

ESTTA Tracking number: **ESTTA525309**

Filing date: **03/07/2013**

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

Proceeding	91206934
Party	Plaintiff New Dream Network, LLC
Correspondence Address	Joel D. Voelzke IP Law Offices of Joel Voelzke, APC 24772 W. Saddle Peak Road Malibu, CA 90265-3042 UNITED STATES joel@voelzke.com
Submission	Motion to Compel Discovery
Filer's Name	Joel D. Voelzke
Filer's e-mail	joel@voelzke.com
Signature	/Joel D. Voelzke73/
Date	03/07/2013
Attachments	Motion to Compel (with Exhibits).pdf ( 42 pages )(1030860 bytes )

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

In the Matter of Application Serial No. 85/335,890  
Published in the Official Gazette: June 5, 2012  
Mark: Dreamcloud

**New Dream Network, LLC**

Opposer

v.

**ATGames Digital Media, Inc.,**

Applicant

Opposition No. 91206934

**NOTICE OF MOTION AND MOTION TO COMPEL RESPONDENT ATGAMES  
DIGITAL MEDIA, INC. TO RESPOND FULLY AND WITHOUT FURTHER  
OBJECTION TO INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Opposer hereby moves to compel Applicant to respond fully and without further substantive objection to the Requests for Production and to the Interrogatories ( collectively, the “Requests”) served on Applicant.

This motion is brought on the grounds that (a) Applicant responded to those Requests late, thereby waiving all objections thereto, and (b) Applicant improperly asserted a boilerplate “overbroad and burdensome” objection to each and every Request and without particularization, thus additionally waiving those objections as to each Request.

Respectfully submitted,

/s/ Joel D. Voelzke

Joel D. Voelzke  
Attorney for Opposer

INTELLECTUAL PROPERTY LAW OFFICES  
OF JOEL VOELZKE, APC  
24772 W. Saddle Peak Road  
Malibu, CA 90265-3042  
Tel: (310) 317-4466  
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email: [joel@voelzke.com](mailto:joel@voelzke.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on **March 6, 2013** I served the foregoing:

**NOTICE OF MOTION AND MOTION TO COMPEL RESPONDENT ATGAMES  
DIGITAL MEDIA, INC. TO RESPOND FULLY AND WITHOUT FURTHER  
OBJECTION TO INTERROGATORIES AND REQUESTS FOR PRODUCTION**

on the applicant by:

- First Class Mail [Fed. Rule Civ. Proc. 5(b), 37 CFR §2.119(c)]** by United States Postal Service first class mail, postage prepaid, addressed as follows:

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
Cary, NC 27518

- ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b), 37 CFR §2.119(b)(6)]** by electronically mailing a true and correct copy through the INTELLECTUAL PROPERTY LAW OFFICE OF JOEL VOELZKE's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list, per agreement of counsel in accordance with Federal Rules of Civil Procedure rule 5(b) and 37 CFR §2.119(b)(6):

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
Cary, NC 27518  
[mswyers@thetrademarkcompany.com](mailto:mswyers@thetrademarkcompany.com)

Dated: March 6, 2013

/s/ Joel D. Voelzke

Joel D. Voelzke  
Attorney for Opposer

INTELLECTUAL PROPERTY LAW OFFICES  
OF JOEL VOELZKE, APC  
24772 W. Saddle Peak Road  
Malibu, CA 90265-3042  
Tel: (310) 317-4466  
Fax: (310) 317-4499  
email: [joel@voelzke.com](mailto:joel@voelzke.com)

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

In the Matter of Application Serial No. 85/335,890  
Published in the Official Gazette: June 5, 2012  
Mark: Dreamcloud

**New Dream Network, LLC**

Opposer

v.

**ATGames Digital Media, Inc.,**

Applicant

Opposition No. 91206934

**BRIEF IN SUPPORT OF OPPOSER'S  
MOTION TO COMPEL RESPONDENT ATGAMES DIGITAL MEDIA, INC. TO  
RESPOND FULLY AND WITHOUT FURTHER OBJECTION TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Opposer, in support of its Motion to Compel Respondent ATGames Digital Media, Inc. to Respond Fully and Without Further Objection to Interrogatories and Requests for Production, hereby respectfully asserts the following:

**FACTUAL BACKGROUND**

1. During the initial discovery conference held November 7, 2012, and confirmed via letter from the undersigned later that same day, the parties agreed that service by electronic mail would be acceptable.

