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

Proceeding	91202952
Party	Defendant Andrew N. Greenberg
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85268906

Mark: Haunted House Tycoon

Atari Interactive, Inc. ·

Opposer,

v.

Andrew Greenberg,

Applicant.

Opposition No.: 91202952

**APPLICANT’S OPPOSITION TO MOTION TO REOPEN TESTIMONY
PERIOD**

Applicant hereby moves the Trademark Trial and Appeal Board deny Opposer’s motion to reopen testimony period. Opposer recently filed with the USPTO to register the mark HAUNTED HOUSE: CRYPTIC GRAVES. As Opposer had already initiated its claim against Applicant, Opposer filed such claiming knowing that the USPTO would act on such a new registration attempt as it has. Opposer also falsely claims there is new evidence that “clearly demonstrates the harm that will befall Opposer if Applicant’s mark HAUNTED HOUSE TYCOON is registered.” Finally, Opposer falsely asserts there is “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 Not Newly Discovered but is Newly Manufactured

Opposer filed to register this new mark November 25, 2014, well after the testimony period had closed on May 18, 2014. Opposer was well aware of this existing proceeding when it filed for the new mark and had every reason to know that the USPTO would rule as it did. The motion should be denied because clearly there is no newly discovered evidence. In order to be newly discovered, it must have been outside the control of the party making the discovery. Here, on the other hand, Opposer intentionally made the filing which it claims is newly discovered. Rather than being newly discovered evidence, the recent filing is an intentional strategy by Opposer to muddy the waters and get a second bite at the apple by reopening testimony. Opposer should be sanctioned for frivolously claiming that there is newly discovered evidence when clearly there is not.

II. The Evidence has No Bearing on Opposer's Case and the Grant of the Instant Motion Will Prejudice Applicant

The proposed evidence has little relevance to the issues of harm and likelihood of confusion. The Suspension notice itself has no bearing on the current action. Additionally, the Suspension Notice merely suspends the registration until the Applicant's application is either registered or abandoned. The suspension notice clearly says, "If the mark in the referenced application(s) registers, applicant's mark may be refused registration," not that it will. The suspension notice clearly indicates that the USPTO has not made any final decision as to the new registration. It also does not "clearly demonstrate the harms that will befall Opposer."

Opposer also asserts that the “Trademark Examiner’s official opinion” is that HAUNTED HOUSE: CRYPTIC GRAVES is likely to cause confusion with HAUNTED HOUSE TYCOON. Again, the suspension notice does not say such, merely that the mark “may be” refused registration because of a likelihood of confusion,” not that it will be, or that there is an official ruling that it does. In fact, Applicant’s registration specifically notes “no claim is made to the exclusive right to use ‘Haunted House’ apart from the mark as shown.”

In addition, the suspension notice does not demonstrate any actual market confusion or propensity for such, nor does it show “persuasive evidence” of confusion.

Finally, the inclusion of the proposed evidence will clearly prejudice Applicant. As this action has been going on for three years, primarily due to Opposer delays, Applicant has been developing his case for far longer than most applicants have to. Applicant has been working with the documents that have already been introduced during the testimony and discovery periods established by the USPTO. Extending these so Opposer can include evidence it has just created clearly encumbers and prejudices Applicant.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board deny this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 25th day of March, 2015, a true and correct copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN ITS TESTIMONY PERIOD TO INTRODUCE NEWLY DISCOVERED EVIDENCE** was sent to Opposer's attorney of record, via email and First Class Mail, postage prepaid to:

Susan Progoff
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51 West 52nd Street
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/Andrew Greenberg/

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