

ESTTA Tracking number: **ESTTA567413**Filing date: **10/26/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Zyis Ltd.		
Entity	Corporation	Citizenship	United Kingdom
Address	1 Castle Court, Castle Hill Farnham, Surrey, GU9 7JE UNITED KINGDOM		

Attorney information	Nicholas D. Wells Wells IP Law, LLC 299 S. Main St., Suite 1300 Salt Lake City, UT 84111 UNITED STATES nwells@wellsiplaw.com Phone:801-444-7143
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Applicant Information

Application No	85873567	Publication date	10/01/2013
Opposition Filing Date	10/26/2013	Opposition Period Ends	10/31/2013
Applicant	Gargiulo, Michael 1702 Milledge Avenue Extension Athens, GA 30605 USX		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer game programs; computer game software; downloadable electronic games via the Internet and wireless devices; interactive game software
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment in the nature of providing online electronic and computer games; entertainment services, namely, providing non-downloadable interactive games

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	FRIV
Goods/Services	Computer game programs; computer game software; downloadable electronic games via the Internet and wireless devices; interactive game software; Entertainment in the nature of providing online electronic and computer games; entertainment services, namely, providing non-downloadable interactive games

Attachments	FRIV-TTAB Opposition.pdf(18331 bytes) FRIV Opposition-Exhibit A.pdf(286415 bytes) FRIV Opposition-Exhibit B.pdf(292856 bytes)
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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	/Nicholas Wells/
Name	Nicholas D. Wells
Date	10/26/2013

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

Mark: FRIV

Serial No.: 85873567

Published: October 1, 2013

Zyis Ltd.

Opposer,

v.

Michael Gargiulo

Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Zyis Ltd (hereinafter “Opposer” or “Zyis”), believes that it is or will be damaged by the registration of United States Trademark Application Serial No. 85873567 (the “Application”), as filed with the U.S. Patent and Trademark Office (“USPTO”) on March 12, 2013 by Michael Gargiulo (hereinafter “Applicant”), for the trademark FRIV in connection with: “Computer game programs; computer game software; downloadable electronic games via the Internet and wireless devices; interactive game software” in International Class 009 and “Entertainment in the nature of providing online electronic and computer games; entertainment services, namely, providing non-downloadable interactive games” in International Class 041 (collectively “Applicant’s Goods and Services”). Zyis hereby opposes said application under the provisions of Section 13 of the Trademark Act of 1946 (hereinafter “Lanham Act”), 15 U.S.C. Section 1063.

As grounds for the Opposition, Zyis alleges the following:

1. Zyis Ltd. is a company organized under the laws of England and Wales and having a place of business at 1 Castle Court, Castle Hill, Farnham, Surrey, GU9 7JE United Kingdom.
2. Zyis is a leading provider of online games under its FRIV trademark.
3. Zyis and its predecessor entities registered the friv.com domain name on May 28, 2004, with the intent to use it to provide a child-friendly site for playing computer games.
4. Since at least as early as March 2008, Zyis and its predecessor entities have provided a huge variety of online games for users through its friv.com website, a copy of which is attached to this Opposition as Exhibit A.
5. Opposer's friv.com website is clearly and prominently branded with Opposer's FRIV mark.
6. Opposer's friv.com website has been used by tens of thousands of users in the United States, since at least early 2008, as shown by the Google Analytics report from March 2008, attached to this Opposition as Exhibit B.
7. Zyis has expended significant resources in developing, advertising, and promoting its friv.com website. Through such advertising and promotion, and through its long use of the FRIV mark in connection with the friv.com website, Zyis has developed valuable goodwill in its FRIV mark. As such, the FRIV mark is closely associated with Zyis and its predecessor entities in the minds of consumers and the FRIV mark serves as a strong source identifier for the goods and services provided by Zyis.
8. On information and belief, Applicant Michael Gargiulo is an individual citizen of the United States having an address at 1702 Milledge Avenue Extension, Athens, Georgia 30605.

