

ESTTA Tracking number: **ESTTA740027**

Filing date: **04/14/2016**

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

Proceeding	91226299
Party	Defendant Chimpchat
Correspondence Address	CHIMPCHAT 3500 S DuPont Hwy Dover, DE 19901-6041 UNITED STATES info@chimpchatapp.com
Submission	Withdrawal Of Application
Filer's Name	David Alexander Jackson
Filer's e-mail	daj17@stanford.edu
Signature	/David Alexander Jackson/
Date	04/14/2016
Attachments	ChimpChat Agreement (3.21.16).pdf(2238172 bytes) Jackson_Signed_Chimpchat_PDF.pdf(2833897 bytes)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of March 21, 2016 ("Effective Date") by and between The Rocket Science Group LLC DBA MailChimp, a Georgia limited liability company with a principal place of business at 675 Ponce de Leon Ave NE, Suite 5000, Atlanta, Georgia 30308 ("MailChimp"), Chimpchat, a Delaware limited liability company with a principal place of business at 3500 South Dupont Highway, Dover Delaware 19901 ("Chimpchat") and David Alexander Jackson, an individual living in California ("Jackson").

WHEREAS, MailChimp is the owner of the trademark MAILCHIMP and formatives thereof, as well as U.S. trademark registrations for such marks (the "MAILCHIMP Marks") for use in connection with "providing on-line non-downloadable software for supporting and managing the creation and sending of bulk electronic mail which customers can use to design and send out email advertising and promotional campaigns, to track what happens to emails after they are sent out, to develop and manage multiple email lists, to manage bounces and unsubscribes, and to target specific customers with particular promotional emails" in International Class 42;

WHEREAS, Chimpchat filed U.S. trademark application number 86696389 for CHIMPCHAT word mark (the "CHIMPCHAT Mark") for use in connection with "Computer application software for mobile phones, namely, software for users to ask questions and spark discussions among their peer groups anonymously" in International Class 9 (the "CHIMPCHAT Application");

WHEREAS, MailChimp has filed with the Trademark Trial and Appeal Board proceeding number 91226299 to oppose the CHIMPCHAT Application (the "Opposition"); and

WHEREAS, without admitting any liability to one another in connection herewith, the parties seek to resolve their dispute amicably pursuant to and in accordance with this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Acknowledgement. Chimpchat, on behalf of itself, and any parents, subsidiaries, affiliates, and any successors-in-interest, hereby recognizes and acknowledges MailChimp's rights in and to the MAILCHIMP Marks and all of the goodwill associated therewith, and that the MAILCHIMP Marks are subsisting, valid, enforceable, and owned by MailChimp. Chimpchat agrees not to challenge MailChimp's use or registration the MAILCHIMP Marks.

2. Express Abandonment of the CHIMPCHAT Marks. Chimpchat agrees not to register the CHIMPCHAT Mark. Specifically, Chimpchat agrees to file with the United States Patent and Trademark Office an express abandonment of the CHIMPCHAT Application.

3. Cessation of Use. Chimpchat and Jackson both covenant and agree to promptly cease all use of, and never to commence use of, the terms "CHIMPCHAT" or "MAILCHIMP"

alone, or any other word, phrase, or design, containing the term “Chimp” or otherwise confusingly similar to the MAILCHIMP Marks.

4. Covenant Transfer the ‘chimpchat.com’ Domain Name. Chimpchat agrees to transfer the ‘chimpchat.com’ domain name (the “Domain Name”) to MailChimp. Such transfer shall be made in accordance with any reasonable instructions provided to Chimpchat by MailChimp.

5. Covenant Withdraw the Opposition. Subject to Chimpchat’s and Jackson’s compliance with the terms hereof, and only after the United States Patent and Trademark Office accepts the express abandonment of the CHIMPCHAT Application, MailChimp agrees to withdraw the Opposition.

