

ESTTA Tracking number: **ESTTA828316**

Filing date: **06/20/2017**

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

Proceeding	91233994
Party	Defendant JAKKS Pacific, Inc.
Correspondence Address	LARRY MILLER Feder Kaszovitz Llp 845 3rd Ave Fl 11 New York, NY 10022-6601 Email: lmiller@fedkas.com, cmashel@fedkas.com
Submission	Answer
Filer's Name	Larry Miller
Filer's email	lmiller@fedkas.com, cmashel@fedkas.com
Signature	/Larry Miller/
Date	06/20/2017
Attachments	REVISEDTRAXaSSanswerFINAL.pdf(266395 bytes)

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

In the Matter of Application Serial No. 86/748683
Published in the *Official Gazette* February 21, 2017

-----x
TRAXXAS, L.P.)
)
Opposer,)
)
v.) Opposition No. 91233994
)
JAKKS PACIFIC, INC.,)
)
Applicant.)
)
-----x

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant in the above-referenced proceeding, JAKKS PACIFIC, Inc. ("Applicant"), by and through its undersigned attorneys, hereby answers TRAXXAS, L.P.'s ("Opposer") Notice of Opposition as follows:

1. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.
2. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.
3. Applicant lacks knowledge and information sufficient to form a belief as to the truth

of the allegations of Paragraph 3 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.

4. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.

5. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.

6. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof; except that Applicant admits that the registration number exists at the U.S. Patent and Trademark Office.

7. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

8. Applicant admits that it applied for the mark ANIMAL TRAXX on the date alleged and for the goods alleged in Paragraph 8 of the Notice of Opposition. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other allegations of Paragraph 8 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

9. Applicant admits that the mark was published for opposition on the date alleged and for the goods alleged in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition and demands strict proof thereof.

13. Applicant denies the allegations of Paragraph 13 of the Notice of Opposition and demands strict proof thereof.

To the extent that any Paragraph or subpart of any allegation in the Notice of Opposition has inadvertently not been answered, it is herewith denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by waiver or estoppel or acquiescence or laches.

THIRD AFFIRMATIVE DEFENSE

Opposer's claims are barred by reason of the existence of numerous third party registrations for compound marks that include the word or phoneme TRACKS and phonetically similar or identical variants thereof, as well as numerous other trade names, business names, and common law uses of marks, words, or designations incorporating or consisting of the letters TRAXX or homonyms thereof. As such, Opposer does not hold any exclusivity in use or in registration of a

"traxx" mark, which is a fairly common element appearing in trademarks, including marks covering toy products. Opposer's coexistence with such third-party marks constitutes an admission on behalf of Opposer that it can coexist with Applicant's mark opposed herein.

FOURTH AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake, or deception between Opposer's asserted marks and Applicant's mark because no prospective purchaser of Applicant's goods would be confused into thinking that its products are sponsored, endorsed by or manufactured by Opposer.

FIFTH AFFIRMATIVE DEFENSE

The goods of interest to the parties are vastly different, move in different marketing and sales channels, and are offered at different price points, such that no likelihood of confusion exists.

SIXTH AFFIRMATIVE DEFENSE

Various paragraphs of the Notice of Opposition do not comply with Fed. R. Civ. P. 8(a) and (e), which require a "short and plain statement" of the claims showing that Opposer is entitled to relief and 37 C.F.R. § 2.104(a) and T.B.M.P. § 309.03(a)(2), which require "a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark...." As such Applicant is not required to separately admit or deny each of the allegations contained therein.

ADDITIONAL DEFENSES RESERVED

Applicant reserves the right to raise additional defenses to the claims alleged by Opposer based upon information learned or obtained through investigation or discovery.

WHEREFORE, Applicant prays that this Opposition be in all things denied and that Applicant's mark proceed to allowance.

DATED: June 20, 2017
Respectfully submitted,

FEDER KASZOVITZ LLP
Attorneys for Applicant
JAKKS PACIFIC, Inc.

By: _____

Larry Miller

845 Third Avenue, 11th Floor
New York, NY 10022-6601
(212) 888-8200
(212) 888-7776
lmiller@fedkas.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on Opposer this 20th day of June 2017 by sending the same via first-class mail, postage prepaid, to:

Gregory W. Carr
Carr Law Firm PLLC
6170 Research Rd., Suite 111
Frisco, TX 75033



Candace Mashel