2. Opposer served its initial disclosures on Applicant by first class mail on November 26, 2012.

3. On November 26, 2012, Applicant served both its first set of Interrogatories (**Exhibit 1**) and its first set of Requests for Production (RFPs) (**Exhibit 2**) (collectively, the “Requests”), by first class mail.

4. On February 5, 2012, Applicant served its responses (**Exhibit 3**) to the RFPs via electronic mail.

5. On January 8, 2013, Applicant served its responses (**Exhibit 4**) to the Interrogatories. After Opposer contended that some of those responses were deficient, on February 5, 2013, Applicant served an amended set of Interrogatory responses.

6. Opposer contends that Applicant’s responses to the RFPs and Interrogatories are inadequate. Opposer has made a good faith attempt to resolve this discovery dispute without bringing a motion to compel. In particular, on February 11, 2013, Opposer sent a letter to Applicant, pointing out that its responses to the RFPs and to the Interrogatories were late, and therefore Applicant had waived its objections. Applicant also contended that Applicant had waived any objections that any of the Interrogatories or RFPs were overbroad and/or burdensome, for the additional reason that by improperly asserting an “overbroad and burdensome” boilerplate objection without particularity to each and every Interrogatory and RFP, Applicant had waived that objection as to each and every request. Applicant demanded supplemental responses by March 1.

7. Applicant never responded to that letter.

## **ARGUMENT**

### **I. BY SERVING ITS RESPONSES LATE, APPLICANT WAIVED ALL SUBSTANTIVE OBJECTIONS TO THE DISCOVERY REQUESTS**

On November 26, 2012, Applicant served the Requests at issue by first class mail, making the associated responses due December 31, 2012. Applicant served its associated responses on January 8, 2013, and February 11, 2013. Applicant’s Interrogatory and RFP responses were therefore both late.

By failing to respond or object within the required time period, Applicant should be found to have waived any objection to the Interrogatories or RFPs. "A party which fails to respond to a request for discovery during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel

filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. Objections going to the merits of a discovery request include claims that the information sought by the request is irrelevant, overly broad, unduly vague and ambiguous, burdensome and oppressive, or not likely to lead to the discovery of admissible evidence. In contrast, objections based on claims of privilege or confidentiality or attorney work product do not go to the merits of the request, but instead to a characteristic of the information sought." TMBP § 403.03 (citing *No Fear, Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (T.T.A.B. 2000) (The Board has great discretion in determining whether forfeiture of the right to object should be found.); *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 449 (T.T.A.B. 1979) (Excusable neglect is not shown where Opposer was out of the country and, upon return, failed to ascertain that responses were due.); *Crane Co. v. Shimano Industrial Co.*, 184 U.S.P.Q. 691 (T.T.A.B. 1975) (the right to object was waived by refusing to respond to interrogatories, claiming that they served "no useful purpose.") (Other citations omitted.); TMBP § 406.04(a).

Applicant clearly received the Interrogatories and RFPs, but failed to raise any objections within the applicable time limit. Applicant should therefore be found to have waived any objection to the merits of the Interrogatories and Requests for Production of Documents.

## **II. APPLICANT FURTHER WAIVED ALL OBJECTIONS THAT THE REQUESTS ARE OVERBROAD OR BURDENSOME BY ASSERTING BOILERPLATE OBJECTIONS WITHOUT PARTICULARIZATION**

For each and every RFP (Nos. 1-26) and each and every Interrogatory (Nos. 1-18) Applicant objected "on the grounds that it is overly broad and burdensome." Applicant did not state any facts nor provided any analysis under the circumstances of this case to support any of its assertions that the Requests are overly broad and burdensome.

All grounds for objection to an interrogatory must be stated "with specificity." FRCP 33(b)(4); see *Nagele v. Electronic Data Sys. Corp.*, 193 F.R.D. 94, 109 (W.D.N.Y. 2000) (objection that interrogatories were "burdensome" overruled because objecting party failed to "particularize" basis for objection); *Mancia v. Mayflower Textile Serv. Co.*, 253 F.R.D. 354, 357 (D. Md. 2008) (boilerplate objections waived any legitimate objections responding party may have); *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 293 (N.D.W. Va. 2004) ("The mere recitation of the familiar litany that an interrogatory or document production request is overly broad, burdensome, oppressive and irrelevant will not suffice."); *St. Paul Reinsurance Co., Ltd.*

*v. Commercial Fin'l Corp.*, 198 F.R.D. 508, 512 (N.D. Ia. 2000) (objections must explain how request or interrogatory is overbroad or unduly burdensome). Where an interrogatory is overbroad, the responding party should answer whatever part of the question is proper, object to the balance, and provide some meaningful explanation of the basis for the objection. *Mitchell v. Nat'l R.R. Passenger Corp.*, 208 F.R.D. 455, 458 n.4 (D.D.C. 2002).

