

ESTTA Tracking number: **ESTTA694261**

Filing date: **09/08/2015**

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	Cartamundi Services NV		
Entity	Naamloze Vennootschap	Citizenship	Belgium
Address	Visbeekstraat 22 Turnhout, B-2300 BELGIUM		

Attorney information	Clifford D. Hyra Symbus Law Group 11710 Plaza America Drive, suite 2000 Reston, VA 20190 UNITED STATES chyra@symbus.com, docketing@symbus.com Phone: 8669133499		
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Applicant Information

Application No	86502850	Publication date	08/11/2015
Opposition Filing Date	09/08/2015	Opposition Period Ends	09/10/2015
Applicant	Nintendo of America Inc. 4600 150th Avenue NE Redmond, WA 98052 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Protective carrying cases for hand-held video game systems; toy figures; hand-held video game machines; hand-held units for playing electronic games; plush toys; promotional game cards; puzzles; toy action figures; balloons; toy balls; toy key chains

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 No.	79156054	Application Date	06/16/2014
Registration Date	NONE	Foreign Priority Date	12/16/2013
Word Mark	SHUFFLE		

Design Mark	
Description of Mark	<p>The mark consists of the word "SHUFFLE" overlapping a stylized playing card where the letters "H" and "L" are incorporated into the edge of the playing card.</p>
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Apparatus for recording, transmission or reproduction of sound, images or other data; apparatus for receiving of sound, images or other data, namely, audiovisual receivers and mobile data receivers; magnetic, optical, numerical and electronic data carriers, namely, prerecorded magnetic data carriers featuring games; data processing equipment and computers; computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic publications in the nature of magazines and books in the field of games; downloadable electronic manuals and handbooks in the field of computer games; electronic diaries; electronic memo books in the nature of handheld computers; downloadable electronic books in the field of computer games, downloadable electronic game programs; downloadable audio and video recordings featuring games; downloadable music files; downloadable video and computer game programs; downloadable digital music from the Internet; downloadable electronic game programs</p> <p>Class 028. First use: First Use: 0 First Use In Commerce: 0 Games and playthings, namely, game cards; playing cards and cards for games; electronic hand-held game units; musical games, namely, musical arcade games; electronic playthings, namely, electronic learning toys; handheld electronic games, namely, hand held units for playing electronic games; apparatus for games, namely, handheld game consoles; decorations for Christmas trees</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0 Education services, namely, providing classes, seminars and workshops in the field of card games; providing of training in the field of card games; entertainment, namely, providing an on-line board card game; provision of on-line entertainment, namely, providing on-line computer card games; providing of non-downloadable electronic publications online in the nature of magazines and books in the field of games; electronic publication of books and magazines online; games services provided online from a computer network, via computer databases or via the Internet, namely, providing online electronic games; providing information online relating to computer games and computer enhancements for games; providing information from an on-line computer database in the field of computer games; information relating to entertainment, provided on-line from a computer database or the Internet; providing on-line music, not downloadable; arranging of online computer games via the Internet; rental of books, films and computer game programs; games equipment rental; rental of video games</p>

Related Proceedings	Opposition 91223590
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Attachments	79156054#TMSN.png(bytes) Class 28 Not. Opp. 201509 POKEMON SHUFFLE.pdf(193946 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	/Cliff Hyra/
Name	Clifford D. Hyra
Date	09/08/2015

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

Cartamundi Services, NV)	
)	
Opposer,)	Opposition No.: _____
)	Ser. Nos.: 86502850
v.)	
)	
Nintendo of America Inc.)	
)	
Applicant)	
)	

NOTICE OF OPPOSITION

Cartamundi Services, NV, a Naamloze Vennootschap organized under the laws of Belgium, having its principal place of business at Visbeekstraat 22, B-2300 Turnhout, Belgium (“Cartamundi”), hereby opposes registration of the following application owned, according to the records of the U.S. Patent and Trademark Office, by Nintendo of America Inc. (“Applicant”) and referred to herein as “Applicant's Mark”:

- App. Ser. No. 86/502,850 – POKÉMON SHUFFLE for “Protective carrying cases for hand-held video game systems; toy figures; hand-held video game machines; hand-held units for playing electronic games; plush toys; promotional game cards; puzzles; toy action figures; balloons; toy balls; toy key chains,” filed January 14, 2015 and published for opposition August 11, 2015

Cartamundi would be damaged by registration of Applicant's Mark and hereby opposes

the same on the following grounds:

1. Applicant, Nintendo of America Inc., is a corporation organized under the laws of the state of Washington and has a mailing address of 4600 150th Avenue NE, Redmond, Washington 98052.

2. On January 14, 2015, Applicant filed an Application, namely Serial No. 86/502,850 for the mark POKÉMON SHUFFLE, as a trademark for use in connection with “Protective carrying cases for hand-held video game systems; toy figures; hand-held video game machines; hand-held units for playing electronic games; plush toys; promotional game cards; puzzles; toy action figures; balloons; toy balls; toy key chains,” which was published in the Official Gazette on August 11, 2015.

