

ESTTA Tracking number: **ESTTA730322**

Filing date: **02/29/2016**

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

Proceeding	91226616
Party	Plaintiff Nightmare Football, LLC
Correspondence Address	ADAM R VILLANUEVA FEARS   NACHAWATI PLLC 4925 GREENVILLE AVE, SUITE 715 DALLAS, TX 75206 UNITED STATES ip@fnlawfirm.com, jreed@fnlawfirm.com, chaskins@fnlawfirm.com, kdob- bins@fnlawfirm.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Adam R. Villanueva
Filer's e-mail	ip@fnlawfirm.com, jreed@fnlawfirm.com, chaskins@fnlawfirm.com, kdob- bins@fnlawfirm.com
Signature	/Adam R. Villanueva/
Date	02/29/2016
Attachments	Amended Notice of Opposition.pdf(704433 bytes )

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

*In re: Trademark Application Serial Nos. 86/399,124 and 86/399,110*

In re Trademark Application Serial Nos.: 86/399,124 and 86/399,110

For the Marks: NIGHTMARE FOOTBALL and NIGHTMARE FANTASY FOOTBALL

Dates of Publication: September 1, 2015

Nightmare Football, LLC Opposer,  v.  Burnt Orange Productions, LLC, Applicant.	Opposition No. 91226616
---------------------------------------------------------------------------------------------------	-------------------------

**AMENDED NOTICE OF OPPOSITION**

Opposer, Nightmare Football, LLC, a limited liability company organized under the laws of Louisiana, with a business address of 828 Royal St., New Orleans, Louisiana 70116, believes that it is or will be damaged by the registration of Application Serial Nos. 86/399,124 and 86/399,110 and hereby petitions to oppose said applications.

As grounds of this Notice of Opposition, it is alleged that:

**I. THE NIGHTMARE FOOTBALL MARK**

1. On or about September 1, 2013, Joshua Clark, Officer at Nightmare Football, LLC, began a fantasy football league, titled NIGHTMARE FOOTBALL, and invited a group of friends to join.
2. On or about August 9, 2013, in anticipation of commercialization of the NIGHTMARE FOOTBALL mark, Mr. Clark purchased the domain name [www.nightmarefootball.com](http://www.nightmarefootball.com). See Exhibit A, a status copy from the ICANN WHOIS database for the [www.nightmarefootball.com](http://www.nightmarefootball.com) domain name.
3. On or about January 1, 2014, Mr. Clark inquired as to the availability of any members of the Nightmare Football league to join in the commercialization of the NIGHTMARE

FOOTBALL mark. Mr. Clark was thereafter joined by Joseph Judy, Officer at Nightmare Football, LLC, and Jeff Stacey.

4. On or about May 1, 2014, Mr. Clark, Mr. Judy, and Mr. Stacey held a teleconference to discuss the future of the business, during which each member was assigned specific tasks to complete in order to launch the official league for upcoming National Football League season.
5. During the May 2014 teleconference, Mr. Stacey was tasked with speaking to an intellectual property attorney regarding the filing of a trademark, copyright, and the formation of a limited liability company. As of September 2014, Mr. Stacey had neither completed those tasks nor communicated to Mr. Clark as to whether the tasks would ever be completed.
6. As a result of Mr. Stacey's inaction, Mr. Clark, Mr. Judy, and another business partner, Tanya Meurer created Nightmare Football, LLC in the State of Louisiana on September 19, 2014, and all three agreed that Mr. Stacey would no longer take part in the commercialization of the NIGHTMARE FOOTBALL mark.
7. Additionally, Nightmare Football, LLC was forced to find its own counsel for protection of the NIGHTMARE FOOTBALL mark.
8. Upon realization that Mr. Stacey would no longer be involved in the commercialization of the NIGHTMARE FOOTBALL mark, Mr. Stacey retained the services of Thompson Coburn LLP, specifically, Nathan Sportel (no longer with the firm) and Michael A. Parks, to file two federal trademark applications for the marks NIGHTMARE FOOTBALL (Serial No. 86/399,124) and NIGHTMARE FANTASY FOOTBALL (Serial No. 86/399,110) for "fantasy football services" in international class 041 under the ownership of Mr. Stacey's personal company, Burnt Orange Productions, LLC.
9. Upon notice that Mr. Stacey had filed the applications for NIGHTMARE FOOTBALL and NIGHTMARE FANTASY FOOTBALL, Opposer sought the advice of legal counsel. Shortly thereafter, on February 12, 2015, Opposer sent a cease and desist letter Applicant's counsel demanding immediate abandonment of the applications.
10. Since this time, the parties have been in negotiations for a potential settlement to the matter; however, Applicant stalled negotiations as the deadline to oppose approached.

