

ESTTA Tracking number: **ESTTA708294**

Filing date: **11/12/2015**

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	LIGHTNING STRIKE GAMES INC (fka) Kairosbiz Incorporated
Granted to Date of previous extension	11/11/2015
Address	1220 S 356TH ST #C11 Federal Way, WA 98003 UNITED STATES
Party who filed Extension of time to oppose	LIGHTNING STRIKE GAMES INC.
Relationship to party who filed Extension of time to oppose	The Opposer's Registration upon which the Opposition is based is still in its former name Kairosbiz Incorporated. This additional fka information is added for clarification.

Correspondence information	NANCY V. STEPHENS Attorney FOSTER PEPPER PLLC 1111 3RD AVE Suite 3400 SEATTLE, WA 98101 UNITED STATES stepn@foster.com Phone:2064478925
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Applicant Information

Application No	86429642	Publication date	07/14/2015
Opposition Filing Date	11/12/2015	Opposition Period Ends	11/11/2015
Applicant	Nicholas Alexander APT 10 New York, NY 10009 UNITED STATES		

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: Recorded and downloadable software for use in managing multiplayer online videogaming activities, namely, for use in organizing, managing and tracking online computer gaming teams, leagues, and tournaments, and for compiling and managing computer game player and team profiles, scores, rankings and other gaming statistics; games that accept virtual or monetary wagers sold as a feature of game software
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing information on-line relating to

computer games and computer enhancements for games, namely, providing player profile information and real-time game results and feedback in connection with online multiplayer computer games; wagering services, namely, providing an online platform that enables users to place virtual or monetary wagers online for games played on a personal computer or console; providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; providing a web site through which people locate information about tournaments, events, and competitions in the video game field; organizing, conducting and operating online video game tournaments

Applicant Information

Application No	86429716	Publication date	07/14/2015
Opposition Filing Date	11/12/2015	Opposition Period Ends	
Applicant	Nicholas Alexander APT 10 New York, NY 10009 UNITED STATES		

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: Recorded and downloadable software for use in managing multiplayer online videogaming activities, namely, for use in organizing, managing and tracking online computer gaming teams, leagues, and tournaments, and for compiling and managing computer game player and team profiles, scores, rankings and other gaming statistics; games that accept virtual or monetary wagers sold as a feature of game software

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing information on-line relating to computer games and computer enhancements for games, namely, providing player profile information and real-time game results and feedback in connection with online multiplayer computer games; wagering services, namely, providing an online platform that enables users to place virtual or monetary wagers online for games played on a personal computer or console; providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; providing a web site through which people locate information about tournaments, events, and competitions in the video game field; organizing, conducting and operating online video game tournaments

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4632879	Application Date	09/14/2012
Registration Date	11/04/2014	Foreign Priority Date	NONE
Word Mark	PROFESSIONAL BATTLE LEAGUE		

Design Mark	<h1>Professional Battle League</h1>
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2013/06/20 First Use In Commerce: 2013/09/05 Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PRO BATTLE LEAGUE		
Goods/Services	Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours		

Attachments	85729806#TMSN.png(bytes) NOP Professional Battle League.pdf(65757 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	/Nancy V. Stephens/
Name	Nancy V. Stephens
Date	11/12/2015

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

In the matter of Application Serial Nos. 86429642 and 86429716
Published in the Official Gazette on July 14, 2015

Lightning Strike Games Inc.)	
)	
Opposer)	Opposition No.
)	
v.)	
)	
Nicholas Alexander)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Lightning Strike Games Inc., formerly Kairosbiz, Incorporated, a Washington State corporation with a principal place of business at 1220 South 356th Street, #C11, Federal Way, WA 98003 (“Opposer”), believes they will be damaged by registration of the marks BATTLEPRO and BATTLE PRO which are the subject of application Serial Nos. 86429642 and 86429716 and has opposed the same.

