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

Proceeding	92050960
Party	Plaintiff NSM Resources Corporation
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Date	05/29/2009
Attachments	SpinMasterResponse1.pdf (10 pages)(2518197 bytes)

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

In the matter of Trademark Registration
Serial No.: 2944406
Filed: August 8, 2002
Trademark: S SPIN MASTER
Registered: April 26, 2005

_____)	
NSM Resources Corporation)	
)	
Petitioner,)	
)	Petition No.: 92050960
v.)	
)	
Spin Master LTD Corporation)	
)	
Registrant)	
_____)	

RESPONSE TO MOTION TO DISMISS

Petitioner NSM Resources Corporation (“NSM”) moves the TTAB of the USPTO to deny the Registrant Spin Master LTD.’s (“Spin Master”) Motion to Dismiss. The grounds for the Petitioner NSM’s argument are set forth below.

PREFACE

Michael T. Murphy makes an abhorrent bald claim that the Petitioner NSM has “pay back” on its mind herein without any evidence. The Registrant Spin Master has already essentially “stolen” from the Petitioner NSM in using the brand name HUCK to sell toys. Michael T. Murphy, in the same vein, goes on to allege that the Petitioner NSM demanded a “ransom” which in defined terms means “a price demanded for the release of a captive”. This fraudulent charge makes his entire argument vain; how and in what way has the Petitioner NSM “held captive” members of the Registrant Spin Master? Maybe Michael T. Murphy needs to

further explain some missing connection here? These absurd comments, submitted to the USPTO by Michael T. Murphy, should result in sanctions for the Registrant Spin Master and the law firm K&L Gates for allowing anyone in connection with their businesses to make such an outlandish, pathetic suggestion, without any proof whatsoever. The Petitioner NSM defends its Federally Registered Trademark rights and its common law rights to a brand name it has used for at least 9 years. No justification exists for Michael T. Murphy to use this above mentioned terminology in any argument he has, and his inappropriate attitude needs adjusting.

INTRODUCTION

The Motion to Dismiss filed on behalf of the Registrant Spin Master in the above referenced Petition for Cancellation fails. The reasons include the following: 1 – The Registrant Spin Master did not serve the Motion to Dismiss; 2 – The Motion to Dismiss does not have any relevant correct arguments; 3 – The Motion to Dismiss has zero evidence of any defenses; 4 – The Motion to Dismiss has false statements. The Petitioner NSM will explain below the entirety of reasons to justify this Petition and how and why the USPTO should reject this Motion to Dismiss.

BACKGROUND

Sometime at least as early as 2008, it came to the attention of the Petitioner NSM that the Registrant Spin Master offers for sale toys using the name “Hometown HUCK”. These toys use the ancient idea of “Thumb Wrestling”; the Petitioner NSM believes just about every kid that had both a thumb and a friend played this straightforward game at one point growing up. So, the Registrant Spin Master decided to take the “Thumb Wrestling” idea one step further, and created a league of characters that would take form by way of another ancient design “Wrestling Masks”, similar to the masks worn by gladiators in antiquity. Putting this scheme together seems

somewhat plausible in terms of a toy gimmick: miniature masks for thumbs that wrestle. The only problem the creators have now found arises from their ironic selection process for the names of the characters. Certainly, this “Thumb Wrestling” initiative has no originality as in 2006 alone, another assumingly unrelated company made essentially the same exact product (SEE EXHIBIT A). Nonetheless, the Registrant Spin Master snatched up the product line and distributed \$70,000US of these toys, all of them bearing the Trade Name “Hometown HUCK” on the packaging, right next to the S SPIN MASTER logo. Would it surprise the USPTO to learn that of these figures, all of which the Registrant Spin Master sold under the slogan “Season 1”, that they made “Hometown HUCK” the eventual scripted champion of this first season between 16 characters?

Meanwhile, the Petitioner NSM has since 2000 continued in the international business of marketing, manufacturing and selling products, in this case namely toys and action figures, using the brand name HUCK. The Petitioner NSM first researched the brand name HUCK in 1999 as a plausible brand name for its line of products. The Petitioner NSM has Federal Registration for this specific usage of HUCK, among others, to which it herein applies to handheld action figure toys and all of the numerous accessories used in conjunction with these figures. These figures allow people the ability to replicate the movements of humans with the use of handheld objects. The brand name HUCK or HUCK DOLL always appeared on the packaging or on the actual product of these toys. These toys have sold out in over 1000 retail stores and in over 10 international countries. These toys and have acquired a distinct, effective brand name and enormous amount of goodwill.

