

ESTTA Tracking number: **ESTTA949639**

Filing date: **01/23/2019**

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	Stardock Systems, Inc.
Granted to Date of previous extension	01/23/2019
Address	15090 Beck Road Plymouth, MI 48170 UNITED STATES

Attorney information	David L. May Nixon Peabody LLP 799 9th Street NW, Suite 500 Washington, DC 20001 UNITED STATES nptm@nixonpeabody.com, was.managing.clerk@nixonpeabody.com, jwiser@nixonpeabody.com, dmay@nixonpeabody.com, rweikert@nixonpeabody.com 2025858000
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Applicant Information

Application No	87878093	Publication date	09/25/2018
Opposition Filing Date	01/23/2019	Opposition Period Ends	01/23/2019
Applicants	Reiche III, Paul 2553 Laguna Vista Drive Novato, CA 94954 UNITED STATES Ford, Fred 730 Eucalyptus Avenue Novato, CA 94947 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Computer programming of computer games; Computer programming of video games; Video game development services; Video game programming development services; Designing and developing computer game software and video game software for use with computers, video game program systems and computer networks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FRUNGY		
Goods/Services	Computer game programs; Computer game software; Video game programs; Video game software; Entertainment services, namely, providing on-line computer game software and video games; Providing information on-line relating to multimedia entertainment software production services; Providing information on-line relating to computer games and video games		

Related Proceedings	Civil Action No. 4:17-cv-07025-SBA in the U.S. District Court for the Northern District of California and Notice of Opposition against Application Serial No. 87/878,067 for the mark FRUNGY.
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Attachments	Notice of Opposition - FRUNGY GAMES.pdf(201793 bytes)
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Signature	/Jennette E. Wiser/
Name	Jennette E. Wiser
Date	01/23/2019

Attorney Docket No.: 066632-110

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

In the Matter of:

Application Serial No.: 87/878,093

Mark: FRUNGY GAMES

Published in the Official Gazette: September 25, 2018

Stardock Systems, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	Appln. Serial No. 87/878,093
Paul Reiche III and Fred Ford,)	
)	
Applicants.)	
)	

NOTICE OF OPPOSITION

Stardock Systems, Inc., a Michigan corporation, located and doing business at 15090 Beck Road, Plymouth, Michigan 48170 (hereinafter “**Stardock**”), believing that it will be damaged by Applicants’ registration, hereby opposes registration of the mark shown in Application Serial No. 87/878,093 for the mark FRUNGY GAMES, filed April 16, 2018, under the Trademark Act of 1946, in the names of Paul Reiche III, an individual with an address of record 2553 Laguna Vista Drive, Novato, California 94945, and Fred Ford, an individual, with an address of record of 730 Eucalyptus Avenue, Novato, California 94947 (collectively hereinafter “**Applicants**”), published for opposition in the *Official Gazette* of September 25, 2018.

The grounds for Opposition are as follows:

1. In 2013, Stardock acquired, via an asset purchase agreement and associated intellectual property assignment between Stardock and Atari, Inc. dated July 18, 2013 (hereinafter “**Asset Purchase Agreement**”), certain assets in and to the classic Star Control video games (*i.e.*, Star Control I, Star Control II, and Star Control III) (hereinafter the “**Classic Star Control Games**”), including but not limited to any and all trademarks and other intellectual property rights adopted and used by the original publisher of the Classic Star Control Games (*i.e.*, Accolade, Inc. (“**Accolade**”)) in the marketing and publishing thereof, including but not limited to product names/titles, sub-names/titles, cover art, characters (*e.g.*, aliens), alien race names, characters names, spaceship names and spaceship designs, which includes, without limitation, the mark FRUNGY (hereinafter the “**FRUNGY Mark**”).

2. Stardock as well as its predecessors in interest (*i.e.*, Accolade and Atari) have used the FRUNGY Mark in connection with at least the Star Control II video game, *i.e.*, the second game published within the series of Classic Star Control Games. The rights and goodwill established from such use have inured to Stardock’s benefit. Such use of the FRUNGY Mark in connection with Star Control II is exemplified in **Exhibit A** attached hereto and incorporated herein by reference.