6. Release of Chimpchat and Jackson. In consideration for the promises set forth in this Agreement, MailChimp does hereby on its own behalf, and on the behalf of its representatives, attorneys, successors, and assigns, release, acquit, and forever discharge Chimpchat, from any and all actions, causes of action, obligations, costs, fees (including attorneys’ fees and costs actually incurred), expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits, of whatever character, in law or in equity, now existing or arising in the future, from the beginning of time to the Effective Date, which arise from or are in connection with the Opposition.

7. Monetary Consideration. In consideration for Chimpchat’s and Jackson’s promises made herein, MailChimp shall pay Chimpchat a lump sum payment of \$3,000 within ten (10) business days after the later of the date that Chimpchat transfers the Domain Name to MailChimp or the date both parties have signed this Agreement. Such payment shall be made in accordance with any reasonable payment instructions provided to MailChimp by Chimpchat.

8. Costs. Each party will bear its own fees and costs associated with the preparation of this Agreement. The non-breaching party shall be entitled to collect its attorneys’ fees and costs in the enforcement of the terms of this Agreement.

9. Territory. The terms of this Agreement shall apply worldwide.

10. Further Actions. The parties agree to promptly execute such other documents and take such other action as may reasonably be necessary to accomplish the purposes of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and the United States. Chimpchat consents and agrees that the state and federal courts in the State of Georgia shall have exclusive jurisdiction and venue over any claim brought by MailChimp to enforce this Agreement.

12. Successors and Assigns. The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the parties and their successors and assigns.

13. Modification and Waiver. No amendment or modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each party. No

waiver of any provision hereof shall be effective unless in writing and signed by an authorized representative of the waiving party and, in such case, such waiver shall be effective only in connection with the specific instance giving rise to the waiver.

14. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter herein.

15. Severability. If any provision of this Agreement shall be found unenforceable or invalid under applicable law, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objective of such provision within the limits of applicable law.

16. Review. The parties have each had the opportunity to investigate this matter, determine the advisability of entering into this Agreement and have entered into this Agreement freely and voluntarily. Each of the parties acknowledges that in executing this Agreement it relies solely on its own judgment, belief and knowledge and on such advice as it may have received from its own counsel and that it has not been influenced by any representation or statements made by the other party or its counsel. No provision in this Agreement is to be interpreted for or against any of the parties because that party or its counsel drafted such provision.

17. Counterparts. This Agreement may be executed by original, scanned or facsimile signature in one or more counterparts, all of which shall be deemed to be originals and all of which shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date herein.

The Rocket Science Group LLC
DBA MailChimp

Chimpchat

By: _____

Name: _____

Title: _____



J. Scott Caspepper

General Counsel

By: _____

Name: _____

Title: _____

David Alexander Jackson

By: _____

waiver of any provision hereof shall be effective unless in writing and signed by an authorized representative of the waiving party and, in such case, such waiver shall be effective only in connection with the specific instance giving rise to the waiver.

14. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter herein.

15. Severability. If any provision of this Agreement shall be found unenforceable or invalid under applicable law, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objective of such provision within the limits of applicable law.

16. Review. The parties have each had the opportunity to investigate this matter, determine the advisability of entering into this Agreement and have entered into this Agreement freely and voluntarily. Each of the parties acknowledges that in executing this Agreement it relies solely on its own judgment, belief and knowledge and on such advice as it may have received from its own counsel and that it has not been influenced by any representation or statements made by the other party or its counsel. No provision in this Agreement is to be interpreted for or against any of the parties because that party or its counsel drafted such provision.

17. Counterparts. This Agreement may be executed by original, scanned or facsimile signature in one or more counterparts, all of which shall be deemed to be originals and all of which shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date herein.

The Rocket Science Group LLC
DBA MailChimp

Chimpchat

By: _____

By: David Jackson

Name: _____

Name: David Jackson

Title: _____

Title: CEO

David Alexander Jackson

By: David Jackson