

ESTTA Tracking number: **ESTTA370359**

Filing date: **09/27/2010**

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	Gamelink, LLC
Granted to Date of previous extension	09/29/2010
Address	537 Stevenson St.Ste 100 San Francisco, CA 94103 UNITED STATES

Correspondence information	Gamelink, LLC 537 Stevenson St.Ste 100 San Francisco, CA 94103 UNITED STATES phil@greenandgreen.com Phone:(415) 4578300 x 11
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Applicant Information

Application No	77770614	Publication date	06/01/2010
Opposition Filing Date	09/27/2010	Opposition Period Ends	09/29/2010
Applicant	DUNNIGAN, TIMOTHY P. 8136 HIGHLANDS DRIVE Midland, GA 31820 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2008/06/01 First Use In Commerce: 2009/06/21 All goods and services in the class are opposed, namely: entertainment services, namely, amusement arcades featuring console-based video game systems with multiple stations, each consisting of a large LCD television, leather chair and sound dome, for use in individual and group game play, game tournaments and game leagues

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23

Other

GameLink, L.L.C. a Private Media Group Company: the term #Game Link# Ser. No. 77770614, in this instance is de-ceptively descriptive of the services of Applicant in that Applicant provides links literally in a physical facility and has other such facilities planned. In each facility applicant#s customers play video games on the links set up by a network of connected and linked play stations. Under Section 2(e)(1), and others, Defendant furthermore, advertises his de-scriptive services on the internet in a way that is likely to lead Defendant#s customers, being mainly 12-26 year olds, to the website of Plaintiff GameLink, L.L.C. which is likely to be injured by the deceptively descriptive mark. GameLink, LLC under Trademark Dilution Revision Act of 2006, will be likely injured by diluting the GameLink® marks through blurring, by the potential and likelihood of dilution can occur if Plaintiff#s customers, believing that Plaintiff had, by way of example, left its normal business and become a gaming facility, which would tend to cause GL customers to go to others for adult entertainment. GameLink#s marks have become famous in its market and became so long before the other party adopted its mark. The GameLink® marks are in fact famous and distinctive in its markets, and the other party's use of its mark is likely to dilute the famous GameLink® marks. GameLink will likely be injured by diluting its trademarks GameLink® through tarnishment, in that it is likely that the GameLink® marks will become weakened as one of the best places to go for adult entertainment purchases, and that customers of GameLink® that see the advertising of Applicant/Defendant and are likely to believe that GameLink is no longer in the adult entertainment business, that it has changed its format, that it has become a sponsor of, or that it is sponsoring Applicant, or that it has sold its name to another, including, but not limited to, Applicant. There are other legal implications for Plaintiff GameLink in that government entities might confuse it with the physical locations of Applicant, making GameLink, L.L.C. a target for licensing issues, taxation by and other implications that dilute the value of its trademark GameLink®. The markets for Applicant#s services and those of Opposer should not mix. Applicant alleges that it runs a GAMING facility: #Gaming - we are an XBOX360:EI based gaming lounge. Our design satisfies even the most demanding gamer and promotes communal play by providing 12 stations of gaming interactivity. Our community is wireless, internet con-nected. and XBOXLiv8® enabled - your gamer tag or ours. Each station consists of high-end. comfortable leather seat-ing. 47-inch LCD HDTV, and advanced surround-sound dome

	<p>technology the audio quality is amazing! Additiooally. we do: Tournaments Birthday Parties Private Parties Gaming Leagues Game Link# Mobile Game Link#" University## Yet in a response to the Action of PTO dated Oct 2, 2009, Mr. Dunnigan for Applicant stated, #Three photos of our brick and mortar establishment as further evidence of the distinction of our mark as compared to the three current registrars - all of which have no physical location to offer consumers access to their products and/or services, specified or implied, as related to their registered mark# If Applicant wanted to it does not need to advertise all over the Internet, including, but not limited to, Twitter, Face-book, all places where one can follow Plaintiff also, it is straight out copying the GameLink® marks including 3023336 cited by the PTO Examiner, and Plaintiff's GameLink® marks. GameLink® Registration Number: 3023336 Mark (words only): GAMELINK is for, #on-line retail store services, computerized on-line ordering services, and wholesale ordering services in the field of entertainment goods namely videos, CDs, DVDs and order fulfillment services# There is also the mark Registration Number: 2206576 Mark (words only): GAME LINK for: International Class: 035 Class Status: Active, electronic and online retailing services by means of a global computer network, featuring products for adults, namely, videos, CD-ROMs, films, books, rubber goods and adult toys Basis: 1(a) First Use Date: 1993-02-20 First Use in Commerce Date: 1993-02-20 GameLink® is also registered internationally.</p>
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3023336	Application Date	07/14/2004
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	GAMELINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31		

	<p>on-line retail store services, computerized on-line ordering services, and wholesale ordering services in the field of entertainment goods namely videos, CDs, DVDs and order fulfillment services</p> <p>Class 038. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31</p> <p>Video-on-demand transmission and streaming of audio and video materials on the Internet</p>
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U.S. Registration No.	2206576	Application Date	04/10/1997
Registration Date	12/01/1998	Foreign Priority Date	NONE
Word Mark	GAME LINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1993/02/20 First Use In Commerce: 1993/02/20</p> <p>electronic and online retailing services by means of a global computer network, featuring products for adults, namely, videos, CD-ROMs, films, books, rubber goods and adult toys</p>		

Attachments	<p>78450797#TMSN.jpeg (1 page)(bytes)</p> <p>ShortPlain Statement.pdf (4 pages)(76665 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pg/Philip Green/
Name	Gamelink, LLC
Date	09/27/2010

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**IN THE
TRADEMARK TRIAL AND APPEALS BOARD**

GameLink, L.L.C. a Private Media Company)	IN RE: GAMELINK
Plaintiff/Opposer)	Ser. No. 77770614
vs.)	NOTICE OF OPPOSITION
Timothy Dunning,)	
Defendant/Respondent)	

COMES NOW GAMELINK, L.L.C. AND OPPOSES THE APPLICATION FOR THE MARK GAMELINK, Ser. No. 77770614 and alleges as follows.