3. Stardock’s FRUNGY Mark has obtained valuable fame, reputation and goodwill as a result of the extensive use of the mark in U.S. commerce and its association with the greatly successful Classic Star Control Games.

4. Upon information and belief, on April 16, 2018, Applicants filed, under Trademark Act § 1(b) claiming intent-to-use the mark in U.S. Commerce, U.S. Trademark Application No. 87/878,093 for the mark FRUNGY GAMES (the “**Opposed Mark**”) for use with *Computer programming of computer games; Computer programming of video games; Video game development services; Video game programming development services; Designing*

and developing computer game software and video game software for use with computers, video game program systems and computer networks in Class 42 (the “**Opposed Application**”).

5. Upon information and belief, Stardock’s prior common law rights to the FRUNGY Mark predate any date of first use Applicant can claim to the Opposed Mark. Stardock’s FRUNGY Mark and the Opposed Mark are highly similar in at least sound and appearance, and the goods and services in the Opposed Application are highly related to, if not the same as, the goods and services associated with the FRUNGY Mark, as used by Stardock and its predecessors-in-interest in connection with one or more of the Classic Star Control Games.

6. For at least the foregoing reasons, Applicants’ use and registration of the Opposed Mark will create a likelihood of confusion, mistake and/or deception among consumers, within the meaning of Trademark Act § 2(d), 15 U.S.C. § 1052(d), all to the detriment of Stardock.

7. Furthermore, upon information and belief, Stardock avers that the consuming public strongly associates the term FRUNGY with Stardock’s STAR CONTROL brand of products and services pertaining, *inter alia*, to the Classic Star Control Games. As such, Applicant’s proposed use and registration of the mark will falsely suggest a connection with Stardock to the detriment of Stardock and its reputation.

8. Applicants are in fact not affiliated with, endorsed by, sponsored by, or otherwise associated with Stardock.

9. Applicants’ use and registration of the Opposed Mark will therefore falsely suggest a connection with Stardock within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), to the detriment of Stardock.

WHEREFORE, Stardock believes and avers that it is being and will continue to be damaged by registration of the Opposed Mark as aforesaid, and requests that said Application Serial No. 87/878,093 be rejected, that no registration be issued thereon to Applicants, and that this Opposition be sustained in favor of Stardock.

Stardock has appointed David L. May, Robert A. Weikert and Jennette E. Wisner, of the law firm of Nixon Peabody LLP, and members of a U.S. Bar in good standing, to prosecute this Opposition and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

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The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-2686.

Respectfully submitted,

Dated: January 23, 2019

NIXON PEABODY LLP

By /David L. May/
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Counsel for Stardock Systems, Inc.

EXHIBIT A

Alpha Tucanae Planet I

FRUNGY! FRUNGY! FRUNGY!

(In response to your statement)
Tell me more about your people.

CAPTAIN Zelnick
VINDICATOR
FUEL 424
CREW 100
NOV 22 2155

7:05 / 12:57

The image is a screenshot of a video game interface. At the top, a blue bar contains the text "Alpha Tucanae" on the left and "Planet I" on the right. Below this bar is a 3D-rendered scene with a dark, reddish-brown background. In the center, a brown, insect-like creature with a single eye and multiple legs stands on a glowing yellow pedestal. To its left is a green, curled-up plant-like object, and to its right is a blue, cylindrical, segmented object. The text "FRUNGY! FRUNGY! FRUNGY!" is displayed in white, pixelated font above the creature. Below the scene is a blue rectangular area containing white text: "(In response to your statement)" followed by "Tell me more about your people." on the next line. To the right of the main scene is a vertical panel with a black background and green and red text. It displays "CAPTAIN Zelnick" at the top, followed by "VINDICATOR" in red. Below that is a green fuel gauge icon with "FUEL 424" next to it, and a green crew icon with "CREW 100" next to it. At the bottom of this panel is the date and time "NOV 22 2155" in green. At the bottom of the entire screenshot is a video player control bar with a red progress bar, play/pause, next, and volume icons, and the text "7:05 / 12:57". On the right side of the control bar are icons for closed captions, settings, and full screen.