The Petitioner NSM has always noticed that the “world of toys” remains a relatively “small world” with most of these toy products made in a concentrated part of the world

(Southern China) and most of these toy products marketed in sold in common arenas: toy fairs, toy stores, toy chains, etc. As a result, the need for brand separation clearly exists; no justifiable reason exists, outside of the USPTO, that two brands should use the same exact name (HUCK) in the marketplace to sell the same exact product (handheld action toys). As of this filing, the Petitioner NSM believes that the Registrant Spin Master potentially represents the third largest toy manufacturer in the world, and yet the Petitioner NSM seems to have developed quite positive relationships with both Mattel and Hasbro, the two other toy manufacturers who supersede the Registrant Spin Master's size in the toy industry.

The Petitioner NSM attempted to resolve this matter immediately. The Petitioner NSM contacted the Registrant Spin Master upon learning of this conflicting product line. The Petitioner NSM requested financial information regarding this product line from the Registrant Spin Master. The Registrant Spin Master complied by stating they had sold only \$70,000US worth of these toys and then denied involvement such as to settle the Petitioner NSM's claims, and the Registrant Spin Master tried to say they had moved on. The Petitioner NSM mentioned a pittance fee to the Registrant Spin Master, initially set at \$500US, and in turn the Petitioner NSM offered a reasonable royalty rate, not even exceeding 5% of sales of the item in question, to settle. However, the two sides did not come to an agreement. Thus the Petitioner NSM filed this filed Petition.

ARGUMENTS

- A. The Registrant Spin Master did not properly serve the Petitioner NSM the Motion to Dismiss. In fact, the Registrant Spin Master did not serve the Petitioner NSM the Motion to Dismiss whatsoever.

- B. The Registrant Spin Master did not acknowledge that the Petitioner NSM filed a petition for cancellation based on false suggestion of connection between the Registrant Spin Master and the Petitioner NSM in using the brand name HUCK to sell toys.
- C. The Registrant Spin Master did not acknowledge that the Petitioner NSM filed a petition for cancellation based on trademark dilution between the Registrant Spin Master and the Petitioner NSM in using the brand name HUCK to sell toys.

The Registrant Spin Master certainly does not take into account the true and basic reason for the Petition for Cancellation; instead, as stated numerous times above, it attempts to weave some crooked story without any evidence and with ridiculous bold statements. The basis for this Petition for Cancellation remains that beginning in 2000, the Petitioner NSM began using the name HUCK to define its toy products; and sometime within the recent past, the Registrant Spin Master attempted to do the same exact thing. The Petitioner NSM cited its Federal Registrations in the Petition, the Petitioner NSM cited false suggestion of a connection in the Petition, the Petitioner NSM cited Trademark dilution in the Petition; the Petitioner NSM made honest attempts to settle this claim beforehand and eventually had no other choice but to the notify the USPTO of how the Registrant Spin Master has decided to use this questioned Registration: S SPIN MASTER.

CONCLUSION

The Registrant Spin Master's Motion to Dismiss has no legal basis. In the fact, the Registrant Spin Master could not even support its argument with one matter of law or one piece of evidence. The Registrant Spin Master did not serve the Motion. The Motion to Dismiss

attempts to argue about the thread of confusion, typically reserved Trademark Infringement cases in Federal Court, and of the lettering in the marks HUCK and S SPIN MASTER, and not the actuality of the claim that the Registrant Spin Master has used this S SPIN MASTER Registration to attempt to manipulate the Petitioner NSM's Registrations to the effect of the identity of the source of the goods. This Motion to Dismiss should be rejected on the grounds of the information stated above and herein.

Sincerely yours,

/zanemurdock/
Zane Murdock
President / NSM
NSM Resources Corporation
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USA
530-581-4622 phone
zane@huckdoll.com

CERTIFICATE OF SERVICE BY FIRST-CLASS MAIL

On May 29, 2009, I deposited in the United States Mail a properly addressed, postage prepaid envelope containing a true copy of this document served on the counsel for the

Registrant:

Michael T. Murphy
K&L Gates LLP
PO Box 1135
Chicago, IL 60690

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

Dated: May 29, 2009

/zanemurdock/
Zane Murdock
President / NSM
NSM Resources Corporation
PO Box 931162
Los Angeles, CA 90093
USA
Phone: 530-581-4622

EXHIBIT A



THUMB

LUCHA
LIBRE!



WRESTLING

MASKS

"Mano a Mano"



"El Chupacabras"

"El Diablo"

!THUMB WRESTLING MASKS!

\$8.00



251962

THE RULES:

The first luchador (wrestler) to pin their opponent for the count of three wins.



2-on-2 Tag Team.

TAG TEAM PLAY:

Tag team matches can be played between teams of two or three players (2-on-2 or 3-on-3).

In addition, there are 2 different styles of match:

- A) One player from each team "in the ring" at once. Players can "tap in" at any time to replace the player in the ring.
- B) Everyone wrestles at the same time. To win, two members of one team must be pinned at once.

MANEUVERS:



Plancha: A Bodyslam.



Tope: A Headbutt.



Tornillo: A Plancha with a Twist.

*Suitable for children ages 6 and up. © 2006 Sacred Cow Division. Patent pending.



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