

ESTTA Tracking number: **ESTTA618555**

Filing date: **07/30/2014**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|---|-------------|----------|
| Name | Foursquare Labs, Inc. | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 568 Broadway New York, NY 10012 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | Ann Lamport Hammitte LANDO & ANASTASI, LLP One Main Street Cambridge, MA 02142 UNITED STATES alhtrademarks@lalaw.com Phone:617-395-7019 | | |
|----------------------|--|--|--|

Registration Subject to Cancellation

| | | | |
|--------------------------------|---|---------------------------------|------------|
| Registration No | 4080414 | Registration date | 01/03/2012 |
| International Registration No. | NONE | International Registration Date | NONE |
| Registrant | Hothead Games Inc. 350 - 887 Great Northern Way Vancouver, BC, V5T4T5 CANADA | | |

Goods/Services Subject to Cancellation

| |
|---|
| Class 009. First Use: 2011/03/22 First Use In Commerce: 2011/03/22 All goods and services in the class are cancelled, namely: Computer programs, namely, game software for use on computers, video game players, and game consoles; video game programs; video game software |
|---|

Grounds for Cancellation

| | |
|-------------|--------------------------|
| Abandonment | Trademark Act section 14 |
|-------------|--------------------------|

| | |
|-------------|---|
| Attachments | Petition for Cancellation of SWARM, Reg. No. 4080414.pdf(685471 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 | //alh// |
| Name | Ann Lamport Hammitte |
| Date | 07/30/2014 |

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

In the matter of Registration No. 4,080,414

| | | |
|------------------------|---|------------------------|
| Foursquare Labs, Inc., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Cancellation No. _____ |
| |) | |
| Hothead Games Inc., |) | |
| |) | |
| Registrant |) | |
| |) | |

Petition for Cancellation

Petitioner, Foursquare Labs, Inc., a corporation of Delaware having an address at 568 Broadway, New York, New York 10012, believes that it will be damaged by the continued registration of the mark SWARM, which is the subject of U.S. Registration No. 4,080,414, and hereby petitions for cancellation of the registration. As grounds for this petition, Petitioner alleges:

1. Upon information and belief, Hothead Games Inc. is a corporation of Canada, having an address at 350-887 Great Northern Way, Vancouver, BC, Canada V5T 4T5.
2. Hothead Games Inc. ("Registrant") is the owner of record of U.S. Registration No. 4,080,414 (the "'414 Registration") for the mark SWARM for "computer programs, namely, game software for use on computers, video game players, and game consoles; video game programs; video game software," in Class 09.

3. Petitioner, Foursquare Labs, Inc., is the owner of U.S. Trademark Application Nos. 86/181,615 (the “‘615 Application”), 86/268,097 (the “‘097 Application”) and 86/268,110 (the “‘110 Application”) for the marks SWARM, SWARM (and Design), and the Swarm Logo in international classes 09, 41, 42, and 45:

Downloadable software in the nature of a mobile application for displaying and sharing a user's location and finding, locating, and interacting with other users and places; downloadable mobile application software for displaying stylized icons; Computer application software for mobile phones, namely, software for posting reviews and recommendations on products and services of others (class 09);

Entertainment services, namely, providing on-line computer games (class 41);

Providing on-line non-downloadable software for displaying and sharing a user's location and finding, locating, and interacting with other users and places; on-line non-downloadable software for displaying and sharing a user's location and finding, locating, and interacting with other users and places, incorporating stylized icons (class 42); and

On-line social networking services (class 45).

4. Petitioner believes that it is and will be damaged by the continued registration of Registrant's SWARM mark because the Examiner in charge of Petitioner's '615 Application has refused registration, asserting there is a likelihood of confusion with, *inter alia*, the mark of the '414 Registration.

5. On information and belief, Registrant is not currently using the mark SWARM for “computer programs, namely, game software for use on computers, video game players, and game consoles; video game programs; video game software” in Class 09, as evidenced by the attached screenshots from the Hothead Games website at <hotheadgames.com>, showing that the SWARM product is not being offered by Registrant. See Exhibit A, accessed and printed on July 29, 2014.

6. On information and belief, Registrant no longer supports the SWARM product, as evidenced by the excerpt from its website at <hotheadgames.com> showing the listing of products currently supported by Registrant, attached as Exhibit B, accessed and printed on July 29, 2014 where SWARM is not listed as a supported product.

7. On information and belief, Registrant has abandoned its SWARM mark for the goods recited in the '414 Registration for non-use and has no intent to resume use.

8. On information and belief, Registrant has abandoned the mark SWARM of the '414 Registration pursuant to 15 U.S.C. § 1127.

9. For the reasons set forth above, Petitioner believes that it is and will be damaged by the continued registration of the mark SWARM such that the Registration should be cancelled.

WHEREFORE, PETITIONER prays that this Petition be granted and Registration No. 4,080,414 be ordered cancelled.

The required fee is submitted herewith. The Commissioner is authorized to charge any deficiencies or overpayments to Deposit Account No. 50/2762 (Ref. No.: F2042-5006) of the undersigned attorneys.

Respectfully submitted, this 30th day of July, 2014.

LANDO & ANASTASI, LLP

/s/ Ann Lamport Hammitte
Ann Lamport Hammitte
Attorneys for Petitioner
One Main Street - 11th Floor
Cambridge, MA 02142
Telephone: 617-395-7019
Facsimile: 617-395-7070

Certificate of Service

I certify that a true and complete copy of the foregoing Petition for Cancellation has been served on Registrant by mailing copies on July 30, 2014, via First Class Mail, postage prepaid to Registrant's address of record at:

Hothead Games, Inc.
350-887 Great Northern Way
Vancouver, BC V5T 4T5
Canada

/s/ Ann Lamport Hammitte
Ann Lamport Hammitte

EXHIBIT

A

Games



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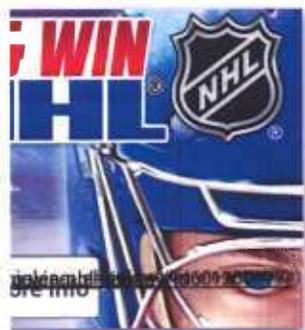
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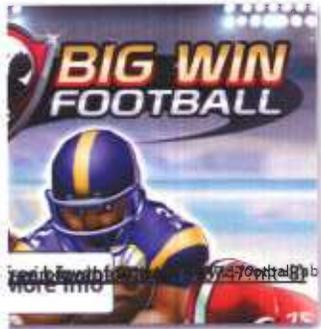
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Hothead Games Support Portal

LEGACY GAMES

This area is dedicated to games that Hothead does not provide support for via our Helpdesk. Hothead Games no longer supports these games in any capacity outside of some FAQ's and bug fixes located here.

DeathSpank

- [DeathSpank : The Baconing FAQ](#)
- [DeathSpank: Thongs of Virtue FAQ](#)
- [DeathSpank Original FAQ](#)
- [Thongs of Virtue – Rudolph bug](#)
- [Mission Collectables](#)

Machinarium

- [Unsupported](#)

Penny Arcade: On the Rain Slick Precipice of Darkness

- [Penny Arcade \(Mac – carrying over your character from Episode 1 to Episode 2\)](#)
- [Penny Arcade \(Mac and PC Steam issue with game not running\)](#)

