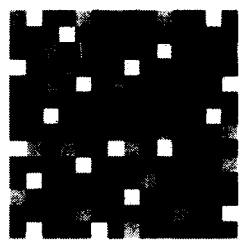


NOV 16 2009

# Artificial Life, Inc.

Incorporated in the State of Delaware  
United States of America



artificial life

TM

November 10, 2009

Robert H. Coggins  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
USA

Opposition No 91190723, Serial No 77488251  
Boost Worldwide, Inc. ("Opposer") v. Artificial Life, Inc. ("Applicant")

**RE: Answer to Notice of Opposition**

Dear Mr Coggins,

We herewith send you a copy of our reply referring to Boost Worldwide, Inc. Notice of Opposition filed June 19, 2009 and the USPTO's letter dated 23 October 2009.

Sincerely,

Ernest Axelbank  
Chief Technology Officer



11-16-2009

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

BOOST WORLDWIDE, INC.,	*	
Opposer	*	Opposition N° 91190723
v.	*	Serial N° 77488251
ARTIFICIAL LIFE, INC.,	*	
Applicant	*	

**APPLICANT 'S ANSWER TO OPPOSER 'S NOTICE OF OPPOSITION**

Applicant, Artificial Life, Inc. hereby answers the Notice of Opposition filed by Opposer as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations.
2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations.
3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations.
4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations
6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations
8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a relief as to the allegations contained therein and accordingly denies the allegations
9. Applicant admits that it is the owner of the intent-to-use application for the mark "MOBILEBOOSTER for " computer software for the support of the development and roll out of mobile applications" in class 9 and denies any other allegations contained in paragraph 9 of Opposer's Notice.
10. Applicant admits the allegations contained in paragraph 10 of Opposer's Notice

Count I: Likelihood of Confusion

11. Applicant repeats and realleges its answers to paragraph 1 to paragraph 10.
12. Answering paragraph 12 of the Notice of Opposition, Applicant denies each and every allegation contained therein
13. Answering paragraph 13 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
14. Answering paragraph 14 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

Count II: Deception/False Suggestion of Connection -

15. Applicant repeats and realleges its answers to paragraph 1 to paragraph 14.
16. Answering paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation contained therein
17. Answering paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation contained therein

Count III: Dilution

18. Applicant repeats and realleges its answers to paragraph 1 to paragraph 17.
19. Answering paragraph 19 of the Notice of Opposition, Applicant denies each and every allegation contained therein
20. Answering paragraph 20 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations
21. Answering paragraph 21 of the Notice of Opposition, Applicant denies each and every allegation contained therein
22. Answering paragraph 22 of the Notice of Opposition, Applicant denies each and every allegation contained therein

**AFFIRMATIVE DEFENSES**

23. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the Opposer's mark are not confusingly similar. Any similarity, if at all, between Applicant's mark and the Opposer's mark is in the portions "Mobile" and "BOOST" which upon information and belief, has been used and registered, together or not, by numerous third parties in the

Hi-Tech industry. As a result, Opposer cannot base any similarity between its pleaded mark and the mark of Applicant of the "Mobile" and/or "Boost". Any trademark or service mark rights that Opposer may have are narrowly circumscribed to the goods and services indicated and any other use would not lead to a likelihood of confusion.

24. Applicant further affirmatively alleges that there is no likelihood of dilution, diminution or impairment because Opposer's and Applicant's marks are not sufficiently similar and because the Applicant's mark does not qualify for protection from dilution as the distinctive requirement is not met.

WHEREFORE: Applicant requests that the Notice of Opposition be dismissed and Applicant's application be allowed to proceed to registration in due course.

**Service of Papers by Electronic Means**

Applicant also asks Opposer to agree to use e-mail for service of papers in accordance with Trademark Rule 2.119 (b)(6). Provided Opposer's acceptance, following e-mail address shall be used for service of papers to Applicant: [i.setzepfandt@artificial-life.com](mailto:i.setzepfandt@artificial-life.com)

Respectfully Submitted

ARTIFICIAL LIFE, INC.



Ernest Axelbank

Chief Technology Officer

Date: November 10, 2009

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of this Answer to Notice of Opposition (re: Opposition N° 91190723) is being served on the Attorney for Opposer, Boost Worldwide, Inc. on November 10 ,2009 via first class international overnight courier, postage prepaid, at the following address:

N. Christopher Norton,  
ARENT FOX LLP,  
1050 Connecticut Avenue, NW,  
Washington, DC 20036, United States

By:



Ernest Axelbank