As grounds of opposition, it is alleged that:

1. On information and belief, Nicholas Alexander, and individual (US citizen) with a mailing address of 309 Avenue C Apartment #10, New York, NY (“Applicant”) is the owner of Application Serial Nos. 86429642 and 86429716, both filed on October 21, 2014 on the basis of an intent-to-use, (“Applications”), and seeks to register the marks BATTLEPRO and BATTLE PRO to cover, “Recorded and downloadable software for use in managing multiplayer online video gaming activities, namely, for use in organizing, managing and tracking online computer gaming teams, leagues, and tournaments, and for compiling and managing computer game player and team profiles, scores, rankings and other gaming statistics; games that accept virtual or monetary wagers sold as a feature of game software” in *International* Class 9, “Providing

information on-line relating to computer games and computer enhancements for games, namely, providing player profile information and real-time game results and feedback in connection with online multiplayer computer games; wagering services, namely, providing an online platform that enables users to place virtual or monetary wagers online for games played on a personal computer or console; providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; providing a web site through which people locate information about tournaments, events, and competitions in the video game field; organizing, conducting and operating online video game tournaments” in *International Class 41* and “Computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking services in the field of computer games” in *International Class 42*, as evidenced by the publication of such mark in the Official Gazette on July 14, 2015.

2. The Applicant’s marks BATTLEPRO and BATTLE PRO are identical to each other except for one space.

3. Opposer filed an application with the USPTO to register the mark PROFESSIONAL BATTLE LEAGUE to cover “Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours,” in *International Class 41*, on September 14, 2012 and such Application was assigned Serial No. 85729806.

4. Opposer has continuously used the PROFESSIONAL BATTLE LEAGUE mark in connection with goods and services associated with on-line gaming, operation and coordination of game tournaments, leagues and tours since as least as early as September 5, 2013.

5. Opposer's trademark PROFESSIONAL BATTLE LEAGUE reached registration on November 4, 2014 and has been assigned Registration No. 4632879. ("Registration")

6. Opposer's filing date for its Registration is prior to Applicant's filing date of October 21, 2014.

7. Opposer used its trademark PROFESSIONAL BATTLE LEAGUE prior to Applicant's use of its mark.

8. "Pro" is commonly used as a shortened form of the word "professional."

9. It is common for consumers and third parties to shorten brand names when one or more word in a trademark lends itself to truncation.

10. The Opposer's mark is sometimes referenced by third parties as "PRO BATTLE LEAGUE."

11. The Opposer has continuously used the trademark PRO BATTLE LEAGUE as its common law trademark in connection with goods and services associated with on-line gaming, operation and coordination of game tournaments, leagues and tours since as least as early as April 2014.



12. The phrase "professional battle" is the dominant part of Opposer's Registration and "pro battle" is the dominant part of Opposer's common law mark PRO BATTLE LEAGUE.

13. The Applicant's mark switches the position of the two elements "professional" (shortened to "pro") and "battle."

14. Applicant's intended use of BATTLEPRO and BATTLE PRO includes software for online video gaming, games that accept wagers, services to provide an online platform that enables users to place wagers online and services to provide a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours.

15. The Opposer uses its marks PROFESSIONAL BATTLE LEAGUE and PRO BATTLE LEAGUE in connection with services that provide a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours.

16. The Opposer's services are fully incorporated within the goods and services intended to be offered by the Applicant.

17. Trademark owners who register trademarks for class 41 services related to online games and game tournaments often also register their trademark in class 9 for games and other goods connected with online games and tournaments.

18. Software and other apparatus in *International Class 9* is a natural expansion of class 41 services related to online gaming.

19. The Opposer uses its marks PROFESSIONAL BATTLE LEAGUE and PRO BATTLE LEAGUE in connection with its software featured on its website.

20. Applicant's goods and services will target the same audience as Opposer's services, online gaming customers.

21. The commercial impression of BATTLEPRO or BATTLE PRO when used with the same services and targeting the same consumer base is identical to that of PRO BATTLE LEAGUE and PROFESSIONAL BATTLE LEAGUE.

22. Based on its rights to the federally registered trademark PROFESSIONAL BATTLE LEAGUE and its common law rights to PRO BATTLE LEAGUE, Opposer has made great expenditures of energy and resources to develop marketing and promotional activities to promote its services bearing the PROFESSIONAL BATTLE LEAGUE and the PRO BATTLE LEAGUE marks.

