

ESTTA Tracking number: **ESTTA110351**

Filing date: **11/17/2006**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Yes Entertainment Corporation
Granted to Date of previous extension	11/22/2006
Address	5 Slater Drive Elizabeth, NJ 07206 UNITED STATES
Attorney information	Michael H. Sproule, Esq. Akabas & Cohen 488 Madison Avenue 11th Floor New York, NY 10022 UNITED STATES msproule@akabascohen.com Phone:(212) 308-8505

Applicant Information

Application No	78550310	Publication date	07/25/2006
Opposition Filing Date	11/17/2006	Opposition Period Ends	11/22/2006
International Registration No.	NONE	International Registration Date	NONE
Applicant	Gamze Ltd 1016 Chinacem Golden Plaza, 77 Mody Rd. Tsim Sha Tsui, HONG KONG		

Goods/Services Affected by Opposition

<p>Class 009. All goods and services in the class are opposed, namely: Computer chip-based audio recording and playback devices, namely, digital audio players, digital audio recorders, and personal voice-memo recorders; radios; radios incorporating clocks; radios incorporating writing implements; and personal communications devices, namely, electronic personal organizers and electronic diaries, and accessories for use therewith, namely, carrying cases, protective cases, and headsets</p>
<p>Class 028. All goods and services in the class are opposed, namely: Toys and games, namely, toy writing implements with voice modulation functions and radios; hand-held units for playing electronic games; electronic action and skill games; talking toys; mechanical toys; toy key chains and key rings; and electronic voice-changing toys</p>

Attachments	615-01-021.pdf (3 pages)(282831 bytes)
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Signature	/Michael H. Sproule/
Name	Michael H. Sproule, Esq.
Date	11/17/2006

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

In the matter of trademark application Serial No. 78/550,310
For the mark POWERPENZ
Published in the Official Gazette July 25, 2006

Yes Entertainment Corporation,)	
Opposer)	
)	
)	Opposition No.
)	
Gamze Ltd,)	
Applicant)	

NOTICE OF OPPOSITION

Yes Entertainment Corporation,
a Delaware corporation
5 Slater Drive
Elizabeth, NJ 07206

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application (the “Application”), and hereby opposes the same.

The grounds for opposition are as follows:

1. The Application seeks registration of the mark POWERPENZ for use with: “computer chip-based audio recording and playback devices, namely, digital audio players, digital audio recorders, and personal voice-memo recorders; radios; radios incorporating clocks; radios incorporating writing implements; and personal communications devices, namely, electronic personal organizers and electronic diaries, and accessories for use therewith, namely, carrying cases, protective cases, and headsets” in Class 009; and “toys and games, namely, toy writing implements with voice modulation functions and radios; hand-held units for playing electronic games; electronic action and skill games; talking toys; mechanical toys; toy key chains and key rings; and electronic voice-changing toys” in Class 28.

2. The Application was filed on January 19, 2005 based on intent to use pursuant to Lanham Act Section 1(b) with priority under Lanham Act Section 44(d) based on European Union (CTM) application number, 4172722, filed 12/21/2004.

3. The Applicant amended the Application to delete the Section 44(e) filing basis, but retained the priority date under Section 44(d) of December 21, 2004.

4. Upon information and belief, the Applicant did not use the mark POWERPENZ in the United States prior to filing the Application, and did not use the mark POWERPENZ anywhere prior to filing the European Union application.

5. Opposer adopted and used in commerce the trademark POWERPENZ as early as November 20, 1995 in connection with pens and with toys incorporated into a pen-like form with which one can write and play. Opposer is currently using the trademark POWERPENZ and has done so continuously since its first use.

6. Opposer is the owner of U.S. trademark application No. 77/046,894 for the mark POWERPENZ for “pens” in Class 009 and “toys incorporated into a pen-like form with which one can write and play” in Class 028, filed under Lanham Act Section 1(a) with dates of first use of November 20, 1995, predating the Application’s priority date.

7. Opposer has used the mark POWERPENZ since long prior to Applicant’s filing date of January 19, 2005, and long prior to the filing date of Applicant’s European Union (CTM) application of December 21, 2004 upon which the priority date of the Application is based.

8. Opposer has devoted large sums of money and substantial efforts to the promotion of its goods bearing the POWERPENZ mark, so the mark has become widely known as identifying goods emanating from the Opposer. The goodwill of the business

connected with the use of, and symbolized by, the mark is a very valuable asset of the Opposer.

9. The goods and/or services identified in the application overlap with and/or are related to Opposer's goods and/or services.

10. The mark POWERPENZ, which Applicant seeks to register, is identical to Opposer's mark and so resembles Opposer's mark that the use and registration of POWERPENZ in connection with Applicant's goods and services is likely to cause confusion, mistake or deception, and therefore the granting of the registration would injure Opposer and Opposer's goodwill in the trademark.

1. Applicant's use and registration of POWERPENZ is likely to cause the public to assume erroneously that Applicant's goods are sponsored by Opposer or that they are in some way connected with Opposer, when in fact they are not, all to Opposer's irreparable damage.

WHEREFORE, Opposer prays that this Opposition be sustained and that the above-identified application be refused registration.

Yes Entertainment Corporation

By: 

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Dated: November 17, 2006