

ESTTA Tracking number: **ESTTA522992**

Filing date: **02/22/2013**

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	Activision Publishing, Inc.
Granted to Date of previous extension	02/24/2013
Address	3100 Ocean Park Boulevard Santa Monica, CA 90405 UNITED STATES
Attorney information	Scott J. Major Millen White Zelano & Branigan, PC 2200 Clarendon Blvd., 14th Floor Arlington, VA 22201 UNITED STATES docketing@mwzb.com, culver@mwzb.com, major@mwzb.com Phone:703-465-5356

Applicant Information

Application No	85570420	Publication date	08/28/2012
Opposition Filing Date	02/22/2013	Opposition Period Ends	02/24/2013
Applicant	A&E Television Networks, LLC 235 East 45th Street New York, NY 10017 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer game software and video game software; single-player, multiple-player, role-playing and real-time computer game software, downloadable via an online website and mobile platforms for entertainment purposes
Class 041. All goods and services in the class are opposed, namely: Entertainment services, namely, providing an on-line single-player, multiple-player, role-playing and real-time computer game for others via the Internet, mobile platforms, and local area computer networks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	TOP SHOT
Goods/Services	video game software and peripherals

Attachments	20130222130038.pdf (3 pages)(125911 bytes)
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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	/Scott J. Major/
Name	Scott J. Major
Date	02/22/2013

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

ACTIVISION PUBLISHING, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	App. No. 85570420
A&E TELEVISION NETWORKS, LLC,)	Mark: TOP SHOT
)	
Applicant.)	

NOTICE OF OPPOSITION

Activision Publishing, Inc. (“Activision”), a Delaware corporation with a business address at 3100 Ocean Park Boulevard, Santa Monica, California 90405, believes that it will be damaged by the registration of the mark that is the subject of Application No. 85570420 (“the Application”), and hereby opposes its registration on the following grounds:

1. Activision is the owner of the mark TOP SHOT (“the TOP SHOT Mark”) for video game software and peripherals (collectively referred to hereinafter as “Activision’s Goods”).
2. Activision commenced use of the TOP SHOT Mark in commerce for Activision’s Goods at least as early as October 20, 1998, and the TOP SHOT Mark continuously has been used in commerce since that date in connection with Activision’s Goods.
3. Activision has invested considerable time, effort and funds in promoting and advertising the TOP SHOT Mark and Activision’s Goods identified thereunder, and such goods have enjoyed commercial success.

4. As a result of factors such as its longstanding use of the TOP SHOT Mark, Activision's promotional and advertising efforts, and the commercial success of Activision's Goods offered under the TOP SHOT Mark, Activision has established an enviable reputation, acquired substantial goodwill, and attained distinctiveness in the TOP SHOT Mark throughout the entire United States.

5. Applicant filed the Application on March 15, 2012 with the PTO to register the mark TOP SHOT for "Computer game software and video game software; single-player, multiple-player, role-playing and real-time computer game software, downloadable via an online website and mobile platforms for entertainment purposes" in International Class 9, and for "Entertainment services, namely, providing an on-line single-player, multiple-player, role-playing and real-time computer game for others via the Internet, mobile platforms, and local area computer networks" in International Class 41 (collectively "the Applicant's Goods and Services").

6. Activision's use of and rights in the TOP SHOT Mark are prior to any rights of Applicant to the mark TOP SHOT for the Applicant's Goods and Services.

7. In view of the similarities between the TOP SHOT Marks and the mark that is the subject of the Application, and the relationship between Activision's Goods as identified by the TOP SHOT Mark and the Applicant's Goods and Services, it is likely that members of the public will erroneously believe that Applicant's Goods and Services originate with, or are in some manner connected or associated with, or sponsored by, Activision, all to the harm of Activision's goodwill and reputation.

8. Applicant's mark so resembles the TOP SHOT Mark as to be likely when used on or in connections with Applicant's Goods and Services as to be likely to cause

confusion, mistake or to deceive, and is therefore precluded from registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

9. If Applicant is granted registration of the subject mark, it would obtain a prima facie exclusive right to use of its mark that would cause damage and injury to Activision.

WHEREFORE, Activision respectfully requests that this opposition be granted and that Application No. 85570420 be denied registration.

ACTIVISION PUBLISHING, INC.

Date: February 22, 2013

By: 

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Attorneys for Opposer

Certificate of Service

This is to certify that a copy of the foregoing Notice of Opposition was served this 22nd day of February, 2013 by first-class mail, postage prepaid, on the following as Applicant's attorney of record:

MONICA B. RICHMAN
SNR DENTON US LLP
PO BOX 061080
CHICAGO, ILLINOIS 60606-1080

By: 

Attorney for Opposer