

ESTTA Tracking number: **ESTTA598355**

Filing date: **04/14/2014**

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

Proceeding	91212821
Party	Defendant Link Tomorrow Co. Ltd.
Correspondence Address	BRUCE W. MCKEE MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVE STE 3200 DES MOINES, IA 50309 UNITED STATES mvslit@ipmvs.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Christine Lebron-Dykeman
Filer's e-mail	mvslit@ipmvs.com
Signature	/s/ Christine Lebron-Dykeman
Date	04/14/2014
Attachments	Answer with Exhibits.pdf(143889 bytes)

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

<p>Midasplayer.com Limited And King.com Ltd.</p> <p style="text-align:right">Petitioner,</p> <p>v.</p> <p>Link Tomorrow Co. Ltd.,</p> <p style="text-align:right">Applicant.</p>	<p>Opposition No: 91212821</p>
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ANSWER AND AFFIRMATIVE DEFENSES

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

COMES NOW, the Applicant, Link Tomorrow Co. Ltd., a Republic of Korea corporation, having its principal place of business at 5F, 136 Yeoksam-ro, Gangnam-gu Seoul, Republic of Korea and responds to the Notice of Opposition, and in doing so denies all allegations and legal arguments made in headings of the Complaint except as specifically stated herein:

1. Applicant admits the allegations contained in paragraph 1 of the Notice of Opposition.

2. Applicant admits the allegations contained in paragraph 2 of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to enable it to admit or deny the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies same.

4. Applicant is without knowledge or information sufficient to enable it to admit or deny the allegations contained in paragraph 4 of the Notice of Opposition and therefore denies same.

5. Applicant admits that Opposer is the purported owner of Application Serial Nos. 85/840,713, 85/966,584, and 85/966,585 for the marks CANDY CRUSH, CANDY CRUSH SAGA & Design, and CANDY CRUSH & Design. Applicant denies the remaining allegations contained in paragraph 5 of the Notice of Opposition. Applicant further specifically states that upon information and belief Opposer has abandoned Application Serial No. 85/842,584 and thus expressly acknowledges that it has no rights in and to the mark CANDY. (A true and correct copy of the Express Abandonment is attached hereto as Exhibit A). Applicant still further states that Opposer's characterization of its marks as "CANDY Marks" is deceptive and misleading since the CANDY application was expressly abandoned and all other marks in Opposer's Applications are for the full phrase CANDY CRUSH or CANDY CRUSH SAGA.

6. Applicant is without knowledge or information sufficient to enable it to admit or deny the allegations contained in paragraph 6 of the Notice of Opposition relating to the extent of sales and promotion of the CANDY CRUSH or CANDY CRUSH SAGA marks, and therefore denies same. Applicant denies the remaining allegations contained in paragraph 6 of the Notice of Opposition. Applicant further states that Opposer's characterization of its marks as "CANDY Marks" is deceptive and misleading since the CANDY application was expressly abandoned and

all other marks in Opposer's Applications are for the full phrase CANDY CRUSH or CANDY CRUSH SAGA.

7. Applicant admits that Application Serial No. 85/840,713 was filed before Application Serial No. 85/756,676, but denies the remaining allegations in paragraph 7 of the Notice of Opposition. Applicant still further states that Opposer's characterization of its marks as "CANDY Marks" is deceptive and misleading since the CANDY application was expressly abandoned and all other marks in Opposer's Applications are for the full phrase CANDY CRUSH or CANDY CRUSH SAGA.

8. Applicant admits that it had heard of the game CANDY CRUSH SAGA prior to adoption of its CANDY PANG mark, but denies the remaining allegations contained in paragraph 8 of the Notice of Opposition. Applicant further states that Opposer's characterization of its marks as "CANDY Marks" is deceptive and misleading since the CANDY application was expressly abandoned and all other marks in Opposer's Applications are for the full phrase CANDY CRUSH or CANDY CRUSH SAGA.