Respondent's asserted boilerplate "over broad and burdensome" objections and without particularization as to every Interrogatory and every RFP. Such boilerplate objections as to each Request and without particularization are clearly improper, and waive any such objections. See *Mancia*. Respondent has therefore waived all objections that the Requests are overbroad and/or burdensome.

### CONCLUSIONS

Respondent should be ordered to respond fully to each Request without further objection, and to produce all responsive documents without further objection.

INTELLECTUAL PROPERTY LAW  
OFFICES OF JOEL D. VOELZKE, APC

Dated: March 6, 2013

By: /s/ Joel D. Voelzke  
Joel D. Voelzke  
Attorney for Opposer  
New Dream Network, LLC

24772 W. Saddle Peak Road  
Malibu, CA 90265  
Tel: (310) 317-4466  
Fax: (310) 317-4499



# Exhibit 1

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

In the Matter of Application Serial No. 85/335,890  
Published in the Official Gazette: June 5, 2012  
Mark: Dreamcloud

**New Dream Network, LLC**

Opposer

v.

**ATGames Digital Media, Inc.,**

Applicant

Opposition No. 91206934

**OPPOSER'S FIRST SET OF  
INTERROGATORIES (NOS. 1-18)**

PROPOUNDING PARTY:           OPPOSER NEW DREAM NETWORK, LLC  
RESPONDING PARTY:            APPLICANT ATGAMES DIGITAL MEDIA, INC.  
SET NO.                            ONE

Pursuant to 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Opposer New Dream Network, LLC hereby propounds its first set of written interrogatories to Applicant ATGames Digital Media, Inc. These interrogatories are to be answered separately and fully, in writing under oath, within 30 days of their service. These interrogatories are continuing in nature. If you discover any additional responsive information, you must supplement your responses pursuant to Fed. R. Civ. P. 26(e)

**DEFINITIONS**

For purposes of these Interrogatories:

1. "OPPOSER" means New Dream Network, LLC, the Opposer in this opposition.
2. "APPLICANT," "YOU," "YOUR," and "ATGAMES" all refer to ATGames Digital Media, Inc., the party to whom these interrogatories are addressed.
3. "APPLICANT'S MARK" means the mark shown in Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.
4. "APPLICANT'S SERVICES" means the seervices identified in Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.
5. "YOUR APPLICATION" means Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

State the effective date of first use to which YOU contend that you are entitled in relation to use of APPLICANT'S MARK on APPLICANT'S SERVICES.

### **INTERROGATORY NO. 2:**

State in detail the factual basis for YOUR effective date of first use claimed in YOUR response to the preceding interrogatory.

### **INTERROGATORY NO. 3:**

State the first date of actual use on which YOU began using the APPLICANT'S MARK in connection with the offering or sale of any of APPLICANT'S SERVICES.

### **INTERROGATORY NO. 4:**

State in detail the factual basis for YOUR contended for first date of actual use as stated in YOUR response to the preceding interrogatory, including the name, address, and telephone number of the first five customers to whom YOU provided APPLICANT'S SERVICES in connection with APPLICANT'S MARK.

### **INTERROGATORY NO. 5:**

List by creation date, author, and subject, all documents which YOU contend tend to establish that YOU conducted a trademark clearance search directed to APPLICANT'S MARK.

### **INTERROGATORY NO. 6:**

State all factual bases for any contention by YOU that, prior to June 2, 2011, YOU had a bona fide intent to use APPLICANT'S MARK in connection with APPLICANT'S SERVICES.

### **INTERROGATORY NO. 7:**

List by date of creation, author, and subject, all documents and things which YOU contend establish YOUR bona fide intent to use APPLICANT'S MARK in commerce for

APPLICANT'S SERVICES, for all documents and things which were created prior to June 2, 2011.

**INTERROGATORY NO. 8:**

State YOUR total sales (in round United States dollars) for each of APPLICANT'S SERVICES sold under APPLICANT'S MARK in the United States from the earliest such sale to the present.

