

ESTTA Tracking number: **ESTTA935600**

Filing date: **11/16/2018**

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

Proceeding	91237780
Party	Plaintiff Amplitude Studios
Correspondence Address	JASON D JONES FROSS ZELNICK LEHRMAN & ZISSU PC 4 TIMES SQUARE, 17TH FLOOR NEW YORK, NY 10036 UNITED STATES jjones@fzlz.com, sharb@fzlz.com, ttabfiling@fzlz.com 212-813-5900
Submission	Answer to Counterclaim
Filer's Name	Jason D. Jones
Filer's email	jjones@fzlz.com, sharb@fzlz.com, ttabfiling@fzlz.com
Signature	/s/ Jason D. Jones
Date	11/16/2018
Attachments	Answer to Amended Counterclaim.PDF(1836854 bytes)

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

In the Matter of Application Serial No. 87/371,549
Mark: ENDLESS EMPIRES

AMPLITUDE STUDIOS,

Opposer,

- against -

STARDOCK SYSTEMS, INC.

Applicant.

Consolidated Opposition No. 91237780

-and-

In the Matter of Application Serial No. 87/372,185
Mark: ENDLESS ENEMIES

AMPLITUDE STUDIOS,

Opposer,

- against -

STARDOCK SYSTEMS, INC.

Applicant.

ANSWER TO APPLICANT'S FIRST AMENDED COUNTERCLAIM

Opposer Amplitude Studios (“Amplitude”), by and through its attorneys Fross Zelnick Lehrman & Zissu, P.C., for its Answer to Applicant Stardock Systems, Inc.’s (“Stardock”) First Amended Counterclaim for Cancellation of Amplitude’s U.S. Registration No. 4,366,504 for ENDLESS SPACE (13 TTABVUE, the “Amended Counterclaim”), states as follows:

1. Amplitude admits that Stardock has filed, with the United States Patent and Trademark Office (“USPTO”), Application Serial No. 87/371,549 to register the mark ENDLESS EMPIRES and Application Serial No. 87/372,185 to register the mark ENDLESS ENEMIES (collectively, “Stardock’s Applications”), but otherwise denies the allegations of paragraph 1 of the Amended Counterclaim and respectfully refers the Board to Stardock’s Applications cited in paragraph 1 for their contents.

2. Amplitude admits that it filed a Consolidated Notice of Opposition in the Trademark Trial and Appeal Board (“the Board”) of the USPTO opposing registration of the marks contained in Stardock’s Applications, but otherwise denies the allegations of paragraph 2 of the Amended Counterclaim and respectfully refers the Board to Amplitude’s Consolidated Notice of Opposition cited in paragraph 2 for its contents.

3. Amplitude admits that, in its Consolidated Notice of Opposition, it alleges that (a) it is the owner of U.S. Registration No. 4,366,504 for the mark ENDLESS SPACE, U.S. Registration No. 5,173,614 for the mark ENDLESS LEGEND, and U.S. Registration No. 5,178,663 for the mark DUNGEONS OF THE ENDLESS, each covering goods and services in International Classes 9, 28 and 41 (collectively referred to herein as Amplitude’s “ENDLESS Marks”); (b) the ENDLESS Marks constitute a family of marks owned by Amplitude; and (c) Stardock’s registration of the marks ENDLESS ENEMIES and ENDLESS EMPIRES would be likely to cause confusion with Amplitude’s prior-used and prior-registered ENDLESS Marks in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), but otherwise denies the allegations of paragraph 3 of the Amended Counterclaim and respectfully refers the Board to Amplitude’s Consolidated Notice of Opposition and Amplitude’s registrations cited in paragraph 3 for their contents.

4. Amplitude admits that, in its Consolidated Notice of Opposition, it alleges that it has extensively sold, advertised and promoted goods and services under its ENDLESS Marks in the United States, but otherwise denies the allegations of paragraph 4 of the Amended Counterclaim and specifically denies the allegation in paragraph 4 of the Amended Counterclaim that “Amplitude has failed to allege within its Notice of Opposition that it has sold, advertised and/or promoted its goods and services in commerce within the meaning of the U.S. Lanham Act.” Amplitude also respectfully refers the Board to Amplitude’s Consolidated Notice of Opposition cited in paragraph 4 for its contents.