## **II. NO BONA FIDE INTENT TO USE THE MARKS IN COMMERCE**

11. As set forth in paragraphs 1-10 above, and to the best of Opposer's knowledge and belief, Applicant has no bona fide intent to use the marks in commerce.
12. In fact, Applicant has made several written statements to Mr. Clark that the trademark applications were filed in an attempt to get back involved with the business and to force out certain members of the NIGHTMARE FOOTBALL fantasy football league, while also making false statements and accusations about members of the fantasy football league.

13. Additionally, Applicant has stated that the marks were filed, “my LLC owns NIGHTMARE FOOTBALL”, and that he is “unwilling to share this” unless a certain member of the fantasy league is ejected.
14. To this date, Mr. Stacey has done nothing to market, exploit, or develop the use of the NIGHTMARE FOOTBALL or NIGHTMARE FANTASY FOOTBALL marks, meanwhile, Opposer has already formed a company, purchased a website, and began use of the NIGHTMARE FOOTBALL mark in commerce.

### **III. PRIORITY AND LIKELIHOOD OF CONFUSION**

15. As set forth in paragraphs 1-14 above, and to the best of Opposer’s knowledge and belief, Applicant has no priority to use a mark that is likely to be confused with Opposer’s mark.
16. As of August 2015 the domain name [www.nightmarefootball.com](http://www.nightmarefootball.com) was active and accepting users to participate in the NIGHTMARE FOOTBALL fantasy football leagues, and create their own leagues for the 2015 National Football League season.
17. To date, Applicant has done no marketing, or development of NIGHTMARE FOOTBALL or NIGHTMARE FANTASY FOOTBALL marks for the fantasy football services listed in federal trademark applications listed above.
18. Additionally, Applicant has never requested that Opposer cease use of the mark, or cease business, marketing and exploitation of the NIGHTMARE FOOTBALL mark.

### **IV. APPLICANT KNOWINGLY, WILLFULLY AND INTENTIONALLY FILED FALSE STATEMENTS IN ITS APPLICATIONS FOR REGISTRATION OF THE MARKS AND COMMITTED FRAUD UPON THE UNITED STATES PATENT AND TRADEMARK OFFICE**

19. As set forth in paragraphs 1-18 above, and to the best of Opposer’s knowledge and belief, Applicant knowingly, willfully and intentionally filed false statements in its applications for Registration.
20. More particularly, Applicant has knowingly, willfully, and intentionally filed false statements in its acknowledgment that it had a bona fide intent to use the marks upon signing its trademark applications.
21. Opposer alleges that Opposer’s continued and legal use of Opposer’s NIGHTMARE FOOTBALL word mark will be impaired by application of said NIGHTMARE FOOTBALL and NIGHTMARE FANTASY FOOTBALL service mark(s) of Applicant.

WHEREFORE, Opposer prays that Application Serial Nos. 86/399,124 and 86/399,110 be cancelled and that this Amended Notice of Opposition be sustained in favor of Opposer.

Dated: February 29, 2016.

Respectfully submitted,

FEARS | NACHAWATI, PLLC

/Adam R. Villanueva/

Adam R. Villanueva

Texas Bar No.: 24084023

[adam@fnlawfirm.com](mailto:adam@fnlawfirm.com)

Connor Haskins

Texas Bar No. 24087680

[chaskins@fnlawfirm.com](mailto:chaskins@fnlawfirm.com)

4925 Greenville Avenue #715

Dallas, Texas 75206

T. (214) 890.0711

F. (214) 890.0712

**CERTIFICATE OF SERVICE**

I certify a true and correct copy of the foregoing document has been sent via U.S. mail to Registrant at the following address:

Michael A. Parks  
Thompson Coburn LLP  
55 E. Monroe St.  
37<sup>th</sup> Floor  
Chicago, Illinois 60603

/Adam R. Villanueva/  
Adam R. Villanueva

Dated: February 29, 2016.

# **Exhibit A**

# ICANN WHOIS

---

*Showing results for: nightmarefootball.com*

Original Query: nightmarefootball.com

## Contact Information

### Registrant Contact

Name: joshua clark

Organization: ---

Mailing Address: 828 royal street #307 NONE, New Orleans LA 70116 US

Phone: +1.5049144322

Ext:

Fax:

Fax Ext:

Email: [jclark@frenchquarterfiction.com](mailto:jclark@frenchquarterfiction.com)

### Admin Contact

Name: joshua clark

Organization: ---

Mailing Address: 828 royal street #307 NONE, New Orleans LA 70116 US

Phone: +1.5049144322

Ext:

Fax:

Fax Ext:

Email: [jclark@frenchquarterfiction.com](mailto:jclark@frenchquarterfiction.com)

### Tech Contact

Name: Aplus.net Internet Services  
Organization: aplus.net  
Mailing Address: 110 East Broward Boulevard Suite 1650, Fort Lauderdale FL  
33301 US  
Phone: +1.8772758763  
Ext:  
Fax:  
Fax Ext:  
Email: dns@cs.aplus.net

