

ESTTA Tracking number: **ESTTA658028**

Filing date: **02/25/2015**

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	Take-Two Interactive Software, Inc.
Granted to Date of previous extension	02/25/2015
Address	662 Broadway New York, NY 10012 UNITED STATES

Attorney information	Andrea L. Calvaruso, Esq. Kelley, Drye & Warren, LLP 101 Park Avenue New York, NY 10178 UNITED STATES trademarks@KelleyDrye.com, ACalvaruso@KelleyDrye.com, Chris.Hamilton@take2games.com, IMaggioni@KelleyDrye.com Phone:2128087800
----------------------	---

**Applicant Information**

Application No	86282493	Publication date	10/28/2014
Opposition Filing Date	02/25/2015	Opposition Period Ends	02/25/2015
Applicant	Edgar R. Garcia 2021 South Vine Avenue Ontario, CA 91762 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2008/03/29 First Use In Commerce: 2008/03/29 All goods and services in the class are opposed, namely: Clothing and headwear, namely, T-shirts, shorts, sweat pants, sweat shirts, swimwear, jackets, belts, jeans, slacks, woven shirts, knit shirts, tank tops, socks, sweaters, hats, beanies, caps
--

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3413563	Application Date	12/29/2004
Registration Date	04/15/2008	Foreign Priority	NONE

		Date	
Word Mark	BULLY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2006/10/17 First Use In Commerce: 2006/10/17 Computer game programs and software [ and computer game cartridges ]		
U.S. Registration No.	3589232	Application Date	12/29/2004
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	BULLY		

Design Mark	<h1>BULLY</h1>
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2006/10/17 First Use In Commerce: 2006/10/17 Printed matter, namely, books, pamphlets, magazines, periodical publications featuring games interactive software and videogames, posters, and pictures

U.S. Registration No.	3670955	Application Date	12/29/2004
Registration Date	08/18/2009	Foreign Priority Date	NONE

Word Mark	BULLY
Design Mark	<h1>BULLY</h1>

Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2006/08/10 First Use In Commerce: 2006/08/10 entertainment services in the nature of animated motion picture films; entertainment services in the nature of computergames provided and played through a global computer network

U.S. Registration No.	4289379	Application Date	08/31/2006
Registration Date	02/12/2013	Foreign Priority Date	NONE

Word Mark	BULLY
-----------	-------

Design Mark	
-------------	--

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2006/10/31 First Use In Commerce: 2006/10/31 Clothing, namely, shirts, t-shirts

Attachments	78979789#TMSN.png( bytes ) 78980896#TMSN.png( bytes ) 78539774#TMSN.png( bytes ) 78964628#TMSN.png( bytes ) Notice of Opposition 86282493 BULLY LIFESTYLE.pdf(18471 bytes )
-------------	---

### 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	/Ilaria Maggioni/
Name	Ilaria Maggioni, Esq.
Date	02/25/2015



is a leading developer, marketer and publisher of interactive entertainment software for all ages and game play platforms and accessories, including video and computer games and online interactive video games, interactive video and online entertainment services and a wide array of related goods and services, including but not limited to clothing and apparel. Opposer's goods and services are marketed and sold to consumers throughout the world. Opposer publishes a number of best-selling video games, and its Rockstar Games label publishes some of the most popular and best-selling video game series of all time, such as the GRAND THEFT AUTO series.

2. In addition to the GRAND THEFT AUTO series, Rockstar Games develops and publishes the critically acclaimed BULLY game series. Opposer sells, distributes, promotes and markets the BULLY game under the trademark and service mark BULLY, used alone or with other words and/or designs ("Opposer's BULLY Mark").

3. Initially announced on May 9, 2005, the first BULLY game was officially released on October 17, 2006, for use on the Sony Playstation 2 system ("PS2"). As a Rockstar Games release, the BULLY game received a great deal of pre-publication attention in the popular press. Upon its release in fall 2006, BULLY earned widespread critical acclaim, including being designated IGN's Best Playstation 2 Action Game of the year and winning the coveted British Academy of Film and Television Arts' award for Best Video Game Script.

4. Given the success of the original BULLY game introduced in 2006, Opposer published BULLY: SCHOLARSHIP EDITION for the Wii and XBox systems in March 2008. Consistent with Opposer's practice with its other best-selling games, additional BULLY sequels

and related games will also feature Opposer's BULLY Mark as the first word and most important source identifier in its title.

5. The BULLY games take place at the Bullworth boarding school. The main theme of the games is standing up to bullies at the school and protecting weaker classmates. The player ultimately defeats the bullies by bringing together all the different student "cliques."

6. The BULLY series has been immensely popular, selling millions of copies worldwide.

7. In addition to its famous video and computer games, Opposer has used Opposer's BULLY Mark in connection with various additional goods and/or services, including without limitation toys, posters, comic books, and clothing, namely shirts and t-shirts.

