

ESTTA Tracking number: **ESTTA702025**

Filing date: **10/13/2015**

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

Proceeding	91223653
Party	Defendant Herbert, Dean L TA ppy Pty Ltd ACN 163 593 413
Correspondence Address	HERBERT L DEAN 41 GREGORY ST WEMBLEY, 6014 AUSTRALIA pe@ppy.sh
Submission	Answer
Filer's Name	Francis John Ciaramella, Esquire
Filer's e-mail	rickruz@ruzlaw.com, francis@ruzlaw.com
Signature	/Francis John Ciaramella/
Date	10/13/2015
Attachments	USPTO Answer to Notice of Opposition (FINAL).pdf(1274105 bytes)

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

The Ohio State University,

Opposer,

v.

Opposition No. 91223653

Dean L. Herbert TA ppy Pty Ltd CAN 163
593 413,

Applicant.

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

In response to the Notice of Opposition (hereafter “Notice”) filed by The Ohio State University (hereafter “Opposer”) on August 19, 2015, the Applicant, Dean L. Herbter TA ppy Pty Ltd CAN 163 593 413 (hereafter “Applicant”), answers the Notice identified above as follows:

1. In response to the allegations of paragraph 1 of the Notice, the Applicant is without knowledge.
2. In response to the allegations of paragraph 2 of the Notice, the Applicant is without knowledge.
3. In response to the allegations of paragraph 3 of the Notice, the Applicant is without knowledge.
4. In response to the allegations of paragraph 4 of the Notice, the Applicant is without knowledge.

5. In response to the allegations of paragraph 5 of the Notice, the Applicant is without knowledge.
6. In response to the allegations of paragraph 6 of the Notice, the Applicant is without knowledge.
7. In response to the allegations of paragraph 7 of the Notice, the Applicant is without knowledge.
8. In response to the allegations of paragraph 8 of the Notice, the Applicant is without knowledge.
9. In response to the allegations of paragraph 9 of the Notice, the Applicant is without knowledge.
10. In response to the allegations of paragraph 10 of the Notice, the Applicant is without knowledge.
11. In response to the allegations of paragraph 11 of the Notice, the Applicant is without knowledge.
12. In response to the allegations of paragraph 12 of the Notice, the Applicant is without knowledge.
13. In response to the allegations of paragraph 13 of the Notice, the Applicant is without knowledge.
14. In response to the allegations of paragraph 14 of the Notice, the Applicant is without knowledge.
15. In response to the allegations of paragraph 15 of the Notice, the Applicant is without knowledge.

16. In response to the allegations of paragraph 16 of the Notice, the Applicant is without knowledge.
17. In response to the allegations of paragraph 17 of the Notice, the Applicant is without knowledge.
18. Applicant denies the allegations of paragraph 18 of the Notice.
19. Applicant denies the allegations of paragraph 19 of the Notice.
20. Applicant denies the allegations of paragraph 20 of the Notice.
21. Applicant denies the allegations of paragraph 21 of the Notice.
22. Applicant denies the allegations of paragraph 22 of the Notice.
23. Applicant denies the allegations of paragraph 23 of the Notice.
24. Applicant denies the allegations of paragraph 24 of the Notice.
25. Applicant denies the allegations of paragraph 25 of the Notice.

Affirmative Defenses

In further answer to the Notice, the Applicant asserts that:

First Affirmative Defense

26. Opposer's Notice fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

Second Affirmative Defense

27. Upon information and belief, Opposer has no priority of use to the OSU! mark.

Third Affirmative Defense

28. There is no similarity between Applicant's OSU! mark and Opposer's OSU Marks as to appearance, sound, or commercial impression. Specifically, Applicant's mark carries with it a distinctive Japanese-influenced appearance, something that is completely absent

from the Opposer's marks. *See* Exhibit A below and Opposer's Exhibit B. Upon visiting Applicant's website, the consumer is greeted by Japanesestyled cartoons, with information about how to download Applicant's computer and video game software free of charge.

Fourth Affirmative Defense

29. Purchasers of goods sold along with the relevant marks are careful and sophisticated, thus making any confusion or mistake amongst potential overlapping consumers highly unlikely.

Fifth Affirmative Defense

30. The respective trademarks, as appears on each party's respective goods and services, do not create the same or overall commercial impression when viewed separately by the ordinary consumer.

Sixth Affirmative Defense

31. The goods and services sold by the Opposer and Applicant under their respective marks are fundamentally different. Specifically, the Applicant's computer software is for a Japanese-themed free-to-play rhythm/musical video game, whereas the Opposer's Marks relate to entertainment services, namely, collegiate sports.

Seventh Affirmative Defense

32. The Opposer's OSU Marks do not sound like the Applicant's mark. Specifically, the Applicant's mark is pronounced "O-S-U" whereas the Opposer's mark is pronounced "O's." The Opposer's Marks require that the consumer pronounce each individual letter, resulting in a three-syllable mark. The Applicant's mark is much shorter, at only one syllable.