23. Applicant's intended use of BATTLEPRO or BATTLE PRO will likely give the impression that its goods and services are endorsed by or associated with Opposer.

24. Based on its prior registration and its priority use date, Opposer's rights in the trademark PROFESSIONAL BATTLE LEAGUE are superior to the Applicant's rights to BATTLEPRO and/or BATTLE PRO.

25. Based on its prior use date, Opposer's rights in the common law trademark PRO BATTLE LEAGUE are superior to the Applicant's rights to BATTLEPRO and/or BATTLE PRO.

26. Through its efforts and the expenditure of funds for marketing and promotional activities, Opposer has developed valuable goodwill and reputation with respect to the trademarks PROFESSIONAL BATTLE LEAGUE and PRO BATTLE LEAGUE in connection with online gaming, online games and goods and services connected therewith.

27. Applicant had at least constructive knowledge of Opposer's Registration when it filed its Applications and therefore at the time of filing its Applications before the U.S. Patent and Trademark Office, fraudulently declared that, "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*" (italics added).

28. Applicant likely had notice of Opposer's use of the mark PRO BATTLE LEAGUE when it filed its Applications and in its Applications before the U.S. Patent and Trademark Office, fraudulently declared that, "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*" (italics added).

29. Applicant's mark if used, will blur the distinctiveness of Opposer's marks and dilute the value of the marks as a source identifier.

30. If Applicant is granted a registration for BATTLEPRO or BATTLE PRO it will blur the distinctiveness of the Opposer's trademark and dilute the value of that mark as a source identifier.

31. Applicant's mark, if registered, could block the ability of Opposer to register the marks PROFESSIONAL BATTLE LEAGUE and PRO BATTLE LEAGUE for software or other goods and services considered a natural expansion of the services listed on the certification of registration for the Registration.

32. Applicant's mark, if registered, could block the ability of Opposer to register the mark PRO BATTLE LEAGUE should it later decide to apply to register the truncated version of the mark PROFESSIONAL BATTLE LEAGUE as a companion or sister trademark.

33. Use of the mark BATTLEPRO or BATTLE PRO by Applicant will likely create a likelihood of confusion in the market place with the prior PROFESSIONAL BATTLE LEAGUE and PRO BATTLE LEAGUE trademarks.

34. If Applicant is permitted to register BATTLEPRO or BATTLE PRO for the goods and services specified in the Applications, damage and injury to Opposer will be caused

and will result by reason of the confusing similarity between Applicant's mark and Opposer's marks.

35. Customers and prospective customers are likely to be confused, mistaken, or deceived into believing that Applicant or its services are associated, connected with, sponsored by or approved by Opposer.

36. Any defect, objection or fault found with Applicant's services bearing the BATTLEPRO or BATTLE PRO mark will necessarily reflect upon and seriously injure the reputation which Opposer has established for its PROFESSIONAL BATTLE LEAGUE brand.

37. If Applicant is granted a registration for the BATTLEPRO or BATTLE PRO mark, Applicant will obtain at least a *prima facie* exclusive right to use the BATTLEPRO or BATTLE PRO mark in any form or manner for the goods listed on its Certificate of Registration. Such registration would be a source of damage and injury to Opposer because not only would it likely create confusion in the marketplace but also it would be inconsistent with Opposer's superior rights in and to the trademark PROFESSIONAL BATTLE LEAGUE.

WHEREFORE, for the reasons set out herein, the Opposer prays that Application Serial Nos. 86429642 and 86429716 in *International* Classes 9 and 41, be denied and refused.

Dated: November 12, 2015

/Nancy V. Stephens/
Nancy V. Stephens, WSBA No. 31510
Attorneys for Opposer
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299
206-447-4400

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2015, I served the foregoing Notice of Opposition on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First-Class U.S. mail addressed to applicant as follows:

John J. Elnitski, Jr.
225A Snowbird LN
Bellefonte, PA 16823-8538

Dated: November 12, 2015

/Joni Cramer/
Joni Cramer