9. Applicant initiated discussions with management of Zyis in July 2013 regarding Applicant's desire to purchase the friv.com website and all associated trademark rights and goodwill, including the rights of Zyis in its FRIV trademark.
10. Zyis management flatly refused to sell the friv.com website or the FRIV trademark or associated goodwill to Applicant.
11. Applicant and Opposer exchanged emails in August and September 2013 regarding the earlier rights of Zyis in the FRIV mark and Zyis' demands that Applicant withdraw the present Application.
12. Notwithstanding the exclusive and long-standing rights of Zyis and its predecessor entities in and to the FRIV mark, on March 12, 2013, Applicant filed a trademark application under Section 1(b) of the Lanham Act, 15 U.S.C. Section 1114(f), with the USPTO for registration of the mark FRIV for use in connection with the above-noted Applicant's Goods and Services. The Application was assigned Serial No. 85873567.
13. Upon information and belief, Applicant knew of Opposer's rights in the FRIV mark and Opposer's operation of the friv.com website before filing the opposed Application.

LIKELIHOOD OF CONFUSION

Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d)

14. Zyis re-alleges the allegations in Paragraphs 1 through 13 of this Notice of Opposition.
15. The trademark that Applicant seeks to register so resembles Zyis' FRIV mark in appearance, sound, meaning, and commercial impression that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods and Services in violation of Section 2(d) of the Lanham Act, 15

- U.S.C. Section 1052(d), and will injure and damage Zyis and the goodwill and reputation symbolized by Zyis' FRIV mark.
16. The use of the FRIV mark by Zyis and its predecessor entities far predates the filing date of the Application; the use of the FRIV mark by Zyis and its predecessor entities also far predates any alleged use of the FRIV mark by Applicant and consequently there is no question of priority of rights, as such priority clearly belongs to Zyis.
 17. Applicant's Goods and Services are identical to or are so related to the goods and services offered by Zyis in connection with its FRIV mark that the public is likely to be confused, deceived, and to assume erroneously that Applicant's Goods and Services are those of Zyis or that Applicant is in some way connected with, licensed, or sponsored by or affiliated with Zyis, all to the irreparable damage of Zyis.
 18. Likelihood of confusion is enhanced by the fact that Zyis' FRIV mark is strong, famous, well-known, and entitled to a broad scope of protection.
 19. Applicant is not affiliated or connected with Zyis and has not been endorsed or sponsored by Zyis nor has Zyis approved any of Applicant's Goods and Services to be sold by Applicant under its alleged trademark.
 20. Applicant has never obtained permission from Zyis to use Applicant's alleged FRIV mark nor has Zyis approved any of Applicant's Goods and Services to be offered under Applicant's alleged FRIV mark.

FRAUD

808 F.2d 46, 1 USPQ2d 1483 (Fed Cir. 1986)

21. Zyis re-alleges the allegations contained in Paragraphs 1 through 20 of this Notice of Opposition.
22. In the Application for the alleged FRIV mark, Applicant has committed prosecution fraud on the USPTO.

23. Upon information and belief, Applicant knowingly made false and material misrepresentations in the filing of the Application.
24. In the filing of Applicant's Application, Applicant declared that "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."
25. Upon information and belief, at the time such declaration was made by Applicant, Applicant was aware of Opposer's use of and rights in the FRIV mark, including without limitation Opposer's friv.com website and the prominent use of Opposer's FRIV mark thereon.
26. Upon information and belief, said false declaration was made with the intent to induce authorized agents of the USPTO to approve the Application for registration and, reasonably relying upon the truth of said false declaration, the USPTO did, in fact, approve the Application for registration.
27. Accordingly, Applicant's Application is invalid on the ground of fraud and should be refused registration.

If Applicant obtains such rights as conferred under the Principal Register of the Lanham Act, it will obtain at least a *prima facie* exclusive right to use its alleged trademark, and Zyis

will be subjected to great and irreparable damage, and Applicant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act.

WHEREFORE, Zyis Ltd believes and avers that it is being, and will continue to be, damaged by the registration of the Application, and respectfully requests that the Application be rejected, that no registration be issued thereon to Applicant, and that the Opposition be sustained in favor of Zyis Ltd.

