

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

UGO NETWORKS, INC.,)
)
 Opposer,)
)
 v.)
)
 KONAMI CORPORATION,)
)
 Applicant.)
_____)

Consolidated Opposition No. 91/153,578
Appln. Serial Nos.: 76/074,595 and 76/075,729

**APPLICANT'S MOTIONS TO COMPEL DISCOVERY &
PRODUCTION OF WITNESSES, TO DETERMINE THE
SUFFICIENCY OF ADMISSIONS & TO SUSPEND PROCEEDINGS
AND APPLICANT'S SUPPORTING MEMORANDUM OF LAW**

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Pursuant to Rules 36(a) and 37(a) of the Federal Rules of Civil Procedure and Trademark Rules 2.120(d), (e), and (h), Applicant, Konami Corporation ("Konami" or "Applicant"), moves the Board for an Order:

1. Directing Opposer to supplement its answers to Applicant's Interrogatories Nos. 2, 4, 12, 13, 17, 18, 20, 23 and 24;
2. Directing Opposer to supplement its responses to Applicant's Requests for Production of Documents and Things Nos. 13, 14, 17, 18, 20 and 21;
3. Directing Opposer to produce all unprivileged documents responsive to Applicant's Interrogatories and Requests for Production of Documents and Things;
4. Directing Opposer to produce witnesses for depositions at a mutually agreeable time and place;
5. Deeming Opposer's responses to Applicant's First Request for Admissions Nos. 4-10 insufficient; and
6. Directing Opposer to fully respond to Applicant's First Requests for Admissions Nos. 4-10; and
7. Directing Opposer to provide a log of all documents withheld on grounds of any privilege; and
8. Suspending proceedings pending resolution of these motions.

Pursuant to Trademark Rule 2.127(a), Opposer shall file a response to this motion within fifteen (15) days from the date of service of the motion unless this time is extended by the Board.

PRELIMINARY STATEMENT

After making several good faith efforts to resolve discovery disputes over the course of several months, Konami Corporation (Applicant) submits this Memorandum in support of its motions to compel UGO Networks, Inc. (Opposer) to adequately respond to discovery and to produce witnesses, to determine the sufficiency of Opposer's responses to Applicant's requests for admissions, and to preclude Opposer from later offering evidence that it failed to produce during discovery. (See Exhibits 10, 11, 12,

13, 15, 16, 17 and 22.) Applicant submits this Memorandum pursuant to Rules 36(a) and 37(a) of the Federal Rules of Civil Procedure and Trademark Rules 2.120(d), (e), and (h).

FACTUAL BACKGROUND

1. Application for Registration and Opposition

On June 21, 2000, Applicant filed its applications for federal registration of its YU-GI-OH Marks (Applicant's Marks), Application Serial Numbers 76/074,595 and 76/075,729. Applicant's Marks were published for opposition on October 8, 2002. One month later, on November 6, 2002, Opposer filed a Notice of Opposition for each application, which resulted in two Opposition proceedings having Opposition Numbers 91/153,578 and 91/154,657. On April 23, 2003, the Board granted the parties' stipulated motion to consolidate the proceedings.

2. Applicant's Discovery Requests

In the parent Opposition, the Board ordered discovery to open on December 15, 2002. By January 7, 2003, Applicant had served Opposer its first set of discovery requests, which included: (1) Applicant's First Set of Interrogatories, (2) Applicant's First Request for Production of Documents and Things, and (3) Applicant's First Request for Admissions.¹ (Exhibits 1-3.)

3. Discovery Disputes & Applicant's Good Faith Efforts to Resolve Them

More than two months after Applicant's initial discovery requests, and after three extensions granted by Applicant, (Exhibits 4, 5 and 6), on March 14, 2003, Opposer submitted its responses. (Exhibits 7, 8 and 9.) Of these, the summary table below identifies Opposer's responses that are most deficient:

¹ On November 20, 2003, Applicant received Opposer's Supplemental Responses to Applicant's First Set of Interrogatories and Opposer's Supplemental Responses to Applicant's First Document Requests. (Exhibits 20 and 21.) Nevertheless, only its response to Interrogatory No. 18 even attempted to address Applicant's disputed discovery requests, and with respect to this response, Opposer, again, fell extremely short of its obligations as discussed *infra* II.B. Because these supplemental responses remain deficient, Applicant asked Opposer to supplement the responses further by Tuesday, November 25, 2003. (Exhibit 22.) Opposer did not supplement its responses and indicated that it would not do so until early December, thereby requiring Applicant to File this Motion.

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