9. Applicant admits the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in paragraph 10 of the Notice of Opposition. Applicant further states Opposer's CANDY CRUSH or CANDY CRUSH SAGA marks contain the words CRUSH or CRUSH SAGA which Applicant's do not and Applicant's CANDY PANG mark contains the word PANG which Opposer's do not. Still further Opposer's Application Serial Nos. 85/966,584, and 85/966,585 contain a design that is not contained in Applicant's mark, and Applicant's CANDY PANG mark contains a design which is not contained in Opposer's Application Serial Nos. 85/840,713, 85/966,584, and 85/966,585.

11. Applicant admits that Applicant and Opposer both sell games that are intended to be played on Android and iPhone devices, but denies the remaining allegations contained in paragraph 11 of the Notice of Opposition.

12. Applicant admits that that Applicant and Opposer both sell games that are intended to be played on Android and iPhone devices, but denies the remaining allegations contained in paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(b), Applicant asserts the following affirmative defenses to Opposer's Notice of Opposition and Applicant expressly reserves the right to assert additional affirmative defenses that further investigation, discovery or otherwise may indicate.

1. Opposer has failed to state a claim upon which relief may be granted.
2. Applicant has not infringed any valid and enforceable trademark right of Opposer.
3. Opposer has abandoned any and all right in and to the word CANDY alone, as Applicant expressly abandoned Application Serial No. 85/842,584. See Exhibit A.

4. The term "CANDY" is descriptive of the game pieces used in the games offered by Applicant Opposer, and is thus unprotectable as to Opposer, apart from the entire mark CANDY CRUSH or CANDY CRUSH SAGA, as was implicitly acknowledged by Opposer in Paragraph 2 of its Amended Answer to Notice of Opposition in Opposition No. 91210162. (A true and correct copy of Opposer's Amended Answer to Notice of Opposition in Opposition No. 91210162 is attached hereto as Exhibit B).

5. The term "CANDY" is commercially weak through the extensive use of this term by third parties for use in connection with games that are intended to be played on Android and iPhone devices.

6. There is no likelihood of confusion between Applicant's CANDY PANG mark and Opposer's CANDY CRUSH or CANDY CRUSH SAGA marks because Opposer's CANDY CRUSH or CANDY CRUSH SAGA marks contain the words CRUSH or CRUSH SAGA, which Applicant's do not, and Applicant's CANDY PANG mark contains the word PANG which Opposer's do not. Still further Opposer's Application Serial Nos. 85/966,584, and 85/966,585 contain a design that is not contained in Applicant's mark, and Applicant's CANDY PANG mark contains a design which is not contained in Opposer's Application Serial Nos. 85/840,713, 85/966,584, and 85/966,585.

7. Opposer' claims are barred because any harm or damage alleged by Opposer was not caused by any act or omission of Applicant.

WHEREFORE, having responded, Applicant prays that Opposer take nothing by way of its Notice of Opposition and that the Board dismiss the same.

Respectfully submitted,

/s/ Christine Lebrón-Dykeman

Bruce M. McKee

Christine Lebrón-Dykeman

Alexandria Christian

McKEE, VOORHEES & SEASE, P.L.C.

801 Grand Avenue, Suite 3200

Des Moines, IA 50309-2721

Phone: 515-288-3667

Fax: 515-288-1338

Email: bruce.mckee@ipmvs.com

Email: christine.lebron-dykeman@ipmvs.com

Email: alexandria.christian@ipmvs.com

Email: mvslit@ipmvs.com

ATTORNEYS FOR APPLICANT

LINK TOMORROW CO. LTD..

CERTIFICATE OF FILING

I hereby declare that the foregoing document has been filed via the Electronic System for Trademark Trials and Appeals (ESTTA) this 14th day of April, 2014.