Dated: Salt Lake City, Utah
25 October 2013

WELLS IP LAW, LLC

By: s/Nicholas D. Wells

Nicholas D. Wells
299 S. Main St., Suite 1300
Salt Lake City, Utah 84111
(801) 444-7143

Attorney for Opposer
Zyis Ltd

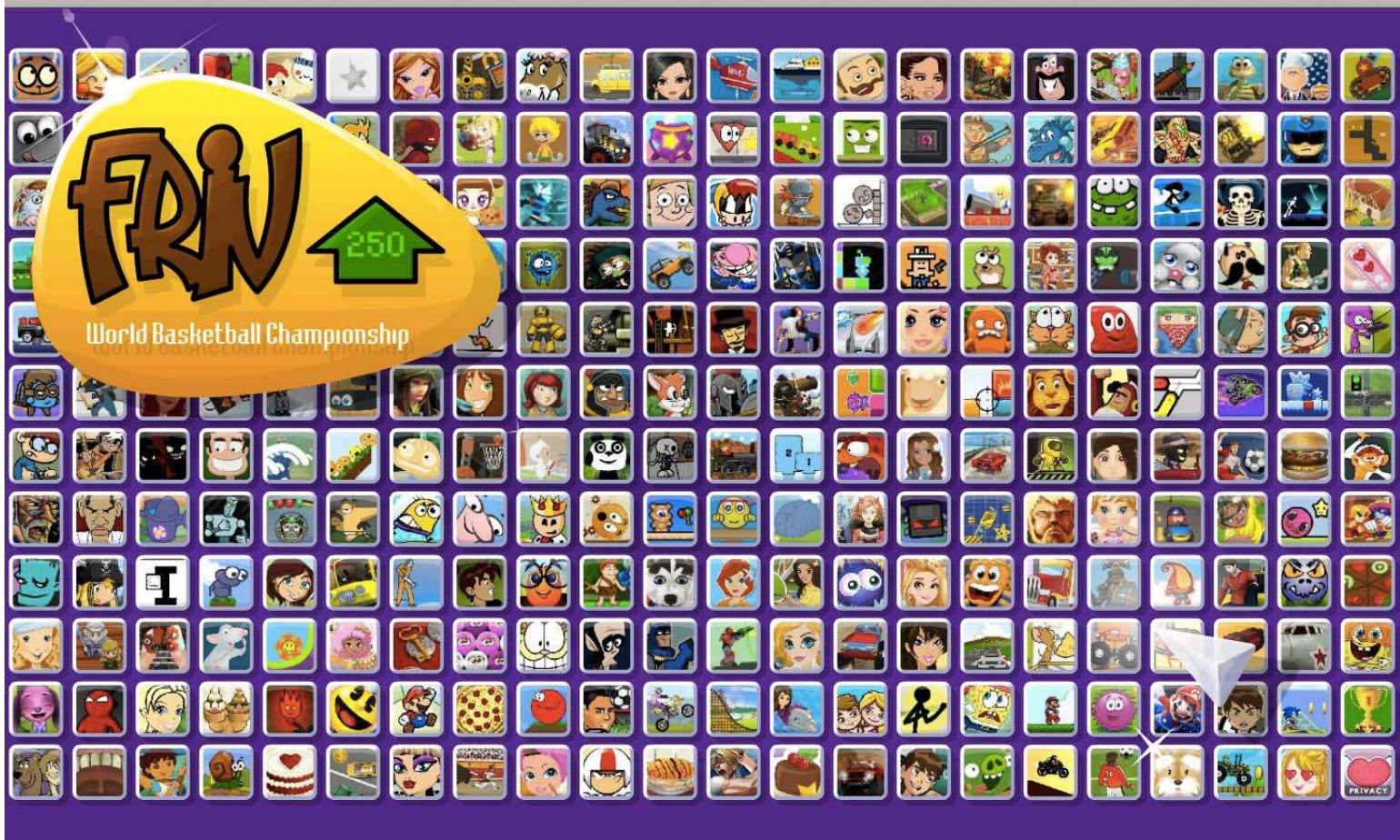
CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of October, 2013, I served a copy of this **NOTICE OF OPPOSITION** on the Applicant, as designated below, by placing said copy in the United States Mail, first class, postage prepaid, addressed as follows:

Gargiulo, Michael
1702 Milledge Avenue Extension
Athens GA 30605

By: s/Nicholas D. Wells

Nicholas D. Wells
WELLS IP LAW, LLC
299 S. Main St., Suite 1300
Salt Lake City, Utah 84111