**INTERROGATORY NO. 9:**

State the name of the persons employed by or associated with YOU who have the most knowledge regarding the use of APPLICANT'S MARK in connection with APPLICANT'S SERVICES.

**INTERROGATORY NO. 10:**

Identify by publication and issue date all print advertisements in the United States in which APPLICANT'S SERVICES have been advertised under APPLICANT'S MARK.

**INTERROGATORY NO. 11:**

List by URL all Internet pages on which APPLICANT'S SERVICES have been advertised under APPLICANT'S MARK, and for each such URL, state the date on which APPLICANT'S SERVICES were first advertised under APPLICANT'S MARK.

**INTERROGATORY NO. 12:**

State the name and address of any person (other than any of YOUR attorneys, and other than OPPOSER) who has mentioned OPPOSER or the mark DREAMHOST in any communication or correspondence with YOU.

**INTERROGATORY NO. 13:**

State the name and address of any expert witness that YOU intend to call at trial and state the substance of his or her opinion(s).

**INTERROGATORY NO. 14:**

State the name, date, and findings or conclusions of any consumer survey, consumer study, market research, focus group research, or other studies or surveys, conducted by or on behalf of YOU regarding OPPOSER, the mark DREAMHOST, APPLICANT'S MARK, or APPLICANT'S SERVICES.

**INTERROGATORY NO. 15:**

Describe the typical sophistication of, and degree of purchaser care of, the classes of customers for each of APPLICANT'S SERVICES sold under APPLICANT'S MARK.

**INTERROGATORY NO. 16:**

State in detail the factual and legal bases for any contention by YOU that APPLICANT'S MARK when used in connection with APPLICANT'S SERVICES would not be confusingly similar to any of the marks in OPPOSER's Registration Nos. 2,664,983; 2,665,588; 3,058,368; 3,467,780; and 4,178,299.

**INTERROGATORY NO. 17:**

State in detail the factual and legal bases for any contention by YOU that cloud computing is not within the natural field of expansion from website hosting services.

**INTERROGATORY NO. 18:**

State in detail the factual basis for any contention by YOU that website hosting is not a type of cloud computing.

INTELLECTUAL PROPERTY LAW  
OFFICES OF JOEL D. VOELZKE, APC

Dated: November 26, 2012

By: \_\_\_\_\_

  
Joel D. Voelzke  
Attorney for Opposer New Dream Network,  
LLC

24772 Saddle Peak Road  
Malibu, CA 90265-3042  
Tel: (310) 317-4466  
Fax: (310) 317-4499  
[joel@voelzke.com](mailto:joel@voelzke.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on **November 26, 2012** I served the foregoing:

**OPPOSER'S FIRST SET OF INTERROGATORIES (NOS. 1-18)**

on the applicant by:

- First Class Mail [Fed. Rule Civ. Proc. 5(b), 37 CFR §2.119(c)]** by United States Postal Service first class mail, postage prepaid, addressed as follows:

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
Cary, NC 27518

- ELECTRONIC SERVICE [Fed. Rule Civ. Proc. 5(b), 37 CFR §2.119(b)(6)]** by electronically mailing a true and correct copy through the INTELLECTUAL PROPERTY LAW OFFICE OF JOEL VOELZKE's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list, per agreement of counsel in accordance with Federal Rules of Civil Procedure rule 5(b) and 37 CFR §2.119(b)(6):

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
Cary, NC 27518  
[mswers@thetrademarkcompany.com](mailto:mswers@thetrademarkcompany.com)

Dated: November 26, 2012

  
\_\_\_\_\_  
Joel Voelzke



# Exhibit 2

In the Matter of Application Serial No. 85/335,890  
Published in the Official Gazette: June 5, 2012  
Mark: Dreamcloud

**New Dream Network, LLC**

Opposer

v.

**ATGames Digital Media, Inc.,**

Applicant

Opposition No. 91206934

**OPPOSER'S FIRST SET OF  
REQUESTS FOR PRODUCTION  
(NOS. 1-20)**

PROPOUNDING PARTY:           OPPOSER NEW DREAM NETWORK, LLC  
RESPONDING PARTY:            APPLICANT ATGAMES DIGITAL MEDIA, INC.  
SET NO.                            ONE

Pursuant to 37 CFR §2.120 and Rule 34 of the Federal Rules of Civil Procedure, Opposer New Dream Network, LLC requests that applicant ATGames Digital Media, Inc. produce, for inspection and copying, all documents and tangible things in applicant's custody, control, or possession which are identified or described herein, no later than thirty (30) days after the service of these requests, at the Intellectual Property Law Offices of Joel D. Voelzke, 24772 W. Saddle Peak Road, Malibu, California 90265, or at such other time and place as the parties mutually agree. These requests are continuing in nature. If you discover any additional responsive documents, you must supplement your responses pursuant to Fed. R. Civ. P. 26(e).