Eighth Affirmative Defense

33. Ordinary Consumers would not confuse or conclude that the parties' products share a common source or affiliation or connection.

Ninth Affirmative Defense

34. On information and belief, Opposer's goods are more expensive than that of the Applicant; thus, Consumers are unlikely to purchase Opposer's goods supposing they derive from Applicant or vice versa.

Tenth Affirmative Defense

35. Opposer has no examples of any actual confusion amongst consumers with regards to Applicant's OSU! mark and Opposer's marks.

Applicant reserves the right to amend this Answer to assert any additional affirmative defenses arising from any applicable facts or law that may be revealed during discovery.

Relief Requested

WHEREFORE, the Applicant asks that this Opposition proceeding be dismissed forthwith.

By: /Francis John Ciaramella/
Francis John Ciaramella, Esq.
Florida Bar No. 111927

and

By: /Rick Ruz/
Rick Ruz, Esq.
Florida Bar No. 42090

Rick Ruz, PLLC
Counsel for the Applicant
300 Sevilla Avenue
Suite 309
Coral Gables, Florida 33134
Telephone No. (305) 921-9326
Facsimile No. (888) 506-2833

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on the following via email this 13th day of October 2015:

Samantha M. Quimby and
Kathryn A. Comella
Frost Brown Todd LLC
One Columbus
10 West Broad Street
Suite 2300
Columbus, Ohio 43215-3484
T: (614) 559-7282
F: (614) 464-1737
fbtplitigation@fbtlaw.com
squimby@fbtlaw.com
kcomella@fbtlaw.com

By: /Francis John Ciaramella/
Francis John Ciaramella, Esq.
Florida Bar No. 111927

and

By: /Rick Ruz/
Rick Ruz, Esq.
Florida Bar No. 42090

Exhibit A



osulacademy Episode 1 - Installation/Account Creation!

osulacademy
 14,147
 Subscribe

+ Add to Share ... More

569,714
218
16

Published on Nov 6, 2014
Hello and welcome to the osulacademy the helpful how too video series covering all thing osul In our 1st episode, we will be going over account creation and installation.

SHOW MORE

ALL COMMENTS (63)

Up next

Autoplay



osulacademy Episode 2 - Standard Gameplay/Settings Adjustments!!
by osulacademy
87,712 views



osulacademy Episode 4 - Introduction to C18
by osulacademy
13,908 views



osulacademy
39 videos
by osulacademy



Wet Into Wet Hydrangeas with Marlon Dutton
Recommended for you
8,333



[Osu] Sodapoppin reacts to rryvui's play of Image Material (with ReChat)
by AnarchyMitsuki
60,668 views



Osul Legendre playing IMAGE -MATERIAL
by Endryon
289,777 views



osul green screen | DJ 3RRL - T-T-Techno
by NinjaVikingFun
81,508 views



Pokemon-Advanced-Episode 307 ... Just One of The Geysers
by DarilkaMccory
Recommended for you



Make a device charging station to organize your phones and gadgets
by Steve Ramsey
Recommended for you



osulacademy Episode 1 - Installation/Account Creation!

osulacademy
 14,147
 Subscribe

+ Add to
 Share
 More

569,714
 218
 16

Published on Nov 6, 2014
 Hello and welcome to the osulacademy the helpful how too video series covering all thing osu! In our 1st episode, we will be going over account creation and installation.

SHOW MORE

ALL COMMENTS (63)

Add a public comment...

Up next

Autoplay

osulacademy Episode 2 - Standard Gameplay/Settings Adjustments!!
 by osulacademy
 87,712 views

osulacademy Episode 4 - Introduction to CIB
 by osulacademy
 13,908 views

osulacademy
 by osulacademy
 39 views

osu! Legendre playing IMAGE -MATERIAL
 by Endkron
 289,777 views

[osu] Sodappoin reacts to rryvii's play of Image Material (with ReChat)
 by AnarchyMitsuki
 60,668 views

osu! green screen | DJ 53RL - T-T-Techno
 by NinjakingFun
 81,508 views

osu! - Knife Party - Centipede [THE Impossible Map]
 by Zavori
 271,670 views

osu! World Cup 2014 - Grand Finals
 by osulive
 123,418 views

osu! - 2008 Skin Shenanigans
 by Doomsday osu
 12,376 views

What's osu? How to Download and Play osu!
 by Jawing
 102,895 views

Upload

Sign In



osulacadeMY Episode 1 - Installation/Account Creation!

osulacadeMY
 Subscribe 14,147

569,714 views
 218 likes
 16 dislikes

Published on Nov 6, 2014
 Hello and welcome to the osulacadeMY the helpful how too video series covering all thing osu! In our 1st episode, we will be going over account creation and installation.

SHOW MORE

ALL COMMENTS (63)

Add a public comment...

