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Filing date: **03/16/2012**

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

Proceeding	91203299
Party	Defendant McGibney, James
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Date	03/16/2012
Attachments	2012-03-16 McGibney Ans to Opp.pdf ( 4 pages )(17130 bytes )

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

ZYNGA INC.,	)	Opposition No.: 91203299
	)	
Opposer,	)	Application Serial No.: 85/268,276
	)	For the Mark: CUPIDVILLE
v.	)	Filing Date: March 16, 2011
	)	Published: July 12, 2011
JAMES MCGIBNEY, an individual,	)	
	)	
Applicant.	)	

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**ANSWER TO NOTICE OF OPPOSITION**

James McGibney, an individual, residing in Las Vegas, Nevada, (“Applicant”), without waiving any right due to any sufficiency in the statement of the grounds of opposition, and saving to himself all defenses in law and equity, in answer to the Notice of Opposition, states:

1. With respect to the preamble to the Notice of Opposition, Applicant denies that Opposer will be damaged by the issuance of a registration maturing from application Ser. No. 85/268,276-CUPIDVILLE. Applicant has no knowledge of where Opposer is located or incorporated and, therefore, denies those allegations.

2. Applicant is without sufficient knowledge of the allegations in paragraphs 1 through 15 of the Notice of Opposition and, therefore, denies them.

3. Applicant admits it applied for registration of the mark CUPIDVILLE, Ser. No. 85/268,276 as set forth in that application. To the extent, Opposer alleges anything inconsistent with that application, Applicant denies the allegations.

4. Applicant admits that it did not use the mark CUPIDVILLE prior the date of its Application for same. Applicant does not have sufficient information about whether Applicant used the mark CUPIDVILLE prior to each of Opposer’s uses of its marks containing the suffix VILLE and, therefore, denies those allegations.

5. Applicant denies the allegations in paragraphs 18 through 23 of the Notice of Opposition, and further denies all other allegations in the Notice of Opposition not expressly admitted in this Answer.

### **AFFIRMATIVE DEFENSES**

1. Numerous marks incorporating the term “VILLE” exist on and off the Internet.

2. Opposer consented to registration of Applicant’s mark.

3. The marks of Opposer and Applicant are sufficiently different when considered in their entireties to avoid any likelihood of confusion, mistake or deception, as applied to the respective goods and services of Opposer and Applicant.

4. The services associated with Opposer’s marks, namely online computer games, and those associated with Applicant’s mark, namely internet dating, are significantly and sufficiently different, even if one were to read the respective class of services broadly, to avoid any likelihood of confusion, mistake or deception.

5. The marketing channels associated with Opposer’s marks, which are primarily through retail stores and online social networking sites like Facebook, and those associated with Applicant’s mark, which are primarily through internet searches and radio and internet advertising, are sufficiently different to avoid any likelihood of confusion, mistake or deception.

6. Opposer does not have the exclusive right to the ending phrase “VILLE” because it is not an indicator of source in and of itself. The term was in common use in the English language long before Opposer began using the term in connection with its computer games. The term is used by many members of the public and other companies for a whole host of services and products.

7. Opposer's opposition should be denied under the doctrine of unclean hands. Opposer has engaged in misuse and trademark bullying by abusively using oppositions, litigation and threats of the same to maintain a competitive market advantage.

8. Opposer's opposition should be denied because many of its marks are descriptive, have not acquired secondary meaning and are not entitled to protection.

9. Opposer does not qualify for anti-dilution protection of the Lanham Act because the term VILLE is highly diluted already by others using this ending in connection with numerous products and services.

10. Opposer's claim is barred by laches.

11. Opposer's claim is barred by the principle of acquiescence.

12. Opposer's claim is barred by the principle of estoppel.

Dated: March 16, 2012

Respectfully submitted,

POLSINELLI SHUGHART PC

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ATTORNEYS FOR APPLICANT  
JAMES MCGIBNEY

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by United States Mail, postage prepaid, this 16<sup>th</sup> day of March 2012, to:

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ZYNGA INC.

/Jeffrey H. Kass/

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