## **DEFINITIONS**

For purposes of these Requests:

1. "OPPOSER" means New Dream Network, LLC, the Opposer in this opposition.
2. "APPLICANT," "YOU," "YOUR," and "ATGAMES" all refer to ATGames Digital Media, Inc., the party to whom these interrogatories are addressed.
3. "APPLICANT'S MARK" means the mark shown in Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.
4. "APPLICANT'S SERVICES" means the services identified in Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.
5. "YOUR APPLICATION" means Application Serial No. 85/335,890 that is the subject of the Notice of Opposition.

## **REQUESTS FOR PRODUCTION**

### **REQUEST NO. 1:**

All documents and things which YOU contend support YOUR claimed effective date of first use, as stated in YOUR response to Interrogatory No. 1 served concurrently with this set of Requests for Production.

### **REQUEST NO. 2:**

All documents and things which YOU contend support YOUR claimed first date of actual use, as stated in YOUR response to Interrogatory No. 3 served concurrently with this set of Requests for Production.

### **REQUEST NO. 3:**

All documents and things which YOU contend support any claim by YOU that use of APPLICANT'S MARK for APPLICANT'S SERVICES is not likely to cause confusion with use of the mark DREAMHOST by OPPOSER.

**REQUEST NO. 4:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting YOUR total sales (in round United States Dollars for each of APPLICANT'S SERVICES) of each of APPLICANT'S SERVICES under APPLICANT'S MARK in the United States from the earliest such sale to the present.

**REQUEST NO. 5:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, all channels of trade (e.g., Internet, retail stores, direct mail, sales agents, etc.) through which APPLICANT'S SERVICES have been offered or sold under APPLICANT'S MARK.

**REQUEST NO. 6:**

Representative specimens of all sales and promotional materials (e.g., sales sheets, brochures, proposals, invoices, flyers, Internet web pages, etc.) showing APPLICANT'S MARK used in connection with the offering of APPLICANT'S SERVICES.

**REQUEST NO. 7:**

All documents and things which support any contention by YOU that as of June 2, 2011, YOU had a bona fide intent to use APPLICANT'S MARK.

**REQUEST NO. 8:**

All trademark searches that YOU conducted or had conducted on YOUR behalf in connection with APPLICANT'S MARK.

**REQUEST NO. 9:**

All opinions of counsel that YOU obtained in connection with APPLICANT'S MARK.

**REQUEST NO. 10:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the reasons for, and the process of, YOUR selection and adoption of APPLICANT'S MARK.

**REQUEST NO. 11:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the circumstances under which YOU first became aware of the mark DREAMHOST.

**REQUEST NO. 12:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any correspondence or communications, whether verbal or in writing, from any person (other than any of YOUR attorneys, and other than OPPOSER) to APPLICANT mentioning the mark DREAMHOST.

**REQUEST NO. 13:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the first use by YOU of APPLICANT'S MARK in the United States in connection with APPLICANT'S SERVICES.

**REQUEST NO. 14:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any solicited or unsolicited media articles, stories, press releases, or other electronic or print media coverage mentioning APPLICANT'S SERVICES offered under APPLICANT'S MARK.

**REQUEST NO. 15:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the identity and opinion(s) of each expert witness that YOU intend to call at trial.

**REQUEST NO. 16:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any consumer survey, consumer study, market research, focus group research, or other studies or surveys, regarding APPLICANT'S MARK.

**REQUEST NO. 17:**

Documents and things sufficient to establish the typical prices for each of APPLICANT'S SERVICES offered, or anticipated to be offered, under APPLICANT'S MARK.

**REQUEST NO. 18:**

Documents and things sufficient to establish the typical sophistication of, and degree of purchaser care of, the classes of customers for APPLICANT'S SERVICES.

**REQUEST NO. 19:**

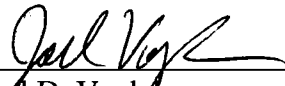
All business plans, marketing plans, and market research relating to APPLICANT'S MARK.