Autoplay

Up next

osulacadeMY Episode 2 - Standard Gameplay/Settings Adjustments!!
 by osulacadeMY
 87,712 views

osulacadeMY Episode 4 - Introduction to CIB
 by osulacadeMY
 13,908 views

osulacadeMY
 by osulacadeMY
 39 videos
 3,245 views

osu! Legendre playing IMAGE - MATERIAL
 by Enkryon
 289,777 views

osu! Sodapoppin reacts to rnyvi's play of Image Material (with Rechat)
 by AnarchyMitsuki
 60,668 views

osu! green screen | DJ S3RL - T-T-Techno
 by NinjaVikingFun
 81,508 views

osu! - Knife Party - Centipede [THE Impossible Map]
 by Zayon
 271,670 views

osu! World Cup 2014 - Grand Finals
 by osulive
 123,418 views

osu! - 2008 Skin Shenanigans
 by Deomdsday osu
 12,376 views

What's osu!? How to Download and Play osu!
 by Jawing
 102,895 views



osulacademy Episode 1 - Installation/Account Creation!

osulacademy
 1,414
 Subscribe

+ Add to Share ... More

569,714
 218
 16

Published on Nov 6, 2014
 Hello and welcome to the osulacademy the helpful how too video series covering all thing osu! In our 1st episode, we will be going over account creation and installation.

SHOW MORE

ALL COMMENTS (63)

Add a public comment...

Up next

Autoplay

osulacademy Episode 2 - Standard Gameplay/Settings Adjustments!!
 by osulacademy
 87,712 views

osulacademy Episode 4 - Introduction to C#8
 by osulacademy
 13,908 views

osulacademy
 39 views
 by osulacademy

Osul Legendre playing IMAGE -MATERIAL
 by Endygon
 289,777 views

[Osul] Sodapoppin reacts to rryvu's play of Image Material (with Rechar)
 by AnarchyMitsukai
 60,668 views

osu! green screen | DJ S9RL - T-I-T-Techno
 by NinjaKingFun
 81,508 views

Osul - Knife Party - Centipede THE Impossible Map!
 by Zayoni
 271,670 views

osu! World Cup 2014 - Grand Finals
 by osulive
 123,418 views

osu! - 2008 Skin Shenanigans
 by Doomsday osu
 12,376 views

What's osu!? How to Download and Play osu!
 by Jawing
 102,895 views

Upload

Sign In



osu! t-shirt swag



let's play with pippi



Beatmap Blueprints



osutablet replacement pen



404 Not Found
Welcome to osu!beta! (20150922.3)



Info Download Wiki / Help Beatmaps Rankings Community

Google Custom Search User Beatmap



RHYTHM IS JUST A CLICK AWAY
7,049,765 users, 13,115 online now.
A total of 3.51 billion ranked plays!

Welcome, guest! • Login • I'm new!

DOWNLOAD OSU!

Start your own rhythmical adventure today!

OSU! GOODIES

Show osu! goodness with shirts, hoodies, mugs and much more!

SUPPORT OSU!

Become a subscriber and get many conveniences including in-game downloading



videos managed by VideosTV!

osu! is a free-to-win online rhythm game

osu! gameplay is based on a variety of popular commercial rhythm games. While keeping some authentic elements, osu! adds huge customisation via skins/beatmaps/storyboarding, online rankings, multiplayer and boasts a community with over 500,000 active users! Play the way you want to play, with your own music, and share your creations with others.

News

15.10.07 osu!mania 4K World Cup 2015 - Results

The osu!mania 4K World Cup 2015 concluded on Sunday two weeks ago with an amazing Grand Final. We would like to shoutout the results once again and celebrate the winning team with cups (1024x800) ! The United States were able to achieve their first World Cup Title in all World Cups after battling against Japan with an outstanding performance.

15.10.05 osu!weekly #30

Hey everyone, deadeat here! Tasha is away for the next few days, so I'm going to be stepping in for this week. Let's get this started!

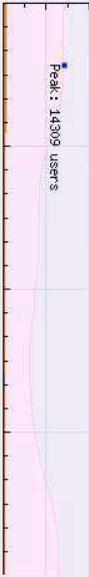
15.10.01 osu! World Cup 2015 - Registrations open!

We would like to welcome all of you to this year's official osu! World Cup. This year, we implemented some groundbreaking changes, so check them out! Please read our wiki article carefully before registering for this tournament.

15.09.29 osu!weekly #29

Not too many things this week, but the things that I do have for you guys are pretty big! Read on to find out more!

Online Users over the last 24 hours



Game Chat also connect from IRC

00:45:13 Y4ki T4j4g4 : XD
00:45:15 topecuz : yea it is
00:45:16 Shiro Akitsu : I should've taken a screenshot when Stenry said "I am Hebrew"
00:45:17 LolFlan : not even korean
00:45:18 Pando : yN

Most Played Beatmaps last 24 hours, non-bundled maps

Plays	Artist / Title	Creator
22,733	Reol - Streaming Heart	sukidNathan
20,599	Panda Eyes & Teminite - Highscore	Fort
16,842	NateWantsToBattle feat. Amanda Lee - Kusou Mesorigumi	Okoratu
14,796	Reol - Asymmetry	Gala

