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

Proceeding	91189287
Party	Defendant Whitehurst, Timothy
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Submission	Answer
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Date	04/23/2009
Attachments	Answer to Notice of Opposition 4.23.09.pdf (6 pages)(136884 bytes)

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

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Techsmith Corporation,	:		
	:		
Opposer,	:		
	:	Opposition No:	91189287
v.	:	Serial No.:	77/505306
	:	Mark:	SNAG-IT
Timothy Whitehurst,	:	International Class:	28
	:	Published:	November 18, 2008
Applicant.	:		
-----X	:		

Box TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Timothy Whitehurst ("Applicant"), by his attorneys, Powley & Gibson, P.C., hereby answers the Notice of Opposition of Techsmith Corporation ("Opposer") as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and, therefore, denies the same.
2. Applicant admits that the records of the U.S. Patent and Trademark Office identify Opposer as the owner of U.S. Registration No. 2,104,800, with a registration date of October 14, 1997; that Opposer allegedly established incontestable status as to U.S. Registration No. 2,104,800 on December 10, 2002; and that the Registration appears to have been renewed on December 22, 2006.

Applicant lacks knowledge or information sufficient to form a belief as to the

truth of the remaining allegations contained in paragraph 2 and, therefore, denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 and, therefore, denies the same.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and, therefore, denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and, therefore, denies the same.
6. Applicant admits that it filed an Intent-to-Use based Application for the Trademark SNAG-IT, which covers board games in International Class 28. Applicant denies that its Application for SNAG-IT has a filing date of December 23, 2006. Applicant denies the remaining allegations in Paragraph 6.
7. Applicant admits that Applicant's Application has been assigned Serial No. 77/505,306.
8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and, therefore, denies the same.
9. Applicant denies the allegations contained in paragraph 9.
10. Applicant denies the allegations contained in paragraph 10.
11. Applicant denies the allegations contained in paragraph 11.
12. Applicant denies the allegations contained in paragraph 12.
13. Applicant denies the allegations contained in paragraph 13.
14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and, therefore, denies the same.

15. Applicant denies the allegations contained in paragraph 15.

16. Applicant denies the allegations contained in paragraph 16.

First Affirmative Defense

17. The Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

18. Opposer owns no exclusive rights to the terms “SNAG” and “IT.”

Third Affirmative Defense

19. Opposer’s mark is not famous.

Fourth Affirmative Defense

20. There is no likelihood of confusion between the mark Opposer is asserting in this Opposition and the Applicant’s mark.

Fifth Affirmative Defense

21. Applicant’s mark in its entirety is sufficiently different from Opposer’s mark to avoid confusion, deception, or mistake as to the source or sponsorship or association of Applicant’s goods.

Sixth Affirmative Defense

22. There is no likelihood of dilution between the mark Opposer is asserting in this Opposition and the Applicant’s mark.

Seventh Affirmative Defense

23. Opposer will not be damaged by registration of Applicant’s mark.

Eighth Affirmative Defense

24. The goods to be offered under Applicant’s mark will differ and be distinct than the goods offered under the Opposer’s mark.

Ninth Affirmative Defense

25. The goods to be offered under Applicant's mark will be sold through different channels of trade than the goods offered under the Opposer's mark.

Tenth Affirmative Defense

26. The goods to be offered under Applicant's mark will be targeted towards different consumers than the goods offered under the Opposer's mark.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice, and that the registration sought by Application Serial No. 77/505306 be granted.

Dated: New York, New York
April 23, 2009

Respectfully submitted,
POWLEY & GIBSON, P.C.

By:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Notice to Opposition was served by first-class mail, postage prepaid, on April 23, 2009, upon the following:

James R. Duby, Jr.
Duby & Associates, PLC
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East Lansing, MI 48823
(517) 371-9835

ATTORNEYS FOR OPPOSER

The undersigned also certifies that the foregoing Answer to Notice to Opposition is being transmitted to the United States Patent and Trademark Office Trademark Trial and Appeal Board using the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated above.



Brunilda Casiano-Marin