## Registrar

WHOIS Server: whois.names4ever.com  
URL: <http://www.aplus.net>  
Registrar: Deluxe Small Business Sales, Inc. d/b/a Aplus.net  
IANA ID: 52  
Abuse Contact Email: dns@aplus.net  
Abuse Contact Phone: +1.8557918966

## Status

Domain Status: ok <http://icann.org/epp#OK>

## Important Dates

Updated Date: 2015-10-01  
Created Date: 2013-01-02  
Registration Expiration Date: 2018-01-02

## Name Servers

ns2.aplus.net

ns1.aplus.net

## Raw WHOIS Record

Domain Name: nightmarefootball.com  
Registry Domain ID: 1770541559\_DOMAIN\_COM-VRSN  
Registrar WHOIS Server: whois.names4ever.com  
Registrar URL: http://www.aplus.net  
Updated Date: 2015-10-01T16:06:34Z  
Creation Date: 2013-01-02T19:08:08Z  
Registrar Registration Expiration Date: 2018-01-02T19:08:08Z  
Registrar: Deluxe Small Business Sales, Inc. d/b/a Aplus.net  
Registrar IANA ID: 52  
Registrar Abuse Contact Email: dns@aplus.net  
Registrar Abuse Contact Phone: +1.8557918966  
Reseller: Deluxe Small Business Sales, Inc. d/b/a Aplus.net  
Domain Status: ok http://icann.org/epp#OK  
Registry Registrant ID:  
Registrant Name: joshua clark  
Registrant Organization: ---  
Registrant Street: 828 royal street #307 NONE  
Registrant City: New Orleans  
Registrant State/Province: LA  
Registrant Postal Code: 70116  
Registrant Country: US  
Registrant Phone: +1.5049144322  
Registrant Phone Ext.:  
Registrant Fax:  
Registrant Fax Ext.:  
Registrant Email: jclark@frenchquarterfiction.com  
Registry Admin ID:  
Admin Name: joshua clark  
Admin Organization: ---  
Admin Street: 828 royal street #307 NONE  
Admin City: New Orleans  
Admin State/Province: LA  
Admin Postal Code: 70116  
Admin Country: US  
Admin Phone: +1.5049144322  
Admin Phone Ext.:  
Admin Fax:  
Admin Fax Ext.:  
Admin Email: jclark@frenchquarterfiction.com  
Registry Tech ID:

Tech Name: Aplus.net Internet Services  
Tech Organization: aplus.net  
Tech Street: 110 East Broward Boulevard Suite 1650  
Tech City: Fort Lauderdale  
Tech State/Province: FL  
Tech Postal Code: 33301  
Tech Country: US  
Tech Phone: +1.8772758763  
Tech Phone Ext.:  
Tech Fax:  
Tech Fax Ext.:  
Tech Email: dns@cs.aplus.net  
Name Server: ns2.aplus.net  
Name Server: ns1.aplus.net  
DNSSEC: Unsigned  
URL of the ICANN WHOIS Data Problem Reporting System:  
<http://wdprs.internic.net/>  
>>> Last update of WHOIS database: 2015-10-01T16:06:34Z <<<

For more information on Whois status codes, please visit  
<https://www.icann.org/resources/pages/epp-status-codes-2014-06-16-en>.

The data in Aplus.net's WHOIS database is provided to you by Aplus.net for information purposes only, that is, to assist you in obtaining information about or related to a domain name registration record. Aplus.net makes this information available "as is," and does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone; or (2) enable high volume, automated, electronic processes that apply to Aplus.net (or its systems). The compilation, repackaging, dissemination or other use of this data is expressly prohibited without the prior written consent of Aplus.net. Aplus.net reserves the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.

**Submit a Complaint for WHOIS**  
[WHOIS Inaccuracy Complaint Form](#)  
[WHOIS Service Complaint Form](#)

[WHOIS Compliance FAQs](#)

## NOTICE, DISCLAIMERS AND TERMS OF USE:

All results shown are captured from registries and/or registrars and are framed in real-time. ICANN does not generate, collect, retain or store the results shown other than for the transitory duration necessary to show these results in response to real-time queries.\* These results are shown for the sole purpose of assisting you in obtaining information about domain name registration records and for no other purpose. You agree to use this data only for lawful purposes and further agree not to use this data (i) to allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited, commercial advertising, or (ii) to enable high volume, automated, electronic processes to collect or compile this data for any purpose, including without limitation mining this data for your own personal or commercial purposes. ICANN reserves the right to restrict or terminate your access to the data if you fail to abide by these terms of use. ICANN reserves the right to modify these terms at any time. By submitting a query, you agree to abide by these terms.

\* There is one exception: ICANN acts as the registry operator for the .int TLD, and in that capacity it does collect, generate, retain and store information regarding registrations in the .int TLD.

© 2015 Internet Corporation for Assigned Names and Numbers [Privacy Policy](#)