

NO. DC-10-13615

|                            |   |                           |
|----------------------------|---|---------------------------|
| TRAXXAS, LP,               | § | IN THE DISTRICT COURT     |
|                            | § |                           |
| Plaintiff,                 | § |                           |
|                            | § |                           |
| v.                         | § | DALLAS COUNTY, TEXAS      |
|                            | § |                           |
| XIN YU ARTS TOYS CO., LTD. | § |                           |
| d/b/a XQ TOYS and          | § |                           |
| AUTOTEC SALES, INC, d/b/a  | § |                           |
| EXTREME MACHINES           | § |                           |
|                            | § |                           |
| Defendants.                | § | E-101ST JUDICIAL DISTRICT |

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff Traxxas, LP (“Traxxas”) files this Original Petition complaining of Defendants Xin Yu Arts Toys Co., Ltd. d/b/a XQ Toys (“XQ”) and AutoTec Sales, Inc. d/b/a Extreme Machines (“AutoTec”), and states:

**DISCOVERY**

1. **Discovery Control Plan.** Traxxas intends to conduct discovery as a “Level Two” case under Texas Rule of Civil Procedure 190.3.

**PARTIES AND VENUE**

2. **Traxxas.** Traxxas is a Texas limited partnership with its principal place of business in Dallas County, Texas.

3. **XQ.** XQ is a Chinese entity with its principal office and place of business at Lai Mei Industrial Zone, Chenghai, Shantou, Guangdong Region, China. XQ does not maintain an agent for service of process in the State of Texas, and therefore the Secretary of State is its agent for service of process pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044, and BUS. ORG. CODE

§ 5.251, which provides that service on the Secretary of State shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of process. The Secretary of State shall immediately forward one copy thereof, by registered mail, to the corporation at its principal office in the state or country under the laws of which it is incorporated.

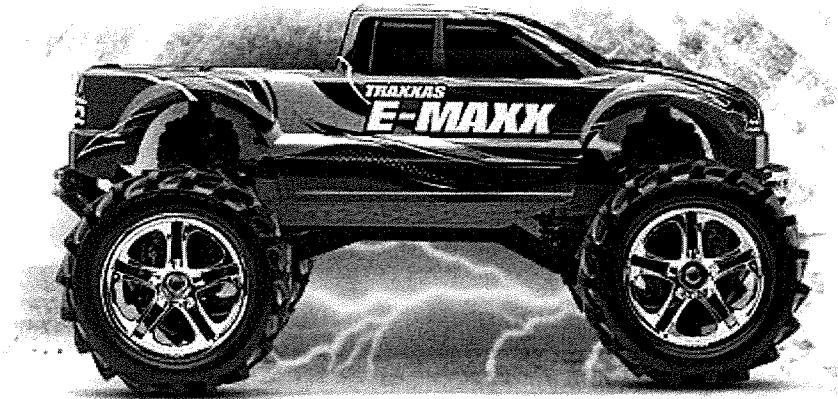
4. **AutoTec.** AutoTec is a California corporation with its principal office and place of business at 1936 Fairway Drive B, San Leandro CA 94577. AutoTec does not maintain an agent for service of process in the State of Texas, and therefore the Secretary of State is its agent for service of process pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044 and BUS. ORG. CODE § 5.251, which provides that service on the Secretary of State shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of process. The Secretary of State shall immediately forward one copy thereof, by registered mail, to the corporation at its principal office in the state or country under the laws of which it is incorporated.

5. **Venue.** Venue is proper in Dallas County, Texas, pursuant to contract and Tex. CIV. PRAC. & REM. CODE §§15.002, and 65.023.

#### **FACTS**

6. Traxxas creates, designs, and manufactures hobby-class radio controlled cars, trucks, and boats in both nitro and electric categories. Traxxas was started in 1986, and pioneered the first fully assembled, hobby-class remote controlled car. Traxxas “ready-to-run” vehicles have the same benefits as hobby-class kits, including replaceable parts, hop-ups, and a high quality component radio system. Traxxas is currently, and has been for last several years, the number-1 selling name in ready-to-run nitro and electric models. Traxxas models include the

T-Maxx®, E-Maxx®, Maxx®, and Mini Maxx® radio controlled vehicles. For example, the E-Maxx Vehicle is depicted:



7. The Traxxas name, with its distinctive and stylized “XX” (the “Traxxas XX”) is widely recognized in the remote control vehicle market, and Traxxas has registered TRAXXAS® under the following registration Nos. 2,292,851, 2,314,111 and 3,205,399 to protect its mark. In addition to the TRAXXAS® registrations, Traxxas has registered T-Maxx® No. 3,169,710, E-Maxx® No. 3,619,270, Maxx® No. 3,191,106, and Mini Maxx® No. 3,697,101, all of which use the distinctive Traxxas XX. These registered marks are attached collectively as Exhibit “A.” Further, Traxxas has also registered Ready to Race® No. 2378932.