/s/ Christine Lebrón-Dykeman

CERTIFICATE OF SERVICE

I hereby declare that the foregoing document was served upon the following this 14th day of April, 2014, via:

- | | |
|---------------------------------------------------------------------|------------------------------------------|
| <input checked="" type="checkbox"/> 1 st Class U.S. Mail | <input type="checkbox"/> Federal Express |
| <input type="checkbox"/> Facsimile | <input type="checkbox"/> Hand Delivery |
| <input checked="" type="checkbox"/> Email | |

Jon A. Schiffrin
Schiffrin & Longo, P.C.
8201 Greensboro Drive, Suite 300
McLean, VA 22102
Phone: 703-288-5248

*ATTORNEYS FOR PETITIONERS
MIDASPLAYER.COM LIMITED
AND KING.COM LTD.*

/s/ Christine Lebrón-Dykeman

Request for Express Abandonment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85842584
LAW OFFICE ASSIGNED	LAW OFFICE 108
PUBLISH FOR OPPOSITION DATE	00/00/0000
MARK SECTION	
MARK	CANDY
REQUEST FOR EXPRESS ABANDONMENT SECTION	
STATEMENT	The applicant hereby expressly abandons the application for trademark registration made under the serial number identified above.
SIGNATURE SECTION	
SIGNATURE	/Dana P. Jozefczyk/
SIGNATORY NAME	Dana P. Jozefczyk
SIGNATORY DATE	02/24/2014
SIGNATORY POSITION	Attorney of record, Colorado bar member
SIGNATORY PHONE NUMBER	303-357-1645
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Feb 24 09:28:58 EST 2014
TEAS STAMP	USPTO/REA-97.118.61.2-201 40224092858021196-8584258 4-5006ccef15310a1b92fd6d1 805f2f9632f241277c5d13975 bbad3a870b56a12823-N/A-N/ A-20140224092534787724

Request for Express Abandonment

To the Commissioner for Trademarks:

MARK: CANDY

SERIAL NUMBER: 85842584

By submission of this request, the applicant hereby expressly abandons the application for trademark registration made under the serial number identified above. Except as provided in 37 C.F.R Section 2.135. (concerning the commencement of an opposition, concurrent use, or interference proceeding), the fact that an application has been expressly abandoned shall not, in any proceeding in the United State Patent and Trademark Office, affect any right that the applicant may have in the mark which is the subject of the abandoned application.

Signature: /Dana P. Jozefczyk/ Date: 02/24/2014

Signatory's Name: Dana P. Jozefczyk

Signatory's Position: Attorney of record, Colorado bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 85842584

Internet Transmission Date: Mon Feb 24 09:28:58 EST 2014

TEAS Stamp: USPTO/REA-97.118.61.2-201402240928580211

96-85842584-5006ccef15310a1b92fd6d1805f2

f9632f241277c5d13975bbad3a870b56a12823-N

/A-N/A-20140224092534787724

ESTTA Tracking number: **ESTTA591394**

Filing date: **03/07/2014**

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

Proceeding	91210162
Party	Defendant King.com Limited
Correspondence Address	SCOTT W JOHNSTON MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402 0910 UNITED STATES SJohnston@merchantgould.com, slindemeier@merchantgould.com
Submission	Answer and Counterclaim
Filer's Name	Scott W. Johnston
Filer's e-mail	sjohnston@merchantgould.com, slindemeier@merchantgould.com
Signature	/SWJ/
Date	03/07/2014
Attachments	2014 02 11 Amended Answer and Counterclaim (refiled and served 2014 03 07).PDF(119274 bytes)

Registration Subject to the filing

Registration No	3989492	Registration date	07/05/2011
Registrant	RUNSOME APPS INC PO BOX 68 WAPPINGERS FALLS, NY 12590 NY		

Goods/Services Subject to the filing

Class 009. First Use: 2010/11/12 First Use In Commerce: 2010/11/13
All goods and services in the class are requested, namely: Computer game software for use on mobile and cellular phones

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

_____)	
Runsome Apps Inc.,)	Opposition No. 91210162
)	
Opposer,)	Mark: CANDY CRUSH SAGA
)	
v.)	Serial No. 85/566,839
)	
King.com Limited,)	Filing Date: March 12, 2012
)	
Applicant.)	Publication Date: March 19, 2013
_____)	

AMENDED ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM

Applicant, King.com Limited, hereby responds to the Notice of Opposition as follows:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the preamble of the Notice of Opposition, and therefore denies the same.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies the same.