http://www.friv.com - http://www.friv.com
Arcade Extras Etc

Location

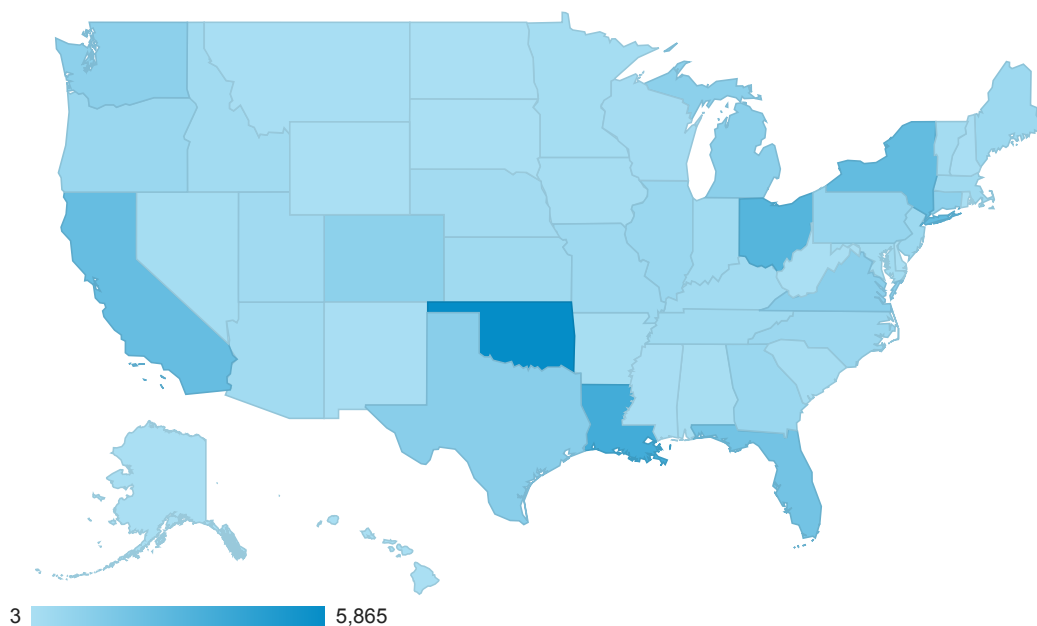
Feb 1, 2008 - Mar 15, 2008

[ALL](#) » COUNTRY / TERRITORY: United States



Map Overlay

Summary



Region	Acquisition			Behavior			Conversions		
	Visits	% New Visits	New Visits	Bounce Rate	Pages / Visit	Avg. Visit Duration	Goal Conversion Rate	Goal Completions	Goal Value
	35,327 % of Total: 6.71% (526,402)	26.01% Site Avg: 26.51% (-1.91%)	9,187 % of Total: 6.58% (139,555)	43.61% Site Avg: 46.09% (-5.39%)	3.12 Site Avg: 3.15 (-0.96%)	00:10:50 Site Avg: 00:10:45 (0.80%)	0.00% Site Avg: 0.00% (0.00%)	0 % of Total: 0.00% (0)	\$0.00 % of Total: 0.00% (\$0.00)
1. Oklahoma	5,865	40.65%	2,384	37.00%	3.50	00:10:47	0.00%	0	\$0.00
2. Louisiana	3,662	17.67%	647	43.06%	3.16	00:10:26	0.00%	0	\$0.00
3. Ohio	3,009	22.53%	678	39.61%	3.41	00:12:01	0.00%	0	\$0.00
4. New York	2,534	19.46%	493	45.03%	2.99	00:12:00	0.00%	0	\$0.00
5. California	2,403	25.22%	606	48.40%	2.81	00:10:40	0.00%	0	\$0.00
6. Florida	1,973	20.98%	414	43.54%	3.05	00:10:27	0.00%	0	\$0.00
7. Texas	1,189	24.14%	287	41.55%	3.02	00:11:10	0.00%	0	\$0.00
8. Virginia	1,113	20.13%	224	43.76%	3.33	00:11:45	0.00%	0	\$0.00
9. Michigan	1,078	26.25%	283	35.53%	4.44	00:15:26	0.00%	0	\$0.00
10. Washington	1,048	30.44%	319	50.76%	2.45	00:08:09	0.00%	0	\$0.00
11. Colorado	1,027	14.70%	151	46.25%	2.74	00:09:22	0.00%	0	\$0.00
12. Connecticut	998	17.94%	179	54.01%	2.41	00:08:25	0.00%	0	\$0.00
13. Pennsylvania	707	22.07%	156	53.04%	2.56	00:07:14	0.00%	0	\$0.00