8. The stylized Traxxas name and the Traxxas XX, as used in Traxxas, T-Maxx, E-Maxx, Maxx, and Mini Maxx are fanciful: they were coined to serve as trademarks for the Traxxas line of remote controlled vehicles. Moreover, they have acquired secondary meaning in the market, and are widely associated with Traxxas’ goods and services. Traxxas’ trademarks are valid and in full force.

9. In the fall of 2009, XQ marketed and sold vehicles under the name “Extreme Machines.” XQ stylized the “X” in Extreme and used a “XX” in its products names in an intentional effort to copy Traxxas’ marks and trade dress and to confuse consumers as to the

affiliation, source and origin of XQ's products. Further, XQ called its vehicles "Raptor Traxx" and "Thunder Traxx," again stylizing the XX to resemble the Traxxas XX. Examples of these infringing marks are attached as Exhibit "B." For example, the Raptor Traxx Vehicle is depicted:



On information and belief, XQ acted with actual intent to cause customer confusion, and used the name "Extreme Machines" in an effort to hide its tracks. XQ was attempting to pass off its goods as those of Traxxas. AutoTec acted as XQ's contact point and customer service representative in the United States, and AutoTec's phone number was listed on XQ's website promoting the Raptor Traxx and Thunder Traxx.

10. In order to protect its trademarks, Traxxas brought suit against AutoTec for trademark infringement, false representation in commerce, unfair competition, dilution, and other claims. AutoTec, in turn, identified XQ as the source of the Raptor Traxx and Thunder Traxx vehicles. After Traxxas obtained a temporary restraining order, the parties entered into a settlement agreement whereby XQ (1) agreed to cease all sales, whether direct or indirect, of the Raptor Traxx and Thunder Traxx vehicles; (2) agreed to take down the Extreme Machines website promoting the Raptor Traxx and Thunder Traxx vehicles; (3) represented that it had sold

fewer than 1,000 Raptor Traxx and Thunder Traxx vehicles. A true and correct copy of the settlement agreement is attached hereto as Exhibit A.

11. It has recently come to the attention of Traxxas that XQ is now selling the same vehicles under the names “Raptor XX” and “Thunder XX” (collectively, the “Infringing Vehicles”). For example, the new Raptor XX is depicted:



In addition, the Website is back up advertising the Infringing Vehicles. Further, the packaging and trade dress for the Infringing Vehicles uses the phrase “RTR/Ready to Race,” in direct and intentional infringement on the Ready to Race® mark owned by Traxxas. A true and correct copy of photographs of the Infringing Vehicles in packaging is attached as Exhibit B. The Infringing Vehicles are currently being offered for sale at Target. AutoTec Sales’ phone number is once again listed as the point of contact for sales and service. Further, the Thunder XX copies the design of Traxxas’ Summit vehicle, down to the tire tread. On information and belief, XQ has once again acted with actual intent to cause customer confusion, and used the name “Extreme Machines” in an effort to hide its tracks. XQ is attempting to pass off its goods as those of Traxxas.

**CAUSES OF ACTION**

13. **Breach of Contract.** XQ's actions are a breach of the Settlement Agreement, for which Traxxas now sues.

14. **Trademark Infringement.** XQ's and AutoTec's actions, as set forth above, constitute trademark infringement pursuant to 15 U.S.C. § 1114 and the common law. As a result of XQ's and AutoTec's actions, Traxxas is entitled to recover its damages and XQ's and AutoTec's profits, for which it now sues.

15. **False Representation in Commerce.** XQ's and AutoTec's actions, as set forth above, constitute false representations in commerce in violation of 15 U.S.C. § 1125. As a result of XQ's and AutoTec's actions, Traxxas is entitled to recover its damages and XQ's and AutoTec's profits, for which it now sues.

16. **Unfair Competition.** XQ's and AutoTec's actions, as set forth above, constitute unfair competition. As a result of XQ's and AutoTec's actions, Traxxas is entitled to recover its damages and XQ's and AutoTec's profits, for which it now sues.