**REQUEST NO. 20:**

All business plans, marketing plans, and market research relating to APPLICANT'S SERVICES.

INTELLECTUAL PROPERTY LAW  
OFFICES OF JOEL D. VOELZKE, APC

Dated: November 26, 2012

By:   
Joel D. Voelzke  
Attorney for Opposer New Dream Network,  
LLC  
24772 Saddle Peak Road  
Malibu, CA 90265-3042  
Tel: (310) 317-4466  
Fax: (310) 317-4499  
[joel@voelzke.com](mailto:joel@voelzke.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on **November 26, 2012** I served the foregoing:

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION (NOS. 1-20)**

on the applicant by:


- First Class Mail [Fed. Rule Civ. Proc. 5(b), 37 CFR §2.119(c)]** by United States Postal Service first class mail, postage prepaid, addressed as follows:

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
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- ELECTRONIC SERVICE [Fed. Rule Civ. Proc. 5(b), 37 CFR §2.119(b)(6)]** by electronically mailing a true and correct copy through the INTELLECTUAL PROPERTY LAW OFFICE OF JOEL VOELZKE's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list, per agreement of counsel in accordance with Federal Rules of Civil Procedure rule 5(b) and 37 CFR §2.119(b)(6):

Matthew Swyers, Esq.  
The Trademark Company  
2703 Jones Franklin Rd., STE 206  
Cary, NC 27518  
[mswyers@thetrademarkcompany.com](mailto:mswyers@thetrademarkcompany.com)

Dated: November 26, 2012

  
Joel Voelzke



# Exhibit 3



**REQUEST NO. 2:**

All documents and things which you contend support your claimed first date of actual use, as stated in your response to interrogatory No. 3 served concurrently with this set of Request for Production.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached.

**REQUEST NO. 3:**

All documents and things which you contend support any claim by you that use of Applicant's Mark for Applicant's Services is not likely to cause confusion with use of the mark DREAMHOST by Opposer.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached.

**REQUEST NO. 4:**

All documents and things referring to, or evidencing, reflecting, or constituting your total sales (in round United States Dollars for each of Applicant's services) of each of Applicant's Services under Applicant's mark in the United States from the earliest such date to the present.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce, therefore Applicant retains no documents referring to, or evidencing, reflecting, or constituting the Applicant's sales.

**REQUEST NO. 5:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, all channels of trade (e.g. internet, retail stores, direct mail, sales agents, etc.) through which Applicant's Services have been offered or sold under Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not possess documents pertaining to this request as Applicant's Mark yet to be used in commerce.

**REQUEST NO. 6:**

Representative specimens of all sales and promotional materials (e.g. sales sheets, brochures, proposals, invoices, flyers, Internet web pages, etc.) showing Applicant's Mark used in connection with the offering of Applicant's Services.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not possess documents pertaining to this request as Applicant's Mark yet to be used in commerce.

**REQUEST NO. 7:**

All documents and things which support any contention by you that as of June 2, 2011, you had a bona fide intent to use Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached.

**REQUEST NO. 8:**

All trademark searches that you conducted or had conducted on your behalf in connection with Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant performed a search, but does not retain the documents.

**REQUEST NO. 9:**

All opinions of counsel that you obtained in connection with Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome, and subject to the attorney work product doctrine.

**REQUEST NO. 10:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the reasons for, and the process of, your selection and adoption of Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached.

**REQUEST NO. 11:**

All documents and things relating to or referring to, or evidencing, reflecting, or constituting, the circumstance under which you became aware of the mark DREAMHOST.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant became aware of the mark DREAMHOST upon the institution of this instant proceeding.

**REQUEST NO. 12:**

All documents and things relating to or referring to, or evidencing, reflecting, or constituting, any correspondence or communications, whether verbal or in writing, from any person (other than any of your attorneys, and other than Opposer) to Applicant mentioning the name DREAMHOST.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

There are no instances of people other than the Opposer and Applicant's counsel who have mentioned the mark DREAMHOST to Applicant.

**REQUEST NO. 13:**

All documents and things relating to or referring to, or evidencing, reflecting, or constituting, the first use by you of Applicant's Mark in the United States in connection with Applicant's Services.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached.

**REQUEST NO. 14:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any solicited or unsolicited media articles, stores, press releases, or other electronic or print media coverage mentioning Applicant's Services offered under Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not retain any documents pertaining to this request.

**REQUEST NO. 15:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting the identity and opinion(s) of each expert witness that you intend to call at trial.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not have any expert witnesses to call.

