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

Proceeding no.	91287839
Party	Defendant Red Giant Media, LLC
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Date	04/18/2024
Attachments	821837.7020 Applicant Red Giant's Response to Motion to Consent.pdf(126471 bytes)

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

In re Application No. 97/057,852 for the mark RED GIANT MEDIA, filed October 4, 2021, and published March 28, 2023

In re Application No. 97/044,215 for the mark RED GIANT STUDIOS, filed September 24, 2021, and published September 26, 2023

Maxon Computer, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91286244 (parent)
	)	Opposition No. 91287839
Red Giant Media, LLC	)	
	)	
Applicant.	)	

APPLICANT RED GIANT MEDIA, LLC'S RESPONSE TO OPPOSER'S MOTION TO CONSENT TO ENTRY OF JUDGMENT PARTIAL NON-USE CANCELLATION AND AMENDMENT TO ITS REGISTRATION

Applicant Red Giant Media, LLC ("Applicant" or "RG Media") hereby submits, in accordance with TMBP §502.02(b), its timely response to Opposer, Maxon Computer, lnc.'s ("Maxon" or "Opposer") Motion to Consent to Entry of Judgment Partial Non-Use Cancellation and Amendment to its Registration, pursuant to Federal Rule 12(b)(6) ("Motion to Consent") (18 TTABVUE).

Opposer by its Motion seeks to cancel the wording "motion picture editing, color correct and color grading" from its claimed U.S. Registration No. 3,767,441 ("the '441 Registration") for the mark RED GIANT and thereby amend and limit the identification of goods in said

registration to the following, “computer software for image processing, photo imaging, motion graphics processing.”

In support of its Motion to Consent and in response to Applicant’s partial non-use cancellation counterclaim, one, Opposer effectively concedes that it has not used the claimed mark RED GIANT in connection with "motion picture editing, color correcting and color grading" identified in Class 009 in the ‘441 Registration. Opposer asserts its proposed deletion of these goods "resolves the issue of nonuse." Two, Opposer concedes its proposed amendment to delete this wording "is sufficient to introduce a "substantially different issue for trial”. (*See*, 18 TTABVUE 2, lines 6-8).

In particular, Opposer states on page 2 of its Motion to Consent that Opposer “seeks to limit its registration to the following: “Computer software for image processing, photo imaging, motion graphics processing.” (Emphasis added) (18 TTABVUE 2). As is clear from its Notice of Opposition, Opposer offers very specific software to a very specific market, namely software “tools that can be used by filmmakers, editors, visual effects artists, motion designers, and others.” (*See*, e.g., 1 TTABVUE, para. 6, p. 4). Applicant’s goods and services in its present applications do not include software of any kind, let alone such niche software to such market.

Yet, Opposer seeks to claw-back the effect of its concessions stating on page 3 of its Motion: " Maxon's request to delete, and consent to entry of judgment with respect to, the wording "motion picture editing, color correcting and color grading" is without prejudice as to any rights, including registration rights, common law rights, and all other rights in and to the RED GIANT mark relating to "computer software for motion picture editing, color correcting and color grading." (18 TTABVUE 3).

Opposer's "claw-back" statement contradicts its statement that it "seeks to limit its registration to the following: "Computer software for image processing, photo imaging, motion graphics processing." (Emphasis added). Furthermore, its "claw-back" statement contradicts its assertion that the amendment it seeks is sufficient to introduce "a substantially different issue for trial." (Emphasis added).

Opposer should not be permitted to have it both ways and claw-back in this proceeding the concessions it admits it must make, and limitations it admits it must accept, in order for its Motion to Consent to be granted. Otherwise, the amendment Opposer seeks would not limit its registration to the following: "Computer software for image processing, photo imaging, motion graphics processing" and would not introduce "a substantially different issue for trial."

CONCLUSION

Accordingly, in view of the foregoing remarks, Applicant RG Media submits that should the Board grant the Motion to Consent, the grant should limit Opposer to the relief Opposer claims to seek, namely to limit its registration to "Computer software for image processing, photo imaging, motion graphics processing" so as to introduce a substantially different issue for trial.

This 18th day of April 2024.

Respectfully submitted,

By: /Todd Deveau/

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	)	Opposition No. 91287839
Red Giant Media, LLC	)	
	)	
Applicant.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "**APPLICANT RED GIANT MEDIA, LLC'S RESPONSE TO MOTION TO CONSENT TO ENTRY OF JUDGMENT PARTIAL NON-USE CANCELLATION AND AMENDMENT TO ITS REGISTRATION**" has been served on Opposer Maxon Computer, Inc. via their counsel of record, via email to:

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Attorney for Maxon Computer, Inc.

Dated this 18th day of April 2024.

/s/ Todd Deveau