

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

BATTLEBOTS, INC.,)
)
Opposer,)
)
v.)
)
KONAMI CORPORATION,)
)
Applicant.)

Opposition No.: 91/152,562
Appln. Serial No.: 76/321,623

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**APPLICANT’S ANSWER AND
AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION**

Applicant, Konami Corporation (“Konami”) hereby submits this Answer and Affirmative Defenses to the Notice of Opposition in this proceeding, and as grounds therefore states as follows:

1. Konami lacks knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 1 of the Notice of Opposition and on that basis denies those allegations.
2. Konami lacks knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 2 of the Notice of Opposition and on that basis denies those allegations.
3. Konami admits that the USPTO online database identifies Opposer as the registrant for U.S. Trademark Registration No. 2,397,203, issued October 24, 2000 for the mark BATTLEBOTS covering “entertainment in nature of competitive events featuring robots” and Konami otherwise lacks knowledge or information sufficient to for a belief as the truth or falsity of the allegations contained in Paragraph 3 of the Notice of Opposition and on that basis denies

those allegations.

4. Konami admits that the USPTO online database identifies Opposer as the applicant for the following applications before the U.S. Patent and Trademark Office for the mark BATTLEBOTS:

- a. Application Serial No. 76/108,549 for the goods and/or services identified in that record;
- b. Application Serial No. 76/108,548 for the goods and/or services identified in that record;
- c. Application Serial No. 76/209,135 for the goods and/or services identified in that record;
- d. Application Serial No. 76/204,965 for the goods and/or services identified in that record;

Konami otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 4, including subparagraphs (a) through (d), of the Notice of Opposition and on that basis denies those allegations.

5. Konami admits that the USPTO online database identifies Opposer as the applicant for U.S. Application Serial No. 76/348,598, for the mark BATTLEBOX covering “toys, namely electronic and non-electronic, assembled and non-assembled action toy model hobbycraft kits of all descriptions; playsets of all descriptions for use in connection with action figures featuring robots; toy vehicles and toy vehicle accessories, plastic collectible clip-on toys; construction toys, namely, electronic and non-electronic construction activity sets for use in connection with action figures featuring robots, toy vehicles and accessories” and Konami otherwise lacks knowledge or information sufficient to form a belief as the truth or falsity of the

allegations contained in Paragraph 5 of the Notice of Opposition and on that basis denies those allegations.

6. Konami lacks knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 6 of the Notice of Opposition and on that basis denies those allegations.

7. Konami admits that it has filed intent-to-use Application Serial No. 76/321,623 for the mark BATTLE OX for “computer products, namely, computer game programs; video game cartridges; video game CD-ROMS; video game machines for use with televisions; computer game CD-ROMS; video game programs; video game programs for use with television sets; video game joysticks” in International Class 9; “brochures and booklets relating to computer and video games; video game strategy guide books; video game strategy guide magazines; card game strategy guide books; card game strategy guide magazines; card game instruction books; card game instruction magazines; posters; playing cards and instruction manual sold therewith; computer game instruction manuals; printed game instruction sheets; printed scoring sheets; trading cards; calendars; loose-leaf binders and stationery” in International Class 16; “stand-alone video game machines; hand-held units for playing electronic games; board games and instructional manuals sold as a unit therewith; card games; dice; promotional game materials; game equipment, namely, chips; toys, namely action figures; dolls and playsets therefore” in International Class 28.

8. Konami lacks knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 8 of the Notice of Opposition and on that basis denies those allegations.

9. Konami denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. Konami denies the allegations contained in paragraph 10 of the Notice of Opposition.

11. Konami denies the allegations contained in paragraph 11 of the Notice of Opposition.

12. Konami denies the allegations contained in paragraph 12 of the Notice of Opposition.

13. Konami admits that Opposer has not authorized Konami's registration or use of the BATTLE OX Mark, that Opposer does not exercise any control over or endorse or approve of Konami's activities in connection with Konami's BATTLE OX Mark and Konami avers that it does not need any authorization, control, endorsement or approval from Opposer. Konami otherwise denies the allegations contained in Paragraph 13 of the Notice of Opposition.

AFFIRMATIVE DEFENSES


- a. The counterclaim fails to state a claim upon which relief can be granted.
- b. Opposer is barred from obtaining the relief requested in its counterclaim for cancellation by the doctrines of estoppel, laches, acquiescence and waiver.
- c. Applicant will assert any and all additional affirmative defenses that will be developed throughout the discovery and testimony periods in this opposition proceeding.

WHEREFORE, Applicant, Konami Corporation, prays that:

1. Application Serial No. 76/321,623 be sustained;
2. Judgment in the opposition be entered in favor of Applicant, Konami Corporation.
3. The opposition proceeding be dismissed with prejudice.

Respectfully submitted,

Dated: November 29, 2002


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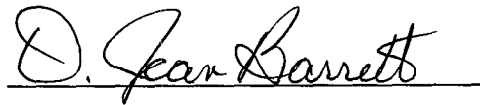
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPOSITION** was served on counsel for Opposer, this 29th day of November, 2002, by sending same via First Class Mail, postage prepaid to:

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**APPLICANT’S MOTION TO EXTEND
TIME TO RESPOND TO OPPOSER’S FIRST SET OF INTERROGATORIES
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Trademark Rule 2.120, Applicant Konami Corporation (hereinafter “Applicant” or “Konami”) hereby respectfully moves for a one-month extension of time to respond to Opposer’s First Set of Interrogatories and First Requests for Production of Documents and Things. Applicant submits that good cause exists for the requested extension and in support thereof states as follows:

Pursuant to a prior agreement between the parties to this proceeding, Applicant’s response to the Notice of Opposition, Applicant’s First Set of Interrogatories and Applicant’s First Request for Production of Documents and Things were due on November 29, 2002, the day after Thanksgiving.

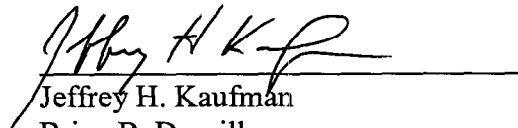
Applicant today is answering the Notice of Opposition. Applicant is also serving its Objections to Applicant’s First Set of Interrogatories and its Objections to Applicant’s First Request for Production of Documents and Things.

However, undersigned counsel has not yet received substantive information from Applicant that would permit counsel to prepare responses to this discovery. Accordingly, Applicant requests a one-month extension of time through December 29, 2002 to serve substantive responses to Opposer's First Set of Interrogatories and First Request for Production of Documents and Things.

This extension will also permit the parties to continue their settlement discussions.

Respectfully submitted,

Dated: November 29, 2002



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S MOTION TO EXTEND TIME TO RESPOND TO OPPOSER'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Opposer, this 29th day of November, 2002, by sending same via First Class Mail, postage prepaid to:

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