

ESTTA Tracking number: **ESTTA659455**

Filing date: **03/05/2015**

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

Proceeding	91202952
Party	Plaintiff Atari Interactive, Inc.
Correspondence Address	SUSAN PROGOFF DORSEY & WHITNEY LLP 51 WEST 52ND STREET NEW YORK, NY 10019 UNITED STATES ny.trademark@dorsey.com, progoff.susan@dorsey.com, sanderji.fara@dorsey.com
Submission	Motion to Reopen
Filer's Name	Susan Progoff
Filer's e-mail	ny.trademark@dorsey.com, progoff.susan@dorsey.com, sanderji.fara@dorsey.com
Signature	/sp/
Date	03/05/2015
Attachments	20150305 Motion Reopen.pdf(219698 bytes)

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

-----X

ATARI INTERACTIVE, INC.,	:	
	:	
Opposer,	:	Opposition No. 91202952
	:	
v.	:	
	:	
ANDREW N. GREENBERG,	:	
	:	
Applicant.	:	

-----X

**OPPOSER'S MOTION TO REOPEN ITS TESTIMONY
PERIOD TO INTRODUCE NEWLY DISCOVERED EVIDENCE**

Opposer, Atari Interactive, Inc., hereby moves the Trademark Trial and Appeal Board pursuant to Trademark Rule 2.121(a) to reopen its testimony period for the limited purpose of introducing the suspension notice issued by the United States Patent and Trademark Office on February 27, 2015, against Application Serial No. 86/464,337, owned by Opposer, for the mark HAUNTED HOUSE: CRYPTIC GRAVES (the “Suspension Notice”) and the corresponding application details from the TSDR. As can be seen from the Suspension Notice and the application TSDR printout, copies of which are attached as Exhibit A, Opposer’s application to register the mark HAUNTED HOUSE: CRYPTIC GRAVES for downloadable electronic games and related goods, substantially the same goods as are covered by Opposer’s existing registration of HAUNTED HOUSE and the application to register HAUNTED HOUSE TYCOON that is the subject of this Opposition, has been suspended pending disposition of the opposed application to register HAUNTED HOUSE TYCOON. The basis for the suspension is the United States Patent and Trademark Office’s belief that if the opposed mark HAUNTED HOUSE TYCOON

registers, Opposer's application to register HAUNTED HOUSE: CRYPTIC GRAVES may be refused registration under Section 2(d) on the basis of a likelihood of confusion with HAUNTED HOUSE TYCOON. This evidence clearly demonstrates the harm that will befall Opposer if Applicant's mark HAUNTED HOUSE TYCOON is registered. Moreover, the Suspension Notice and the corresponding application details serve as persuasive evidence that Applicant's HAUNTED HOUSE TYCOON mark is likely to cause confusion with Opposer's HAUNTED HOUSE trademark.

ARGUMENT

I. Opposer's Evidence is Newly Discovered and Could Not Have Been Discovered Earlier

In deciding a motion to reopen a testimony period to introduce newly discovered evidence, the movant must show that: (1) "the proposed evidence has been newly discovered," and (2) "the evidence could not have been discovered earlier through the exercise of reasonable diligence." TBMP § 509.01(b)(2) (2014). Opposer's proposed evidence plainly meets this standard.

The Suspension Notice Opposer seeks to submit was issued on February 27, 2015. Opposer's testimony period closed on May 18, 2014 and its rebuttal testimony period closed on January 30, 2015. As Opposer's testimony and rebuttal testimony periods closed well before the issuance of the Suspension Notice, there can be no question that the Suspension Notice is newly discovered evidence and that Opposer could not have discovered it through the exercise of any diligence, let alone reasonable diligence, because it did not exist during Opposer's testimony periods.

II. The Evidence is Highly Probative to Opposer's Case and the Grant of the Instant Motion Will Not Prejudice Applicant

The Trademark Trial and Appeal Board Manual of Procedure provides that the “Board must also consider such factors as the nature and purpose of the evidence sought to be brought in, the stage of the proceeding, and prejudice to the nonmoving party.” *See id.* Opposer’s motion to reopen its testimony period for the limited purpose of introducing the Notice of Suspension and the corresponding application details should be granted because (1) the evidence is highly probative to Opposer’s case on actual harm and likelihood of confusion, (2) neither party has submitted its trial brief and (3) Applicant will not be prejudiced by the inclusion of this evidence.

As noted above, the proposed evidence is highly relevant to the issues of harm and likelihood of confusion. The Suspension Notice demonstrates that real harm will befall Opposer if Applicant’s mark is allowed to register because Opposer’s ability to expand, secure registrations for and protect its longstanding HAUNTED HOUSE game franchise will be blocked if Applicant’s mark HAUNTED HOUSE TYCOON registers. In addition, the Trademark Examiner’s official opinion that HAUNTED HOUSE: CRYPTIC GRAVES is likely to cause confusion with HAUNTED HOUSE TYCOON is probative evidence that HAUNTED HOUSE TYCOON is similarly likely to cause confusion with Opposer’s registered trademark HAUNTED HOUSE. Consequently, the Suspension Notice and the corresponding application details are highly relevant to Opposer’s case and should be admitted into evidence in this Opposition.

At this stage of the proceeding, neither party has submitted its trial brief and thus, the grant of this motion will not disrupt the existing schedule. If the instant motion is granted,

Opposer is ready to move forward with the submission of its new evidence promptly and will submit its trial brief shortly thereafter.