**REQUEST NO. 16:**

All documents and things relating or referring to, or evidencing, reflecting, or constituting any consumer survey, consumer study, market research, focus group research, or other studies or surveys, regarding Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome and it may call for a legal conclusion. Subject to said objection, Applicant states:

Applicant has not taken any surveys or participated in any market research regarding Applicant's Mark .

**REQUEST NO. 17:**

Documents and things sufficient to establish the typical prices for each of Applicant's Services offered, anticipated to be offered, under Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not retain documents at this time pertaining to this request.

**REQUEST NO. 18:**

Documents and things sufficient to establish the typical sophistication of, and the degree of purchaser care of, the classes of customers for Applicant's Services.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not retain documents at this time pertaining to this request. However, Applicant states that the typical customer of Applicant is a traditional gamer.

**REQUEST NO. 19:**

All business plans, marketing plans, and market research relating to Applicant's Mark.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not retain documents at this time pertaining to this request.

**REQUEST NO. 20:**

All business plans, marketing plans, and market research relating to Applicant's Services.

**ANSWER:** Applicant objects to this Instant Request on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not retain documents at this time pertaining to this request.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

Serial No. 85/335,890

For the mark: DREAMCLOUD,

New Dream Network, LLC,

Opposer,

vs.

ATGames Digital Media, Inc.,

Applicant.

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Opposition No. 91206934

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 5<sup>th</sup> day of February, 2013, to be served, via first class mail, postage prepaid, upon:

Joel D. Voelzke, Esq.  
Intellectual Property Law Offices of Joel Voelzke, APC  
24772 W. Saddle Peak Road  
Malibu, CA 90265

/Matthew H. Swyers/  
Matthew H. Swyers

# Exhibit 4

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

Serial No. 85/335,890  
For the mark: DREAMCLOUD,

New Dream Network, LLC,  
  
Opposer,

vs.

ATGames Digital Media, Inc.,  
  
Applicant.

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Opposition No. 91206934

**APPLICANT'S ANSWERS TO OPPOSER'S  
FIRST SET OF INTERROGATORIES**

COMES NOW ATGames Digital Media, Inc., (hereinafter "Applicant"), by counsel The Trademark Company, PLLC, and hereby provides the following answers and objections to New Dream Network, LLC, (hereinafter "Opposer") First Set of Interrogatories stating as follows:

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

State the effective date of first use to which YOU contend that you are entitled in relation to use of APPLICANT'S MARK on APPLICANT'S SERVICES.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant relies on its application date of June 2, 2011, as this is an Intent to Use Application.

**INTERROGATORY NO. 2:**

State in detail the factual basis for YOUR effective date of first use claimed in YOUR response to the preceding interrogatory.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant relies on its application date of June 2, 2011, as this is an Intent to Use Application.

**INTERROGATORY NO. 3:**

State the first date of actual use on which YOU began using the APPLICANT'S MARK in connection with the offering or sale of any of APPLICANT'S SERVICES.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce.

**INTERROGATORY NO. 4:**

State in detail the factual basis for YOUR contended for first date of actual use as stated in YOUR response to the preceding interrogatory, including the name, address, and telephone number of the first five customers to whom YOU provided APPLICANT'S SERVICES in connection with APPLICANT'S MARK.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce.

**INTERROGATORY NO. 5:**

List by creation date, author, and subject, all documents which YOU contend tend to establish that YOU conducted a trademark clearance search directed to APPLICANT'S MARK.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not possess documents pertaining to this request.

**INTERROGATORY NO. 6:**

State all factual bases for any contention by YOU that, prior to June 2, 2011, YOU had a bona fide intent to use APPLICANT'S MARK in connection with APPLICANT'S SERVICES.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

- 2004 – 2011
  - Filed U.S. patent 7,609,835 covering streaming media cartridge client device and is an important client strategy of DreamCloud™ Service.
  - Sponsored research at University of Southern California for 2D Content and Graphic compression optimization and acceleration.
  - Filed pending U.S. patent based on USC research results.
  - Conducted internal development of DreamCloud™ technology prototype.
  - Developed game emulators for major game platforms for streaming.
  - Developed global retail distribution channels for streaming client devices.
  - Sponsored additional research at University of Southern California for uniform bit-rate coding compression and network transmission.

