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

In re Application of Konami Corporation

MARK: BATTLE OX
SERIAL NO.: 76/321,623
FILED: October 5, 2001
PUBLISHED: February 19, 2002



05-21-2002

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #34

BATTLEBOTS, INC.,
a California corporation,

Opposer,

Opposition No. _____

v.

KONAMI CORPORATION,
a Japanese corporation,

Applicant.

TRADEMARK TRIAL AND
APPEAL BOARD
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NOTICE OF OPPOSITION

Opposer Battlebots, Inc. ("Opposer"), a corporation organized under the laws of the state of California and doing business at 3701 DeLong Ave., Unit K, Novato, CA 94947, believes that it would be damaged by registration of BATTLE OX shown in Serial No. 76/321,623 and hereby opposes such registration.

The grounds for opposition are as follows:

1. Opposer has been using BATTLEBOTS in commerce to promote its entertainment services in the nature of competitive events featuring robots, since at least as early as June 1999. Opposer has used BATTLEBOTS to advertise and sell a variety of computer

products, motion pictures, printed matter, clothing, toys and games, all featuring electronic robots and vehicles, since at least as early as December 2000.

2. Opposer has been using BATTLEBOX as its mark to advertise and sell toy robots, toy vehicles, accessories for toy robots and vehicles, and toy kits and play sets for electronic action figures and vehicles, since at least as early as January 1999.

3. Opposer owns U.S. Trademark Registration No. 2,397,203, registered on October 24, 2000, for BATTLEBOTS to promote its entertainment services in the nature of competitive events featuring robots.

4. Opposer also has the following applications pending before the U.S. Patent and Trademark Office for BATTLEBOTS:

- a. Application Serial No. 76/108,549 (approved for publication on January 21, 2002), for BATTLEBOTS (and design), in Classes 6, 14, 16, 18, 21, 25, and 28, for use in connection with the goods and services set forth in the application, including, but not limited to, a variety of computer products and games, motion pictures, other electronic products, sports bags, key chains, piggy banks, plastic sports bottles and cups, clothing, toys, and clocks, all featuring electronic robots and vehicles;
- b. Application Serial No. 76/108,548 (approved for publication on October 3, 2001), for BATTLEBOTS (and design), in Class 41, for use in connection with the goods and services set forth in the application, including, but not limited to, entertainment services, featuring electronic robots and vehicles;
- c. Application Serial No. 76/209,135, for BATTLEBOTS, in Classes 9, 16, 25, 35, and 41, for use in connection with the goods and services set forth in the

application, including, but not limited to, a variety of computer products, motion pictures, a variety of printed matter, clothing, toys and games, on-line retail store services, and entertainment services, all featuring electronic robots and vehicles; and

- d. Application Serial No. 76/204,965, for BATTLEBOTS, in Classes 18, 20, and 21, for use in connection with the goods and services set forth in the application, including, but not limited to, sports bags, key chains, backpack accessories, plastic sports bottles and cups, and piggy banks, all featuring robotic characters and vehicles.

5. Opposer owns pending U.S. Trademark Application Serial No. 76/348,598 for the BATTLEBOX mark, in Class 28, as used in connection with toy robots, toy vehicles, accessories for toy robots and vehicles, and toy kits and play sets for electronic action figures and vehicles and other goods.

6. Opposer has invested substantial time, money, and effort to develop and promote the BATTLEBOTS and BATTLEBOX Marks (the "Marks"). Opposer's longstanding, continuous, and successful uses of the Marks have created, in the mind of the public, a strong association between the Marks and Opposer. The Marks have become famous by reason of their prominent and continuous use by Opposer.

7. Applicant Konami Corporation ("Applicant") has applied for a trademark registration based on its intent to use the mark BATTLE OX (the "Opposed Mark") in connection with computer products and video games (Class 9), brochures, booklets, strategy guides, books, cards, posters and a variety of other printed matter relating to computer video games (Class 16), and video game machines, hand-held electronic games, board games, and other

toys, including action figures (Class 28) (the "Application").

8. Notwithstanding the Application, authorized officers of Applicant have declared recently that the Opposed Mark is not a trademark of Applicant and that Applicant is "not planning to use the [Opposed Mark] in a release or in an announcement . . . in the future."

9. The Opposed Mark is confusingly similar to the Marks. The goods identified in the Application are identical to or closely related to Opposer's goods and services promoted or to be promoted using its Marks.

10. The Opposed Mark presented for registration by Applicant so resembles Opposer's Marks as to be likely, when applied to the goods identified in the Application, to cause confusion, or mistake or to deceive, within the meaning of Title 15 U.S.C. Section 1052(d).

11. Applicant's use of the Opposed Mark is likely to cause confusion, or to cause mistake or to deceive by suggesting that Applicant's goods are endorsed, authorized, sponsored, associated with or approved by Opposer, when in fact there is no such endorsement, authorization or sponsorship.

12. Registration by Applicant of the Opposed Mark would eviscerate the exclusive authority of Opposer to control the use of the Marks and to license the Marks for use by authorized companies under controlled quality conditions.

13. Opposer has not authorized Applicant to imitate the Marks, nor does Opposer exercise any control over or endorse or approve of Applicant or its commercial activities.

WHEREFORE, Opposer requests that this Opposition to Application Serial No. 76/321,623 be sustained pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

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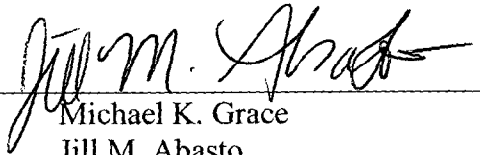
A duplicate copy of this Notice of Opposition along with the required fee is enclosed
herewith.

Respectfully submitted,

GRACE & GRACE LLP

Dated: May 20, 2002

By:

A handwritten signature in black ink, appearing to read "Jill M. Abasto", written over a horizontal line.

Michael K. Grace
Jill M. Abasto
Attorneys for Opposer
Battlebots, Inc.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with Federal Express, postage prepaid, in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, Attn: Box TTAB – FEE, on May 20, 2002.

Deanna Castellanos

(Name)



(Signature)