2. Applicant admits that its goods fall in International Class 9 and that its game involves images of candy pieces. Applicant denies the remaining allegations of paragraph 2.

3. Applicant lacks sufficient knowledge or information as to Opposer's game and channels of trade to form a belief as to the truth of the allegations of paragraph 3, and therefore denies the same.

4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the facts alleged in paragraph 4, and therefore denies the same. Applicant denies the remaining allegations of paragraph 4.

5. Applicant lacks sufficient knowledge or information as to the facts alleged in paragraph 5, and therefore denies the same. Applicant denies that Opposer is damaged.

6. Applicant admits it offers a variation of its game that can be downloaded for free. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 6, and therefore denies the same.

7. Applicant denies the allegations of paragraph 7.

8. Applicant admits that its mark and Opposer's mark contain and begin with the word CANDY and that Applicant's mark contains the words CRUSH SAGA, which Opposer's does not, and that Opposer's contains the word SWIPE, which Applicant's does not. Applicant denies the remaining allegations of paragraph 8.

9. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 9, and therefore denies the same.

10. Applicant admits that it filed the European Community trademark from which Applicant claims priority on March 12, 2012. Applicant admits that Applicant released a mobile version of its CANDY CRUSH SAGA game in November 2012. With respect to the remaining allegations of paragraph 10, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies the same.

AFFIRMATIVE DEFENSES

1. Upon information and belief, Opposer lacks priority as Runsome Apps Inc. did not exist prior to its April 20, 2012, incorporation date, which is after Applicant's effective filing date.

2. AIM Productions N.V. has used the mark CANDY CRUSHER since at least as early as 2004 in connection with game software, including use as a mobile application game available for download in the United States. These common law rights pre-date Runsome's earliest asserted use date by years. By virtue of assignment, Applicant now owns all right, title and interest in CANDY CRUSHER, as well as the goodwill associated with the mark. CANDY CRUSHER has a first use date well before the November 2010 first use date provided in Registration No. 3989492 for the CANDYSWIPE mark. The use of CANDY CRUSHER has been continuous and continues under license from Applicant. Additionally, CANDY CRUSHER is the legal equivalent of King's CANDY CRUSH and CANDY CRUSH SAGA marks such that King can tack the prior use of CANDY CRUSHER onto its use of the CANDY CRUSH marks. CANDY CRUSHER is so similar to CANDY CRUSH and CANDY CRUSH SAGA when used for game software that it creates the same, continuing commercial impression. CANDY CRUSH and CANDY CRUSH SAGA do not materially differ from and do not alter the character of CANDY CRUSHER. Thus, not only does King have priority based on its rights in CANDY CRUSHER, but it also has priority with respect to its CANDY CRUSH and CANDY CRUSH SAGA marks because of tacking. If there is a likelihood of confusion, Applicant has priority.

3. If CANDY CRUSH SAGA is confusingly similar to CANDYSWIPE, CANDYSWIPE is also confusingly similar to CANDY CRUSHER such that consumers will likely wrongly associate Runsome's CANDYSWIPE game with King's prior CANDY CRUSHER mark.