17. **Dilution.** XQ's and AutoTec's actions, as set forth above, constitute dilution in violation of TEX. BUS. & COM. CODE §16.29 and 15 U.S.C. §1125. As a result of XQ's and AutoTec's actions, Traxxas is entitled to recover its damages and XQ's and AutoTec's profits, for which it now sues.

18. **Preliminary and Permanent Injunctive Relief.** XQ's and AutoTec's continued use of the Traxxas' protected trademarks, including the Traxxas XX, are causing immediate and irreparable damage to Traxxas, for which Traxxas has no adequate remedy at law. Traxxas' damages in this regard are continuing and incalculable and such actions of XQ's and AutoTec mislead customers into believing that XQ's and AutoTec products are Traxxas products, when in

fact they are cheap imitations, which also is causing immediate and irreparable damage to Traxxas, for which it has no adequate remedy at law. Traxxas seeks preliminary and permanent injunctive relief ordering XQ's and AutoTec to (i) cease using the Traxxas XX or any likeness thereto or any derivation thereof and all other material that might suggest that products distributed by XQ's and AutoTec are distributed by Traxxas; (ii) cease selling or manufacturing any products under the name Raptor XX or Thunder XX, (iii) provide a complete inventory and accounting for all products sold by AutoTec bearing the name Raptor XX, Thunder XX, the Traxxas XX or any likeness thereto or any derivation thereof, including gross profits, cost of goods, number of units produced, and the purchaser of all such units; and (iv) selling or distributing products bearing the name Raptor XX, Thunder XX, the Traxxas XX or any likeness thereto or any derivation thereof.

19. **Attorneys' Fees.** Traxxas is entitled to recover its reasonable and necessary attorneys' fees, pursuant to 15 U.S.C. § 1117, for which it now sues.

20. **Conditions Precedent.** Traxxas has performed all conditions precedent to recovery of its damages, attorneys' fees, and expenses.

#### **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

21. **Legal Standard.** The purpose of a temporary injunction is to preserve the status quo pending trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The applicant must show a probable right to the relief sought and a probable, imminent, and irreparable injury. *Id.*

22. **Probable Right To Relief Sought.** XQ and AutoTec infringed Traxxas' protected trademarks by marketing products bearing the name Raptor XX and Thunder XX, and by using a stylized XX in imitation of the Traxxas XX. Traxxas' protected marks are attached as

Exhibit “C”. XQ’s and AutoTec’s infringing marks are attached as Exhibit “D”. XQ’s and AutoTec’s breaches are ongoing and without justification.

23. **Immediate, Irreparable Injury.** XQ’s and AutoTec’s continued sale of products bearing the name Raptor XX and Thunder XX is causing immediate and irreparable damage to Traxxas, for which Traxxas has no adequate remedy at law. Traxxas’ damages in this regard are continuing and incalculable and such actions of XQ’s and AutoTec mislead customers into believing that XQ’s and AutoTec’s products are sold by Traxxas, which also is causing immediate and irreparable damage to Traxxas, inasmuch as XQ’s and AutoTec’s products are cheap imitations of inferior quality, for which Traxxas has no adequate remedy at law.

24. **Temporary Restraining Order.** In view of the foregoing, Traxxas seeks a temporary restraining order restraining and prohibiting XQ and AutoTec from (i) using the Traxxas XX or any likeness thereto or any derivation thereof and all other material that might suggest that products distributed by XQ and AutoTec are distributed by Traxxas; (ii) cease selling or manufacturing any products under the name Raptor XX or Thunder XX , (iii) provide a complete inventory and accounting for all products sold by XQ and AutoTec bearing the name Raptor XX, Thunder XX, the Traxxas XX, or any likeness thereto or any derivation thereof, including gross profits, cost of goods, number of units produced, and the purchaser of all such units; (iv) selling or distributing products bearing the name Raptor XX, Thunder XX, the Traxxas XX or any likeness thereto or any derivation thereof; (v) cease selling any radio control vehicle marked with words “Ready to Race” or using packaging marked “Ready to Race” for any remote control vehicle.

**RELIEF REQUESTED**

25. **Prayer.** Traxxas respectfully requests the following relief:



- (a) That XQ and AutoTec be served with process and be required to answer in the time and manner prescribed by law;
- (b) That the Court award damages against AutoTec as requested above;
- (c) That the Court grant a temporary restraining order, preliminary and permanent injunction against AutoTec as requested above;
- (d) That Traxxas recover its actual damages, pre and post-judgment interest, reasonable and necessary attorneys' fees, and costs of court; and
- (e) That Traxxas have such other and further relief, both general and special, at law and at equity, to which it may show itself justly entitled.