14.	Illinois	581	33.73%	196	46.64%	3.36	00:11:30	0.00%	0	\$0.00
15.	Georgia	560	23.39%	131	47.86%	2.99	00:09:27	0.00%	0	\$0.00
16.	Oregon	554	21.48%	119	39.89%	3.81	00:14:26	0.00%	0	\$0.00
17.	North Carolina	543	30.20%	164	42.17%	3.23	00:12:33	0.00%	0	\$0.00
18.	(not set)	465	21.29%	99	38.49%	3.46	00:15:16	0.00%	0	\$0.00
19.	New Jersey	454	29.74%	135	41.85%	2.93	00:11:07	0.00%	0	\$0.00
20.	Maine	453	21.85%	99	62.25%	2.16	00:06:15	0.00%	0	\$0.00
21.	Missouri	414	17.15%	71	52.17%	2.37	00:08:21	0.00%	0	\$0.00
22.	Tennessee	356	21.07%	75	40.17%	3.49	00:13:51	0.00%	0	\$0.00
23.	Kansas	354	18.08%	64	51.13%	2.58	00:08:35	0.00%	0	\$0.00
24.	Massachusetts	342	22.51%	77	48.54%	2.53	00:08:25	0.00%	0	\$0.00
25.	Utah	334	16.17%	54	35.93%	3.49	00:10:55	0.00%	0	\$0.00
26.	Indiana	324	36.42%	118	50.31%	2.37	00:07:24	0.00%	0	\$0.00
27.	Idaho	300	15.67%	47	37.67%	3.86	00:14:39	0.00%	0	\$0.00
28.	Arizona	292	29.11%	85	46.23%	3.14	00:11:14	0.00%	0	\$0.00
29.	Kentucky	291	25.43%	74	36.08%	3.14	00:12:18	0.00%	0	\$0.00
30.	Nebraska	269	56.88%	153	48.33%	2.89	00:08:19	0.00%	0	\$0.00
31.	Maryland	253	33.99%	86	58.50%	2.31	00:07:15	0.00%	0	\$0.00
32.	Vermont	221	18.10%	40	56.56%	2.07	00:08:26	0.00%	0	\$0.00
33.	Wisconsin	188	39.36%	74	44.68%	2.69	00:15:36	0.00%	0	\$0.00
34.	Minnesota	180	52.78%	95	56.11%	2.70	00:08:08	0.00%	0	\$0.00
35.	Nevada	177	13.56%	24	44.07%	3.04	00:14:44	0.00%	0	\$0.00
36.	South Carolina	150	22.67%	34	45.33%	3.24	00:07:40	0.00%	0	\$0.00
37.	Iowa	129	22.48%	29	55.81%	2.24	00:08:53	0.00%	0	\$0.00
38.	Arkansas	110	24.55%	27	42.73%	2.94	00:10:21	0.00%	0	\$0.00
39.	Alabama	76	48.68%	37	42.11%	2.82	00:07:46	0.00%	0	\$0.00
40.	District of Columbia	60	35.00%	21	46.67%	2.47	00:08:28	0.00%	0	\$0.00
41.	Montana	57	31.58%	18	45.61%	2.68	00:09:01	0.00%	0	\$0.00
42.	New Mexico	50	24.00%	12	40.00%	2.68	00:10:38	0.00%	0	\$0.00
43.	Mississippi	47	40.43%	19	29.79%	4.17	00:19:28	0.00%	0	\$0.00
44.	New Hampshire	46	67.39%	31	41.30%	2.57	00:08:35	0.00%	0	\$0.00
45.	South Dakota	18	44.44%	8	44.44%	2.83	00:07:55	0.00%	0	\$0.00
46.	West Virginia	16	62.50%	10	50.00%	2.12	00:06:34	0.00%	0	\$0.00
47.	Rhode Island	15	80.00%	12	53.33%	3.53	00:20:29	0.00%	0	\$0.00
48.	Hawaii	14	78.57%	11	21.43%	2.43	00:07:32	0.00%	0	\$0.00
49.	Delaware	10	80.00%	8	50.00%	2.30	00:02:04	0.00%	0	\$0.00
50.	Wyoming	8	25.00%	2	62.50%	1.75	00:05:12	0.00%	0	\$0.00
51.	Alaska	7	57.14%	4	71.43%	1.29	00:00:32	0.00%	0	\$0.00
52.	North Dakota	3	100.00%	3	66.67%	1.33	00:04:14	0.00%	0	\$0.00