1. Plaintiff GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.
2. GameLink, L.L.C. a Private Media Group Company: has grounds to oppose the term "Game Link" Ser. No. 77770614, in this instance is deceptively descriptive of the services of Applicant in that Applicant provides links literally in a physical facility and has other such facilities planned.

I. LIKELIHOOD OF CONFUSION

1. In each facility applicant's customers play video games on the links set up by a network of connected and linked play stations. Under Section 2(e)(1), and others, Defendant furthermore, advertises his descriptive services on the internet in a way that is likely to lead

1 Defendant's customers, being mainly 12-26 year olds, to the website of Plaintiff
2 GameLink, L.L.C. which is likely to be injured by the deceptively descriptive mark.

3 4 **II. Dilution**

- 5 2. Plaintiff GameLink, L.L.C. incorporates all statements made heretofore, and incorporates
6 herein all statements made on the ESTTA form online.
- 7 3. GameLink, LLC under Trademark Dilution Revision Act of 2006, will be likely injured by
8 diluting the GameLink® mark through blurring, by the potential and likelihood of dilution
9 can occur if Plaintiff's customers, believing that Plaintiff had, by way of example, left its
10 normal business and become a gaming facility, which would tend to cause GL customers to
11 go to others for adult entertainment. GameLink's mark has become famous in its market
12 and became so long before the other party adopted its mark. The GameLink® mark is in
13 fact famous and distinctive in its market, and the other party's use of its mark is likely to
14 dilute the famous GameLink® mark.
- 15 4. GameLink will likely be injured by diluting its trademark GameLink® through
16 tarnishment, in that it is likely that the GameLink® mark will become weakened as one of
17 the best places to go for adult entertainment purchases.
- 18 5. Customers of GameLink® that see the advertising of Applicant/Defendant and are likely to
19 believe that GameLink is no longer in the adult entertainment business, that it has changed
20 its format, that it has become a sponsor or that it is sponsoring Applicant, or that it has sold
21 its name to another, including, but not limited to, Applicant. There are other legal
22 implications for Plaintiff GameLink in that government entities might confuse it with the
23 physical locations of Applicant, making GameLink, L.L.C. a target for licensing issues,
24 taxation by and other implications that dilute the value of its trademark GameLink®. The
25 markets for Applicant's services and those of Opposer should not mix. Applicant alleges
26 that it runs a
- 27 6. "Gaming - we are an XBOX360:EI based gaming lounge. Our design satisfies even the
28 most demanding gamer and promotes communal play by providing 12 stations of gaming

1 interactivity. Our community is wireless, internet connected. and XBOXLiv8® enabled -
2 your gamer tag or ours. Each station consists of high-end. comfortable leather seating. 47-
3 inch LCD HDTV, and advanced surround-sound dome technology the audio quality is
4 amazing! Additionally. we do: Tournaments Birthday Parties Private Parties Gaming
5 Leagues Game Link™ *Mobile Game Link™* University...”

- 6 7. Yet in a response to the Action of PTO dated Oct 2, 2009, Mr. Dunnigan for Applicant
7 stated, “Three photos of our brick and mortar establishment as further evidence of the
8 distinction of our mark as compared to the three current registrars - all of which have no
9 physical location to offer consumers access to their products and/or services, specified or
10 implied, as related to their registered mark”
11 8. If Applicant wanted to it does not need to advertise all over the Internet, including, but not
12 limited to, Twitter, Facebook, all places where one can follow Plaintiff also, it is straight
13 out copying the GameLink® marks including 3023336 cited by the PTO Examiner, and
14 Plaintiff’s GameLink® marks.

15 16 **III.GameLink, L.L.C. marks:**

- 17 9.
18 a. GameLink® Registration Number: 3023336
19 Mark (words only): GAMELINK is for, “on-line retail store services, computerized
20 on-line ordering services, and wholesale ordering services in the field of
21 entertainment goods namely videos, CDs, DVDs and order fulfillment services”
22 b. Registration Number: 2206576
23 Mark (words only): GAME LINK for: International Class: 035
24 Class Status: Active, electronic and online retailing services by means of a global
25 computer network, featuring products for adults, namely, videos, CD-ROMs, films,
26 books, rubber goods and adult toys
27 Basis: 1(a)

1 First Use Date: 1993-02-20

2 First Use in Commerce Date: 1993-02-20

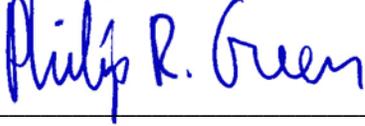
3 c. GameLink® is also registered internationally.

4 WHEREFORE,

5 Plaintiff Opposer prays that

- 6
- 7 1. The mark GAMELINK by Applicant Timothy Dunning be Cancelled,
 - 8 2. That the Mark not be registered and
 - 9 3. any other order this Board may make in its discretion.

10 Dated: September 27, 2010

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12 _____
13 Philip Green attorney for GameLink, L.L.C.