Respectfully submitted,

By: /s/ Lance V. Clack

Keith R. Verges  
State Bar No. 20547650  
Lance V. Clack  
State Bar No. 24040694

FIGARI & DAVENPORT, L.L.P.  
3400 Bank of America Plaza  
901 Main Street  
Dallas, Texas 75202  
(214) 939-2000  
(214) 939-2090 (FAX)

ATTORNEYS FOR PLAINTIFF

**VERIFICATION**

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

BEFORE ME, the undersigned notary public, on this day personally appeared \_\_\_\_\_, who, being by me duly sworn on oath, deposed and said that he is \_\_\_\_\_ for Traxxas, LP, Plaintiff in the above-entitled and numbered cause, that he has read the above and foregoing instrument, and that the statements contained therein in paragraphs 5-9 and 19 in support of the injunctive relief requested are within his personal knowledge and are true and correct.

\_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of September, 2008, to certify which witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

My commission expires:

\_\_\_\_\_

# **EXHIBIT A**

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

Reg. No. 2,314,111

**United States Patent and Trademark Office**

Registered Feb. 1, 2000

**TRADEMARK  
PRINCIPAL REGISTER**



TRAXXAS CORPORATION (TEXAS CORPORATION)  
12150 SHILOH ROAD  
DALLAS, TX 75228

FIRST USE 8-0-1994; IN COMMERCE 8-0-1994.  
OWNER OF U.S. REG. NO. 1,669,563.

FOR: RADIO-CONTROLLED MODEL VEHICLES  
AND PARTS THEREFOR SOLD AS A UNIT, IN  
CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

SER. NO. 75-601,565, FILED 12-10-1998.

ROBERT COGGINS, EXAMINING ATTORNEY

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

Reg. No. 2,292,851

**United States Patent and Trademark Office**

Registered Nov. 16, 1999

**TRADEMARK  
PRINCIPAL REGISTER**

**TRAXXAS**

TRAXXAS CORPORATION (TEXAS CORPORATION)  
12150 SHILOH ROAD.  
DALLAS, TX 75228

FIRST USE 8-0-1994; IN COMMERCE  
8-0-1994.

OWNER OF U.S. REG. NO. 1,669,563.

FOR: RADIO-CONTROLLED MODEL VEHICLES AND PARTS THEREFOR, SOLD AS A UNIT, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

SER. NO. 75-603,799, FILED 12-11-1998.

ROBERT COGGINS, EXAMINING ATTORNEY

TRAXXAS - E-Maxx Trucks

DEALER  
LOCATOR

ZIP

Mile Radius

Find

Search Traxxas.com

Search

[HOME](#) | [ABOUT US](#) | [PRODUCTS](#) | [ONLINE COMMUNITY](#) | [VIDEOS](#) | [SUPPORT](#)


E-MAXX BRUSHLESS

E-MAXX



### E-Maxx® Brushless Edition (#3908)

When you've got the top-selling, top-performing electric monster truck, there's only one way to improve it: add even more power. E-Maxx Brushless Edition unleashes the Castle Creations Mamba Monster brushless motor system for over-the-top performance that could only come from Traxxas. Ready-To-Race® and built for brushless, E-Maxx Brushless Edition includes two 7-cell Power Cell batteries for speeds of 35+mph. Want even more? Strap in two 3S LiPos and experience 50+mph right out of the box. 65+mph when you gear up and install Talon™ tires for all-out speed!

### E-Maxx Brushless Features

In addition to everything that makes E-Maxx the best-selling electric monster truck, the Brushless Edition features:

- Castle Creations Mamba Monster Brushless System
- Up to 25.2 Volts of Massive Brushless Power
- Traxxas Power Cell Batteries Included
- Heavy-Duty 17mm Hex Hubs



### E-Maxx® (#3903)

E-Maxx®. The original high-performance electric monster truck is better than ever--easy to drive, tough to beat, and full of the monster innovation that Traxxas is known for. Dual Titan® motors, Revo® sealed pivot ball suspension, dual-servo steering, a brushless-ready transmission and waterproof electronics are just a few of the features that give E-Maxx its go-anywhere, crush-anything capability. Equipped for performance and fun, E-Maxx is the standard for electric monster truck excitement.