8. Opposer has promoted Opposer's BULLY Mark and the goods and services it designates extensively in advertising and promotional materials.

9. By virtue of Opposer's distribution, sale, promotion, and advertising of products and services under Opposer's BULLY Mark, and the critical acclaim and press coverage relating to the BULLY game, Opposer's BULLY Mark has become famous and is closely associated with high quality products and services originating with Opposer, and as a result has developed tremendous goodwill uniquely identified with Opposer in the trade and among consumers and is of great value to Opposer.

10. Opposer owns the following U.S. trademark registrations for Opposer's BULLY Mark:

- A. Reg. No. 3,413,563 for BULLY for "computer game programs and software" in International Class 9, issued April 15, 2008;
- B. Reg. No. 3,589,232 for BULLY for "printed matter, namely, books, pamphlets, magazines, periodical publications featuring games interactive software and videogames, posters, and pictures" in International Class 16, issued March 10, 2009;
- C. Reg. No. 3,670,955 for BULLY for "entertainment services in the nature of animated motion picture films; entertainment services in the nature of computer games provided and played through a global computer network" in International Class 41, issued August 18, 2009; and
- D. Reg. No. 4,289,379 for BULLY for "clothing, namely, shirts, t-shirts" in International Class 25, issued February 12, 2013.

11. These registrations for Opposer's BULLY Mark are valid and enforceable. The applications maturing into the first three registrations noted above were filed on an intent-to-use basis on December 29, 2004, resulting in a constructive first use date of December 29, 2004. The application maturing into the final registration noted above was filed on August 31, 2006, resulting in a constructive first use date of August 31, 2006.

12. Opposer has used Opposer's BULLY Mark on clothing and apparel since at least as early as 2006.

13. On May 15, 2014, applicant Edgar R. Garcia ("Applicant") filed Application Serial No. 86/282,493 (the "Application"), to register the mark BULLY LIFESTYLE ("Applicant's Mark") for "clothing and headwear, namely, T-shirts, shorts, sweat pants, sweat

shirts, swimwear, jackets, belts, jeans, slacks, woven shirts, knit shirts, tank tops, socks, sweaters, hats, beanies, caps,” in International Class 25 (“Applicant’s Goods”), and claims a first use in commerce date of March 29, 2008. Opposer has priority of use over Applicant, whose first use date and filing date for the Applicant’s Mark is subsequent to Opposer’s first use date of Opposer’s BULLY Mark.

14. By virtue of Opposer’s prior use of and registrations for Opposer’s BULLY Mark, Opposer has rights in Opposer’s BULLY Mark prior and superior to any alleged rights of Applicant in Applicant’s Mark covered by the Application.

15. Applicant’s Mark is confusingly similar, in appearance, sound and meaning, to Opposer’s BULLY Mark. Applicant’s Goods covered by the Application are identical or closely related to goods bearing and services offered in connection with Opposer’s BULLY Mark.

16. Applicant’s Mark so resembles Opposer’s BULLY Mark as to be likely, when applied to Applicant’s Goods in class 25, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant’s Goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Such confusion would irreparably harm and damage the consuming public and Opposer because Opposer has no control over the nature or quality of the goods and/or services provided or produced by Applicant under Applicant’s Mark. Opposer would therefore be injured by the granting to Applicant of a certificate of registration for Applicant’s Mark.

17. Opposer's BULLY Mark is distinctive and famous and enjoyed such fame well prior to March 29, 2008, Applicant's claimed first use date. Opposer would be further injured by the granting of a certificate of registration for Applicant's Mark, which is likely to dilute and impair the distinctive quality of Opposer's BULLY Mark.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and respectfully requests that its opposition be sustained and that the application for said registration be denied.

Dated: New York, New York  
February 25, 2015

KELLEY DRYE & WARREN LLP  
Attorneys for Opposer

/Ilaria Maggioni/  
Andrea L. Calvaruso  
Ilaria Maggioni  
101 Park Avenue  
New York, NY 10178  
(212) 808-7800

**CERTIFICATE OF SERVICE**

I, Ilaria Maggioni, am an attorney at Kelley Drye & Warren LLP, attorneys for Opposer Take-Two Interactive Software, Inc., and hereby affirm under the penalties of perjury, that on February 25, 2015, I caused a true and correct copy of the foregoing Notice of Opposition to be served via first class mail, postage prepaid, upon the Applicant's Attorney of Record:

Nathalie Adourian, Esq.  
Briggs and Alexander, A.P.L.C.  
558 S Harbor Blvd Ste 100  
Anaheim, CA 92805-4524

/Ilaria Maggioni/\_\_\_\_\_