

ESTTA Tracking number: **ESTTA108457**

Filing date: **11/08/2006**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Valiant Entertainment, Inc.
Granted to Date of previous extension	11/08/2006
Address	P.O. Box 7317 Philadelphia, PA 19101 UNITED STATES
Attorney information	Marya Lenn Yee Donovan & Yee LLP 110 Greene Street Suite 700 New York, NY 10012 UNITED STATES dalexander@yeellp.com

Applicant Information

Application No	78598980	Publication date	07/11/2006
Opposition Filing Date	11/08/2006	Opposition Period Ends	11/08/2006
Applicant	Valiant Intellectual Properties, LLC P. O. Box 2207 Wilmington, DE 19899 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. All goods and services in the class are opposed, namely: printed matter, namely, comic books; graphic novels; books featuring stories in illustrated form; books relating to comic book characters; periodicals, namely, magazines featuring illustrated stories for children and adults; comic strips; posters; art prints; lithographic prints; serigraphic prints; limited edition prints; collector's cards featuring comic book characters; trading cards; trading card albums

Attachments	ETERNAL WARRIOR Notice of Opp.pdf (5 pages)(89045 bytes)
Signature	/Marya Lenn Yee/
Name	Marya Lenn Yee
Date	11/08/2006

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

**IN THE MATTER OF TRADEMARK APPLICATION
SERIAL NO. 78-598980 PUBLISHED IN THE
OFFICIAL GAZETTE ON July 11, 2006
MARK: ETERNAL WARRIOR**

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VALIANT ENTERTAINMENT INC. :

Opposer, : OPPOSITION NO.

v. :

**VALIANT INTELLECTUAL :
PROPERTIES, LLC**

Applicant. :

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**Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231**

NOTICE OF OPPOSITION

Valiant Entertainment Inc. ("Opposer") is a limited liability corporation organized under the laws of the British Virgin Islands with a principal place of business in Philadelphia, Pennsylvania. Opposer believes it will be damaged by registration of the mark ETERNAL WARRIOR as shown in the above-identified application and hereby opposes the same.

The grounds for opposition are as follows:

1. Since at least as early as 1992, Opposer and its predecessors in interest have used

the mark ETERNAL WARRIOR (the “WARRIOR Mark”) in connection with comic books and related goods and services. ETERNAL WARRIOR is a strong mark and unique as applied to comic books and related goods and services. Opposer’s WARRIOR Mark was the subject of a federal trademark registration (Reg. No. 1,819,881).

2. Opposer purchased all right, title and interest, including all trademark rights, in and to the WARRIOR Mark and the goods and services related thereto from its predecessor, Acclaim Comics, Inc., after the latter company declared bankruptcy in 2004.

3. Opposer’s predecessor published the ETERNAL WARRIOR comic for many years under the Valiant imprint and, as is often the case in comic book publishing, intermittently ceased such publication with subsequent revivals of the ETERNAL WARRIOR character and the WARRIOR Mark in new series, plot lines, crossovers, back stories and the like. No such cessation was intended as an abandonment of rights. In the period immediately preceding the bankruptcy, Opposer’s predecessor was in a hiatus from publishing comics bearing many of its marks, including the WARRIOR Mark. Eventually, because of its financial problems, it was unable to resume such publication (or publication of many of its titles) and instead sought the protection of the bankruptcy laws, an excusable non-use as a matter of law.

4. Even with the intermittent cessation of new publications bearing the WARRIOR Mark, sales of the comics bearing the WARRIOR Mark did not cease. As is also common in the comic book industry, comic books, posters, lithographs, trading cards, and other merchandise bearing Opposer’s WARRIOR Mark and ETERNAL WARRIOR comic character were regularly sold and traded, and continue to be sold and traded in the relevant marketplace, since the inception of the ETERNAL WARRIOR comic in 1992 to date.

5. Opposer's comics and related goods, including the ETERNAL WARRIOR comic, were and are well-known in the United States and throughout the world by the relevant consumers and are understood by such consumers to be solely associated with Opposer and its predecessors as their source. Opposer's comics, including the comic bearing the WARRIOR Mark, have regularly been and are sold in comic book stores, via the internet and/or at comic-related trade shows. Opposer's comics have developed a large fan base and have been and are the subject of many internet fan websites.

6. Applicant seeks to register the trademark ETERNAL WARRIOR, which is identical to Opposer's WARRIOR Mark, based upon its intention to use the mark in connection with comic books and related goods and services, which are the same as Opposer's goods and services.

7. Applicant's ETERNAL WARRIOR mark is identical in appearance, sound and meaning to Opposer's WARRIOR Mark, the marks are used on identical goods and services and, upon information and belief, will be marketed through the same and/or similar channels of trade. Applicant's use or registration of the ETERNAL WARRIOR mark will cause confusion or cause consumers to believe that Opposer has authorized or endorsed the quality of Applicant's goods and services.

8. Applicant's registration and use of ETERNAL WARRIOR is also likely to create confusion and deceive purchasers into believing that Applicant's goods and services originate with or are in some way sponsored, endorsed, licensed, associated or otherwise authorized or connected with Opposer and its predecessors in interest. Such confusion would irreparably harm and damage Opposer because it will directly compete with Opposer's continued use of its

WARRIOR Mark on identical goods and services. Opposer would also be harmed by such confusion because it has no control over the nature or quality of the services provided or produced by Applicant under the ETERNAL WARRIOR mark.

9. Upon information and belief, Applicant was aware of Opposer and its predecessor in interest's rights in and to the WARRIOR Mark, and its ETERNAL WARRIOR comics prior to filing the instant trademark application for ETERNAL WARRIOR. Indeed, it has applied to register on an intent-to-use basis numerous of the marks owned by Opposer's predecessor including the key VALIANT imprint trademark, in the apparent interest of usurping the rights and benefits acquired by Opposer from the bankruptcy court. As a matter of public policy, such inequitable conduct should not be condoned.

By reason of the foregoing, Opposer will be damaged by Applicant's registration of the mark ETERNAL WARRIOR. WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the registration by Applicant of the mark ETERNAL WARRIOR be refused.

Two copies of this Notice of Opposition and the fee required in 37 CFR 2.6 are enclosed herewith.

Respectfully submitted,

Donovan & Yee LLP

Dated: New York, New York
November 8, 2006

By: Marya Lenn Yee, Esq.

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