### E-Maxx Features

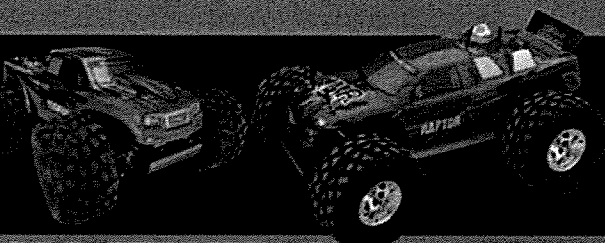
- TQ 2.4GHz Transmitter and Receiver with Traxxas Link™
- Traxxas Power Cell Batteries Included!
- Waterproof electronics
- Four-Channel micro receiver
- Revo®-Spec sealed pivot ball suspension, sealed differentials, and sealed driveshafts

TRAXXAS - E-Maxx Trucks

- New body design and graphics
- Aggressive 6.3" Maxx-Sized tires
- Black-Chrome 3.8" Twin-Spoke wheels
- Adjustable four-position wheelie bar
- Includes New Traxxas TQ 2.4GHz Radio System with 4-Channel Micro Receiver
- Top Speed: 50+mph out of the box, 65+mph all-out!
- Low-CG chassis design
- Transmission skid plate
- Snap-lock battery hold downs
- Dual-servo steering system
- Integrated servo saver
- Hex hardware throughout
- 3.8" mirror chrome Twin-Spoke wheels and Maxx® chevron tires

# **EXHIBIT B**





**CUSTOMER SERVICE**  
510-618-1700

READY TO RACE

**Pro Grade ALL WHEEL DRIVE 20mph**

**ABOUT US PRODUCTS PARTS CUSTOMER SERVICE**

**EXTREME MACHINES PRODUCTS**

**1:10 SCALE**



**EXTREME MACHINE THUNDER**

**SPECIFICATIONS:**

- 1) Product package size: 23"x 12.75" x 10.5"
- 2) Digital Proportional Steering and speed control
- 3) Transmitter type: AM Gun Style
- 4) Battery: Ni-MH SC 7.2V 2500 MAH  
- included w/ charger
- 5) 8 AA (FOR TRANSMITTER, NOT INCLUDED)
- 6) Motor: 540 motor (20000 rpm/s)
- 7) 27mhz or 49 mhz with up to 6 changeable crystals for each frequency to race up to 6 vehicles

**FEATURES:**

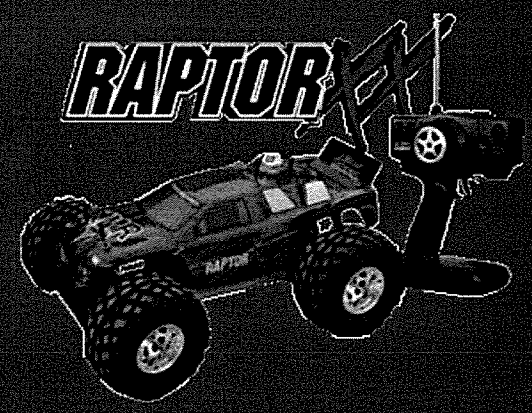
1. Easy to change PVC truck body
2. 2CH digital proportional R/C system - Steering & Speed
3. Powerful 540 motor
4. All Wheel Drive
5. Electronic differential and braking system
6. Independent front and rear differential gears

TO DOWNLOAD INSTRUCTION MANUAL FOR  
PRO GRADE THUNDER XX  
[CLICK HERE](#)



(requires adobe reader 9)

[Quick Trouble Shoot Page](#)



**EXTREME MACHINE RAPTOR**

**SPECIFICATIONS:**

- 1) Product package size: 23"x 12.75" x 10.5"
- 2) Digital Proportional Steering and speed control
- 3) Transmitter type: AM Gun Style
- 4) Battery: Ni-MH SC 7.2V 2500 MAH  
- included w/ charger
- 5) 8 AA (FOR TRANSMITTER, NOT INCLUDED)
- 6) Motor: 540 motor (20000 rpm/s)
- 7) 27 mhz or 49 mhz with 6 changeable crystals for each frequency to race up to 6 vehicles

**FEATURES:**

1. Easy to change PVC truck body
2. 2CH digital proportional R/C system - Steering & Speed
3. Powerful 540 motor
4. All Wheel Drive
5. Electronic differential and braking system
6. Independent front and rear differential gears

TO DOWNLOAD INSTRUCTION MANUAL FOR  
PRO GRADE RAPTOR XX  
[CLICK HERE](#)



(requires adobe reader 9)

[CLICK HERE](#)

[Quick Trouble Shoot Page](#)  
[CLICK HERE](#)



All content, images, logos, icons are property of Extreme Machines and should only be used with the written consent of Extreme Machines.  
Extreme Machines logo is a registered trademark of Extreme Machines  
Extreme Machines © 2009 ALL RIGHTS RESERVED.