COUNTERCLAIM

1. On April 9, 2013, Runsome filed its Notice of Opposition, alleging that King.com Limited's ("King's") CANDY CRUSH SAGA mark in Class 9 was likely to cause confusion with Runsome Apps Inc.'s ("Runsome's") CANDYSWIPE mark as shown in Registration No. 3989492.
2. Runsome's earliest priority date for the CANDYSWIPE mark is November 2010.
3. AIM Productions N.V. has used the mark CANDY CRUSHER since at least as early as 2004 in connection with game software, including use as a mobile application game available for download in the United States.
4. AIM Productions N.V. common law rights pre-date Runsome's earliest asserted use date by years.
5. By virtue of assignment, King now owns all right, title and interest in AIM Productions N.V.'s CANDY CRUSHER mark, as well as the goodwill associated with the mark.
6. The use of the CANDY CRUSHER mark has been continuous since its first use, and continues today under license from King.
7. King's rights in CANDY CRUSHER date to at least as early as 2004 in connection with game software, including use as a mobile application game available for download in the United States
8. King's CANDY CRUSHER has a first use date well before the November 2010 first use date provided in Registration No. 3989492 for the CANDYSWIPE mark.
9. The mark CANDY CRUSHER is the legal equivalent of King's CANDY CRUSH and CANDY CRUSH SAGA marks.

10. The mark CANDY CRUSHER is so similar to CANDY CRUSH and CANDY CRUSH SAGA when used for game software that it creates the same, continuing commercial impression.

11. CANDY CRUSH and CANDY CRUSH SAGA do not materially differ from and do not alter the character of CANDY CRUSHER.

12. King can tack the prior use of CANDY CRUSHER onto its use of the CANDY CRUSH marks.

13. Not only does King have priority based on its rights in CANDY CRUSHER, but it also has priority with respect to its CANDY CRUSH and CANDY CRUSH SAGA marks because of tacking.

14. If CANDY CRUSH SAGA is confusingly similar to CANDYSWIPE, CANDYSWIPE is also confusingly similar to CANDY CRUSHER such that consumers will likely wrongly associate Runsome's CANDYSWIPE game with King's prior CANDY CRUSHER mark. If there is a likelihood of confusion, this would damage King and supports King's proposed petition for cancellation of Runsome's registration under 15 U.S.C. §§ 1052(d) and 1064.

15. If CANDY CRUSH SAGA is confusingly similar to CANDYSWIPE, King has priority based on its rights in CANDY CRUSH and CANDY CRUSH SAGA marks because the priority date of use for these marks is at least as early as 2004 due to tacking to CANDY CRUSHER. If there is a likelihood of confusion, this would damage King and supports King's proposed petition for cancellation of Runsome's registration under 15 U.S.C. §§ 1052(d) and 1064.

WHEREFORE, Applicant respectfully requests that the opposition be denied, that Applicant's Petition to Cancel be granted, and that Applicant's application be approved for registration.

KING.COM LIMITED

By its Attorneys,



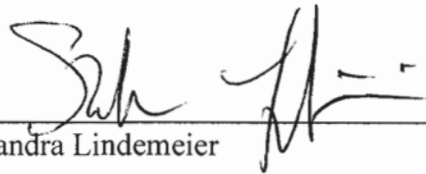
Date: February 11, 2014

Scott W. Johnston
Andrew S. Ehard
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, MN 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AMENDED ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM was served upon the following attorneys of record for Opposer by First Class Mail, postage prepaid, this 11th day of February, 2014:

Frank J. Colucci
David M. Dahan
Colucci & Umans
218 East 50th Street
New York, NY 10022

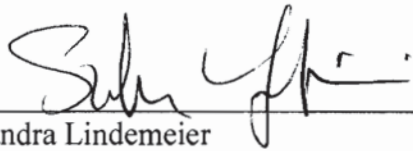


Sandra Lindemeier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AMENDED ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM was served upon the following attorneys of record for Opposer by First Class Mail, postage prepaid, this 7th day of March, 2014:

Frank J. Colucci
David M. Dahan
Colucci & Umans
218 East 50th Street
New York, NY 10022



Sandra Lindemeier