Finally, the inclusion of the proposed evidence will not prejudice Applicant. In this context, neither delay nor inconvenience qualifies as prejudice. *See* TBMP § 509.01(b)(1). Rather, Applicant must demonstrate that his ability to litigate the case will be prejudiced. *See Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1587 (TTAB 1997). As Applicant has not taken testimony or cross-examined Opposer's witness and has yet to submit his trial brief, he will not be prejudiced by the inclusion of this evidence.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board grant its motion

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: March 5, 2015

By: /Susan Progoff/
Susan Progoff
Fara S. Sunderji
51 West 52nd Street
New York, NY 10019-6119
(212) 415-9200

Attorneys for Opposer,
Atari Interactive, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2015, a true and correct copy of the foregoing OPPOSER'S MOTION TO REOPEN ITS TESTIMONY PERIOD TO INTRODUCE NEWLY DISCOVERED EVIDENCE was served on Applicant via e-mail at hdiandrew@earthlink.net, as previously agreed between Applicant and Opposer's counsel, and by first class mail, postage prepaid, addressed as follows:

Andrew N. Greenberg
1846 Hebron Hills Drive
Tucker, GA 30084-5901

/Thomas Kearney/

Thomas Kearney

EXHIBIT A

To: Atari Interactive, Inc. (kristen.keller@atari.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86464337 - HAUNTED HOUSE: CRYPTIC GRAVES - N/A
Sent: 2/27/2015 2:45:31 PM
Sent As: ECOM112@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86464337

MARK: HAUNTED HOUSE: CRYPTIC GRAVES

86464337

CORRESPONDENT ADDRESS:

KRISTEN J. KELLER
ATARI, INC.
475 PARK AVE S FL 12
NEW YORK, NY 10016-6901

GENERAL TRADEMARK INFORMATION
<http://www.uspto.gov/trademarks/index>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Atari Interactive, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO. :

N/A

CORRESPONDENT E-MAIL ADDRESS:

kristen.keller@atari.com

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 2/27/2015

The trademark examining attorney is suspending action on the application for the reason(s) stated below. *See 37 C.F.R. §2.67; TMEP §§716 et seq.*

The effective filing date of the pending application(s) identified below precedes the filing date of applicant's application. If the mark in the referenced application(s) registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark(s). *See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application(s) is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application(s) is attached.

- Application Serial No(s). 85268906

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the “Response to Suspension Inquiry or Letter of Suspension” form online at <http://teasroa.uspto.gov/rsi/rsi>.

/Charles H Hiser IV/
Examining Attorney
Law Office 112
(571) 272-7526
charles.hiser@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

85268906

Status

OPPOSITION PENDING

Word Mark

HAUNTED HOUSE TYCOON

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Andrew N. Greenberg INDIVIDUAL UNITED STATES 1846 Hebron Hills Dr
Tucker GEORGIA 30084

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game software.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HAUNTED HOUSE" APART
FROM THE MARK AS SHOWN.

Filing Date

2011/03/16

Examining Attorney

SNYDER, NELSON

Haunted House Tycoon

To: Atari Interactive, Inc. (kristen.keller@atari.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86464337 - HAUNTED HOUSE: CRYPTIC GRAVES - N/A
Sent: 2/27/2015 2:45:32 PM
Sent As: ECOM112@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **2/27/2015** FOR U.S. APPLICATION SERIAL NO.86464337

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see

http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

SEARCH MULTI-SEARCH ?

US Serial No 86464337 Status Documents

Status results found

STATUS DOCUMENTS ? Download Print Preview

Generated on: This page was generated by TSDR on 2015-03-05 13:36:37 EST

Mark: HAUNTED HOUSE: CRYPTIC GRAVES

HAUNTED HOUSE: CRYPTIC GRAVES

US Serial Number: 86464337 Application Filing Date: Nov. 25, 2014

Register: Principal

Mark Type: Trademark

Status: An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 27, 2015

▲ Mark Information Expand All

▲ Related Properties Information

▼ Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *,* identify additional (new) wording in the goods/services.

For: Downloadable electronic games via the internet and wireless devices; electronic, video and multimedia game software for use on personal computers and for use on electronic game playing machines; recorded computer software featuring video games; game software for computers; and prepaid downloadable video game and video game software

International Class(es): 009 - Primary Class U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 25, 2014 Use in Commerce: Nov. 25, 2014

▲ Basis Information (Case Level)

▼ Current Owner(s) Information

Owner Name: Atari Interactive, Inc.

Owner Address: 475 Park Avenue South
New York, NEW YORK 10016
UNITED STATES

Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

▲ Attorney/Correspondence Information

▲ Prosecution History

▲ TM Staff and Location Information

▲ Assignment Abstract Of Title Information - Click to Load

▲ Proceedings - Click to Load

Download Adobe Reader

If you are the applicant or the applicant's attorney and have questions about this file, please contact the [Trademark Assistance Center](#)



USA.gov
United States Patent and Trademark Office

- » [Accessibility](#)
- » [Privacy Policy](#)
- » [Terms of Use](#)
- » [Security](#)
- » [Emergencies/Security Alerts](#)

- » [Federal Activities Inventory Reform \(FAIR\) Act](#)
- » [Notification and Federal Employee Antidiscrimination and Retaliation \(NoFEAR\) Act](#)
- » [Budget & Performance](#)

- » [Freedom of Information Act \(FOIA\)](#)
- » [Department of Commerce NoFEAR Act Report](#)
- » [Regulations.gov](#)
- » [STOPIFakes.gov](#)

- » [Strategy Targeting Organized Piracy \(STOP!\)](#)
- » [Information Quality Guidelines](#)
- » [Department of Commerce](#)
- » [USPTO Webmaster](#)

