TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/864,263	)	
For the mark: SHOCKWAVE	)	Opposition No.: 911766103
Published in the Official Gazette (Trademarks) December 5, 2006.	)	
Atom Entertainment, Inc., Opposer,	)	
v.	)	
Dream Stage Entertainment, Inc., Applicant.	)	

ANSWER TO NOTICE OF OPPOSITION

BOX TTAB NO FEE
UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Applicant Dream Stage Entertainment, Inc., ("Applicant") of the trademark application identified above, by and through its attorneys of record, answers each

[redacted]

05-01-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

allegation in the notice of opposition ("Notice") filed by Atom Entertainment Inc. ("Opposer") as follows:

1. Applicant is without sufficient information to admit or deny the allegations contained in paragraph one of the Notice. Therefore, on that basis, the allegations are denied.

2. Applicant admits that it filed an application to register the mark SHOCKWAVE for " Clothing, namely, T-shirts, sweatshirts, pullovers, jackets, tank tops, jeans, tops, swimsuits, footwear, headwear, and baby T-shirts, caps and cloth bibs" in International Class 25, "Recorded DVDs, CDs, video discs and video tapes in the field of martial arts; downloadable electronic publications, namely magazines, in the field of martial arts; sunglasses; electronic handheld video games featuring martial arts" in International Class 9, and "Martial arts and mixed martial arts performances and exhibitions; organization and arrangement of martial arts competitions; arrangements for the showing of movies, shows, plays and musical performances all in the field of martial and mixed martial arts; movie showing in the field of martial and mixed martial arts; presentation of live show performances in the field of martial and mixed martial arts; presentation of musical performances; production of radio and television programs in the field of martial and mixed martial arts" in International Class 41 which was assigned Serial Number 78/864,263 and was published for opposition on December 5, 2006. Therefore, on that basis, the allegations contained in paragraph two of the Notice are admitted.

3. Applicant is without sufficient information to admit or deny the allegations contained in paragraph three of the Notice. Therefore, on that basis, the allegations are denied.

4. Applicant is without sufficient information to admit or deny the allegations contained in paragraph four of the Notice. Therefore, on that basis, the allegations are denied.

5. Applicant admits that the marks noted are registered with the United States Patent and Trademark Office ("USPTO") as they appear on the federal TESS database. Otherwise, as to all other allegations, Applicant is without sufficient information to admit or deny the additional allegations contained in paragraph four of the Notice. Therefore, on that basis, the additional allegations are denied.

6. Applicant is without sufficient information to admit or deny the allegations contained in paragraph six of the Notice. Therefore, on that basis, the allegations are denied.

7. Applicant is without sufficient information to admit or deny the allegations contained in paragraph seven of the Notice. Therefore, on that basis, the allegations are denied.

8. Applicant denies that Applicant's mark resembles any mark owned by Opposer and further denies that Applicant's mark is likely to cause confusion, mistake or deception under Section 2(d) of the Lanham Act, or damages Opposer in any way. On these bases, the allegations contained in paragraph eight of the Notice are denied.

9. Applicant denies that Applicant's mark resembles any mark owned by Opposer and further denies that Applicant's mark is likely to cause confusion, mistake or deception under Section 2(d) of the Lanham Act, or damages Opposer in any way. On these bases, the allegations contained in paragraph nine of the Notice are denied.

10. Applicant denies that Applicant's mark resembles any mark owned by Opposer and further denies that Applicant's mark is likely to cause confusion, mistake or deception under Section 2(d) of the Lanham Act, or damages or is likely to tarnish Opposer in any way. On these bases, the allegations contained in paragraph ten of the Notice are denied.

11. Applicant denies that Opposer's mark is distinctive and famous. The allegations contained in paragraph eleven of the Notice are denied.

12. Applicant denies that Applicant's mark resembles any mark owned by Opposer and further denies that Applicant's mark is likely to dilute Opposer's mark in any way. On these bases, the allegations contained in paragraph twelve of the Notice are denied.

13. The allegations contained in paragraph thirteen of the Notice are denied.

AFFIRMATIVE DEFENSES

Failure to State Grounds for Opposition

1. Applicant is informed and believes, and thereon alleges, that the facts set forth in the Notice are insufficient to justify denial of its application.

No Priority or Likelihood of Confusion

2. Opposer has not previously used a mark which is likely to be confused with the Applicant's mark, and specifically as an alternative affirmative defense to a claim of seniority, nor is there any likelihood of confusion, mistake or deception because Applicant's mark and the pleaded mark of Opposer are not confusingly similar.

Estoppel, Waiver, Acquiescence and Laches

3. Opposer is estopped from asserting any exclusive rights to a trademark for SHOCKWAVE and Opposer's claims against Applicant are barred under the doctrines of waiver, acquiescence and laches.

No Exclusive Right

4. Opposer does not have any exclusive right to the use of the letters "SHOCKWAVE" alone or in combination with any other letters, terms or words to form a trademark.

Unclean Hands

5. Opposer has engaged in acts constituting unclean hands in filing its application and in the conduct of this opposition proceeding and should therefore be precluded from asserting any rights against Applicant.

Lack of Distinctiveness

6. Applicant is informed and believes, and thereupon alleges, that there is no likelihood of confusion, mistake or deception because Applicant is informed and believes that Opposer's mark is not distinctive or has not acquired distinctiveness, nor do purchasers associate the mark with Opposer alone.

Failure to Function as Trademark

7. Applicant is informed and believes, and thereupon alleges, that there is no likelihood of confusion, mistake or deception because purchasers of goods do not exclusively identify Opposer with the mark.

THEREFORE, Applicant requests that this Notice and opposition proceeding be dismissed with prejudice and Applicant's application be allowed to issue as a registration. Please charge any additional fees, or credit any overpayment, associated with the Applicant's application or this opposition to deposit account No.503593. A duplicate answer to the notice of opposition is filed for this purpose. Service has been made on Opposer's counsel as shown in the attached certificate of service.

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Dated: April 26, 2007

Respectfully submitted,

By _____

Lindy M. Herman, Esquire
TRW LAW GROUP
19900 MacArthur Boulevard, Suite 1150
Irvine, California 92612
(949) 401-4747
Attorneys for Applicant
DREAM STAGE ETERTAINMENT, INC.

PROOF OF SERVICE BY MAIL

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding. My business address is TRW LAW GROUP, 19900 MacArthur Boulevard, Suite 1150, Irvine, California 92612, which is located in the county in which the within-mentioned mailing occurred. I am readily familiar with the practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence will be deposited with the United States Postal Service on the same day in the ordinary course of business.

On April 26, 2007, I served the following document(s):

ANSWER TO NOTICE OF OPPOSITION

by placing a true copy in a separate envelope for each addressee named below, with the name and address of the persons served shown on the envelope as follows:

Beth M. Goldman
Shannon Scott
Attorneys for Atom Entertainment, Inc.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104

and by sealing the envelope and placing it in the appropriate location at my place of business for collection and mailing with postage fully prepaid in accordance with ordinary business practices.

Executed on April 26, 2007, at Irvine, California.

X (State) I declare under I penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X (Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Diane Magaletta-Barnes

Diane Magaletta-Barnes

CERTIFICATE OF MAILING BY EXPRESS MAIL

"Express Mail" mailing label number: EV895428522US

I hereby certify that this **ANSWER TO NOTICE OF OPPOSITION** is addressed to BOX TTAB NO FEE, UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, and is being deposited with the United States Postal Service Express Mail for pick up on:

April 26, 2007

Diane Magaletta - Barnes
Name

Diane Magaletta-Barnes
Signature

April 26, 2007
Date of Signature