**INTERROGATORY NO. 7:**

List by date of creation, author, and subject, all documents and things which YOU contend establish YOUR bona fide intent to use APPLICANT'S MARK in commerce for APPLICANT'S SERVICES, for all documents and things which were created prior to June 2, 2011.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Please see the attached documents submitted with Applicant's responses to the Document Requests.

**INTERROGATORY NO. 8:**

State YOUR total sales (in round United States dollars) for each of APPLICANT'S SERVICES sold under APPLICANT'S MARK in the United States from the earliest such sale to the present.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce.

**INTERROGATORY NO. 9:**

State the name of the persons employed by or associated with YOU who have the most knowledge regarding the use of APPLICANT'S MARK in connection with APPLICANT'S SERVICES.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Jodie Lee  
ATGames Digital Media, Inc.  
16321 Pacific Coast Hwy #101  
Pacific Palisades, CA 90272

**INTERROGATORY NO. 10:**

Identify by publication and issue date all print advertisements in the United States in which APPLICANT'S SERVICES have been advertised under APPLICANT'S MARK.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce.

**INTERROGATORY NO. 11:**

List by URL all Internet pages on which APPLICANT'S SERVICES have been advertised under APPLICANT'S MARK, and for each such URL, state the date on which APPLICANT'S SERVICES were first advertised under APPLICANT'S MARK.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant's application is an Intent to Use Application, and yet to be used in commerce.

**INTERROGATORY NO. 12:**

State the name and address of any person (other than any of YOUR attorneys, and other than OPPOSER) who has mentioned OPPOSER or the mark DREAMHOST in any communication or correspondence with YOU.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

There are no instances of people other than the Opposer and Applicant's counsel who have mentioned the mark DREAMHOST to Applicant.

**INTERROGATORY NO. 13:**

State the name and address of any expert witness that YOU intend to call at trial and state the substance of his or her opinion(s).

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant does not have any expert witnesses to call.

**INTERROGATORY NO. 14:**

State the name, date, and findings or conclusions of any consumer survey, consumer study, market research, focus group research, or other studies or surveys, conducted by or on behalf of YOU regarding OPPOSER, the mark DREAMHOST, APPLICANT'S MARK, or APPLICANT'S SERVICES.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Applicant has not performed any consumer surveys, studies, or other research.

**INTERROGATORY NO. 15:**

Describe the typical sophistication of, and degree of purchaser care of, the classes of customers for each of APPLICANT'S SERVICES sold under APPLICANT'S MARK.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Traditional video gamers.



**INTERROGATORY NO. 16:**

State in detail the factual and legal bases for any contention by YOU that APPLICANT'S MARK when used in connection with APPLICANT'S SERVICES would not be confusingly similar to any of the marks in OPPOSER's Registration Nos. 2,664,983; 2,665,588; 3,058,368; 3,467,780; and 4,178,299.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome and it may call for a legal conclusion.

**INTERROGATORY NO. 17:**

State in detail the factual and legal bases for any contention by YOU that cloud computing is not within the natural field of expansion from website hosting services.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Web hosting business has been running without cloud computing since the beginning of World Wide Web around 1990.

Cloud computing is a recent business model started promoted around 2008.

Cloud computing has the "computing" aspect that is not done in Web hosting (the computing portion in cloud computing includes database processing, data mining, scientific computing, video encoding (in the case of Netflix), 3d game rendering (in the case of OnLive).) Web hosting does not have the computing portion.

**INTERROGATORY NO. 18:**

State in detail the factual basis for any contention by YOU that website hosting is not a type of cloud computing.

**ANSWER:** Applicant objects to this Instant Interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, Applicant states:

Web hosting business has been running without cloud computing since the beginning of World Wide Web around 1990.

Cloud computing is a recent business model started promoted around 2008.

Cloud computing has the “computing” aspect that is not done in Web hosting (the computing portion in cloud computing includes database processing, data mining, scientific computing, video encoding (in the case of Netflix), 3d game rendering (in the case of OnLive).) Web hosting does not have the computing portion.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

Serial No. 85/335,890  
For the mark: DREAMCLOUD,

New Dream Network, LLC,

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Opposition No. 91206934

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 8<sup>th</sup> day of January, 2013, to be served, via first class mail, postage prepaid, upon:

Joel D. Voelzke, Esq.  
Intellectual Property Law Offices of Joel Voelzke, APC  
24772 W. Saddle Peak Road  
Malibu, CA 90265

/Matthew H. Swyers/  
Matthew H. Swyers