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

Proceeding	91202952
Party	Plaintiff Atari Interactive, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

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**OPPOSER'S REPLY IN SUPPORT OF ITS MOTION TO REOPEN
ITS TESTIMONY PERIOD TO INTRODUCE NEWLY DISCOVERED EVIDENCE**

Applicant’s brief opposing Atari’s motion contains nothing that refutes the validity of Atari’s request to reopen Atari’s testimony period for the limited purpose of allowing Atari to introduce the suspension notice issued by the United States Patent and Trademark Office on February 27, 2015, against Atari’s Application Serial No. 86/464,337 to register the mark HAUNTED HOUSE: CRYPTIC GRAVES (the “Suspension Notice”) and the corresponding application details from the TSDR.

First, Applicant improperly misconstrues Atari’s motion as a general request to reopen testimony to “muddy the waters and get a second bite at the apple.” Opposition at 2. This is simply not so. As noted previously, Atari’s request is for the *limited* purpose of introducing the Suspension Notice and the corresponding application details from TSDR, and no other testimony or documents. *See* Motion at 1, 3. Atari is not seeking to reopen its testimony period to take testimony from any witnesses or change its theory of the case.

Second, Applicant claims that the Suspension Notice issued by the Patent and Trademark Office was “manufactured” by Atari because Atari “had every reason to know that the USPTO would rule as it did” and that Atari should be “sanctioned for frivolously claiming that there is newly discovery evidence when clearly there is not.” Opposition at 2. As an initial matter, there is no way that Opposer could “manufacture” a suspension notice because it was issued by the Patent and Trademark Office, an entity over which Atari has no control. In addition, as the owner of longstanding prior rights in HAUNTED HOUSE, Atari also could not have predicted that Applicant’s intervening junior rights would interfere with Atari’s right to build on its existing brand. Opposer simply filed a new used-based application for a trademark registration to cover the new game in its HAUNTED HOUSE game series, a game that Atari disclosed during the testimony of Todd Shallbetter on May 2, 2014 (58:11-59:4). Atari did nothing to cause the Suspension Notice to issue, and could not have predicted its issuance.¹

Finally, Applicant’s assertion that the proposed evidence will “clearly prejudice Applicant” is simply wrong because his sole basis for this claim is delay. Opposition at 3. The law is clear: “The ‘prejudice to the nonmovant’ contemplated under the first *Pioneer* factor must be more than the mere inconvenience and delay.” TMBP § 509.01(b)(1) (citing *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993) and *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 (TTAB 1997)). Here, Applicant did not argue prejudice on any basis other than delay because no such prejudice exists.

¹ It is incongruous that Applicant now claims that HAUNTED HOUSE: CRYPTIC GRAVES is likely to cause confusion with his mark HAUNTED HOUSE TYCOON, while simultaneously claiming that HAUNTED HOUSE TYCOON is not likely to cause confusion with Atari’s mark HAUNTED HOUSE.

For all of the foregoing reasons and for the reasons set forth in its motion papers, Atari respectfully requests that the Board grant its motion to reopen.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: April 1, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2015, a true and correct copy of the foregoing OPPOSER'S REPLY IN SUPPORT OF ITS 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:

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