epoch Company Ltd. affiliate company, International Playthings offers a comprehensive range of proprietary and distributed brands comprising a wide variety of award winning play things including games, infant toys, preschool toys, dolls, educational toys and activity toys.

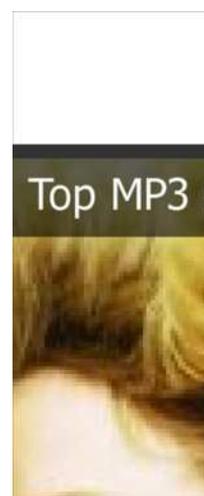
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