3. Cartamundi is the owner of U.S. Trademark Application Serial No. 79156054 (“Cartamundi’s Mark”), filed June 16, 2014 with a priority date of December 16, 2013 and published for opposition on August 4, 2015, for SHUFFLE & Design in connection with “Apparatus for recording, transmission or reproduction of sound, images or other data; apparatus for receiving of sound, images or other data, namely, audiovisual receivers and mobile data receivers; magnetic, optical, numerical and electronic data carriers, namely, prerecorded magnetic data carriers featuring games; data processing equipment and computers; computer game software and computer hardware; computer software platforms for playing games; electronic and computerized video games software; downloadable electronic greetings cards and trading cards, namely, digital trading cards in the nature of multimedia software recorded on magnetic media featuring games; downloadable electronic publications in the nature of magazines and books in the field of games; downloadable electronic manuals and handbooks in

the field of computer games; electronic diaries; electronic memo books in the nature of handheld computers; downloadable electronic books in the field of computer games, downloadable electronic game programs; downloadable audio and video recordings featuring games; downloadable music files; downloadable video and computer game programs; downloadable digital music from the Internet; downloadable electronic game programs” and “Games and playthings, namely, game cards; playing cards and cards for games; electronic hand-held game units; musical games, namely, musical arcade games; electronic playthings, namely, electronic learning toys; handheld electronic games, namely, hand held units for playing electronic games; apparatus for games, namely, handheld game consoles; decorations for Christmas trees” and “Education services, namely, providing classes, seminars and workshops in the field of card games; providing of training in the field of card games; entertainment, namely, providing an on-line board card game; provision of on-line entertainment, namely, providing on-line computer card games; providing of non-downloadable electronic publications online in the nature of magazines and books in the field of games; electronic publication of books and magazines online; games services provided online from a computer network, via computer databases or via the Internet, namely, providing online electronic games; providing information online relating to computer games and computer enhancements for games; providing information from an on-line computer database in the field of computer games; information relating to entertainment, provided on-line from a computer database or the Internet; providing on-line music, not downloadable; arranging of online computer games via the Internet; rental of books, films and computer game programs; games equipment rental; rental of video games” (“Cartamundi’s Goods”).

4. Applicant's Mark was filed on January 14, 2015 on the basis of an intent to use in commerce.

5. The priority date for Cartamundi's Mark in the United States precedes the filing date of Applicant's Mark.

6. Cartamundi's trademark rights in Cartamundi's Mark are superior in time to Applicant's rights in Applicant's Mark.

7. Applicant lists hand-held video game machines, hand-held units for playing electronic games, and promotional game cards in its application for registration of Applicant's Mark.

8. Cartamundi lists game cards, playing cards and cards for games, electronic hand-held game units, electronic learning toys, hand held units for playing electronic games, and handheld game consoles in its application for registration of Cartamundi's Mark.

9. Applicant's Mark is intended to be used in connection with goods that overlap with and closely relate to Cartamundi's Goods.

10. Applicant's Mark so resembles Cartamundi's Mark in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive.

11. Applicant's targeted customer base includes the general public.

12. Applicant's targeted customer base overlaps with the customers of Cartamundi.

13. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Cartamundi may assume that Applicant's Mark will be used in all accepted channels of trade.

14. Applicant's intended channels of trade for its cards, game machines and other goods overlap with the channels of trade used by Cartamundi in marketing, selling, or otherwise distributing its cards, game machines and other goods under Cartamundi's Mark.

15. Applicant's Mark is confusingly similar to Cartamundi's Mark so that registration of Applicant's Mark would be inconsistent with and damaging to Cartamundi. Persons familiar with Cartamundi's Mark would likely perceive Applicant's goods as associated or affiliated with or sponsored by Cartamundi, or vice versa. Such confusion would inevitably result in damage to Cartamundi.

16. Any defect, objection to or fault found with Applicant's goods marketed under Applicant's Mark would necessarily reflect on and seriously injure the reputation that Cartamundi has established for its goods.

17. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Cartamundi.

WHEREFORE, Cartamundi prays that Applicant's Mark be refused registration and that this Opposition be sustained.

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This Notice of Opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.111(b).

RESPECTFULLY SUBMITTED

Cartamundi Services, NV

Dated: September 8, 2015

By: 
Clifford D. Hya, Esq.
Symbus Law Group, LLC
11710 Plaza America Drive, Suite 2000
Reston, VA 20190
(866) 913-3499

Attorney for Opposer
Cartamundi Services, NV

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Jerald E. Nagae, counsel for Applicant, by depositing a copy thereof in the United States Mail on September 8, 2015, First Class Mail, postage prepaid in an envelope addressed as follows:

Jerald E. Nagae
Christensen O'Connor Johnson Kindness
1201 Third Avenue, Suite 3600
Seattle, WA 98101-3029

/s/ Kim Flanagan
Kim Flanagan