5. Amplitude admits that its U.S. Registration No. 4,366,504 for the mark ENDLESS SPACE (hereinafter the “ENDLESS SPACE Registration”) issued on July 16, 2013, but denies that the ENDLESS SPACE Registration covers the list of goods and services set forth in paragraph 5 of the Amended Counterclaim. Rather, Amplitude states that, on October 22, 2018, the Board granted Amplitude’s motion to amend the ENDLESS SPACE Registration, (19 TTABVUE), such that the identification of goods and services in the ENDLESS SPACE Registration now reads as follows:

Class 9: “computer game software”

Class 28: “games adapted for use with television receivers”

Class 41: “entertainment, namely, arranging, organizing, conducting, and hosting special events for social entertainment purposes, arranging, organizing and conducting on-line, video games competitions; electronic game services provided on-line from a computer network; providing information on-line in the fields of computer games”

(hereinafter the “Remaining ENDLESS SPACE Goods and Services”). Amplitude respectfully refers to Board to the ENDLESS SPACE Registration and the Board’s October 22, 2018 Order for their contents.

6. Amplitude denies the allegations of paragraph 6 of the Amended Counterclaim.

7. Amplitude denies the allegations of paragraph 7 of the Amended Counterclaim.

8. Amplitude denies the following allegation contained in paragraph 8 of the Amended Counterclaim: “A review of the Amplitude’s Notice of Opposition reveals no evidence that Amplitude uses, has used nor has any intention of using and/or resuming use of the mark ENDLESS SPACE in commerce within the meaning of U.S. Trademark Act Section (15 U.S.C. § 1127, et al.)” Amplitude states that the remaining allegation of paragraph 8 of the Amended Counterclaim constitute a conclusion of law as to which no response is required.

9. Amplitude admits that its principal place of business is located at 43 Rue de la Breche au Loups, F-75012, Paris, France and that Amplitude does not have “physical offices” in the United States, but otherwise denies the allegations of paragraph 9 of the Amended Counterclaim.

10. Amplitude denies the allegations of paragraph 10 of the Amended Counterclaim and states that, in light of the Board’s October 22, 2018 Order amending the ENDLESS SPACE Registration to cover only the Remaining ENDLESS SPACE Goods and Services, Stardock’s counterclaim for abandonment of the ENDLESS SPACE mark is limited solely to the following goods and services in the ENDLESS SPACE Registration: “games adapted for use with television receivers” in Class 28 and “entertainment, namely, arranging, organizing, conducting, and hosting special events for social entertainment purposes, arranging, organizing and conducting on-line, video games competitions; electronic game services provided on-line from a computer network; providing information on-line in the fields of computer games” in Class 41. Amplitude denies any allegation that it has abandoned the ENDLESS SPACE mark in connection with the foregoing goods and services. Amplitude states that Stardock’s Amended

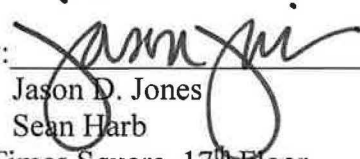
Counterclaim does not assert that Amplitude has abandoned the ENDLESS SPACE mark in connection with “computer game software” in Class 9 and does not seek to cancel the ENDLESS SPACE Registration in Class 9 for “computer game software.”

11. Amplitude denies the allegations of paragraph 11 of the Amended Counterclaim and specifically denies that it has abandoned the ENDLESS SPACE mark in connection any of the Remaining ENDLESS SPACE Goods and Services.

12. Amplitude denies the allegations of paragraph 12 of the Amended Counterclaim and denies that Stardock is entitled to the relief requested in paragraph 12 of the Amended Counterclaim.

Dated: New York, New York
November 16, 2018

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 
Jason D. Jones
Sean Harb
4 Times Square, 17th Floor
New York, New York 10036
(212) 813-5900

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of November, 2018, a copy of the foregoing **ANSWER TO APPLICANT'S FIRST AMENDED COUNTERCLAIM** was sent by e-mail Stardock's counsel of record as follows:

David L. May, Esq.
NIXON PEABODY LLP
dmay@nixonpeabody.com
jwiser@nixonpeabody.com



Jason D. Jones