

ESTTA Tracking number: **ESTTA1052442**

Filing date: **04/30/2020**

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	Warner Bros. Entertainment Inc.		
Entity	Corporation	Citizenship	Delaware
Address	4000 Warner Blvd. Burbank, CA 91522 UNITED STATES		

Attorney information	James D. Weinberger Fross Zelnick Lehrman & Zissu, P.C. 151 West 42nd Street, 17th Floor New York, NY 10036 UNITED STATES jweinberger@fzlj.com, lkittay@fzlj.com (212) 813-5900		
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Applicant Information

Application No	88717454	Publication date	03/03/2020
Opposition Filing Date	04/30/2020	Opposition Period Ends	04/02/2020
Applicant	Phantom I.P., LLC Legal Dept. 2445 Belmont Avenue Youngstown, OH 445052405 UNITED STATES		

Goods/Services Affected by Opposition

Class 013. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fireworks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3971151	Application Date	06/18/2009
Registration Date	05/31/2011	Foreign Priority Date	NONE

Word Mark	CLASH OF THE TITANS
Design Mark	<p style="text-align: center;">CLASH OF THE TITANS</p>
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2010/02/01 First Use In Commerce: 2010/02/01 Printed matter and paper goods, namely, posters

U.S. Registration No.	3958481	Application Date	06/18/2009
Registration Date	05/10/2011	Foreign Priority Date	NONE

Word Mark	CLASH OF THE TITANS
Design Mark	<p style="text-align: center;">CLASH OF THE TITANS</p>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2010/04/30 First Use In Commerce: 2010/04/30 Clothing for men, women and children, namely, shirts, t-shirts, sweatshirts, jackets, and masquerade and Halloween costumes and masks sold in connection therewith

U.S. Registration No.	4436968	Application Date	08/10/2011
Registration Date	11/19/2013	Foreign Priority Date	NONE

Word Mark	WRATH OF THE TITANS
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Design Mark	WRATH OF THE TITANS		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2011/12/19 First Use In Commerce: 2011/12/19 Entertainment services, namely, providing images and text featuring animal stories and pictures on-line and in mobile wireless form;provision of information relating to motion picture film		

U.S. Registration No.	4384539	Application Date	08/10/2011
Registration Date	08/13/2013	Foreign Priority Date	NONE

Word Mark	WRATH OF THE TITANS		
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Design Mark	WRATH OF THE TITANS		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2012/06/26 First Use In Commerce: 2012/06/26 Downloadable films and movies featuringWRATH OF THE TITANS provided via a video-on-demand service; Downloadable films featuring WRATH OF THE TITANS provided via a video-on-demand service; Downloadable multimedia file containing artwork and Internet Web links relating to WRATH OF THE TITANS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CLASH OF THE TITANS		
Goods/Services	films		

Attachments	77763476#TMSN.png(bytes) 77763477#TMSN.png(bytes) 85394090#TMSN.png(bytes) 85394175#TMSN.png(bytes)
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Signature	/s/ James D. Weinberger
Name	James D. Weinberger
Date	04/30/2020

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

WARNER BROS. ENTERTAINMENT
INC.,

Opposer,

-against-

PHANTOM I.P., LLC DBA PHANTOM
FIREWORKS,

Applicant.

NOTICE OF OPPOSITION

Warner Bros. Entertainment Inc. (“Opposer”), a Delaware corporation located at 4000 Warner Boulevard, Burbank, California 91522, believes that it will be damaged by the issuance of a registration for the mark FLASH OF THE TITANS to Phantom I.P., LLC dba Phantom Fireworks (“Applicant”), applied for in Application Serial No. 88717454, and therefore opposes the same. As grounds for the opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is a global leader in the creation, production, distribution, and marketing of motion pictures and television series, including the film *Clash of the Titans*.
2. *Clash of the Titans* was originally produced by Metro-Goldwyn-Mayer Studios, Inc. (“MGM”) in 1981. The film, a retelling of the Greek mythological story of Perseus, starred Harry Hamlin, Judi Bowker, Burgess Meredith, Maggie Smith and Laurence Olivia and featured groundbreaking stop motion visual effects. The film had a worldwide gross of over \$60 million and was one of 1981’s biggest hits.
3. The rights to *Clash of the Titans* were acquired by Opposer in 1996.

4. In 2010, Opposer released a remake of *Clash of the Titans* in both 3D and standard format. Directed by Louis Leterrier (*The Transporter* films, *The Incredible Hulk*, *Now You See Me*) and starring Sam Worthington, Liam Neeson, and Ralph Fiennes, the 2010 version grossed nearly \$500 million worldwide.

5. The 2010 remake of *Clash of the Titans* spawned a 2012 sequel, *Wrath of the Titans*, a popular and successful film in its own right which grossed over \$300 million worldwide.

6. For many years, Opposer has sold and continues to sell home video and streaming versions of its *Clash of the Titans* and *Wrath of the Titans* films in the United States.

7. In addition, consistent with consumers' expectations, Opposer exercises broad merchandising rights in its entertainment products, licensing names, character appearances, and other indicia related to its audiovisual products for use with a broad array of consumer products. Consistent with this practice, Opposer has licensed the rights for various goods and services bearing the CLASH OF THE TITANS and WRATH OF THE TITANS marks, including, *inter alia*, apparel, costumes, posters, downloadable films and entertainment services.

8. Opposer has significantly promoted the *Clash of the Titans* and *Wrath of the Titans* films and has derived substantial revenue from the film and the associated merchandise.

9. As a result of this enormous use and promotion of the CLASH OF THE TITANS and WRATH OF THE TITANS marks and the success of *Clash of the Titans* and *Wrath of the Titans* films, the CLASH OF THE TITANS and WRATH OF THE TITANS marks have come to be recognized as identifying goods and services of Opposer exclusively and have come to represent enormous goodwill of Opposer.

10. In addition to the common law rights in the CLASH OF THE TITANS and WRATH OF THE TITANS marks, Opposer owns numerous U.S. trademark registrations for CLASH OF THE TITANS and WRATH OF THE TITANS, including, but not limited to, the following:

- CLASH OF THE TITANS, U.S. Reg. No. 3971151, registered May 31, 2011 based on a first use in commerce on February 1, 2010 for “Printed matter and paper goods, namely, poster” in International Class 16;
- CLASH OF THE TITANS, U.S. Reg. No. 3958481, registered May 10, 2011 based on a first use in commerce on April 30, 2010 for “Clothing for men, women and children, namely, shirts, t-shirts, sweatshirts, jackets, and masquerade and Halloween costumes and masks sold in connection therewith” in International Class 25;
- WRATH OF THE TITANS, U.S. Reg. No. 4436968, registered on November 19, 2013 based on a first use in commerce on December 19, 2011 for “Entertainment services, namely, providing images and text featuring animal stories and pictures on-line and in mobile wireless form; provision of information relating to motion picture film” in International Class 41; and
- WRATH OF THE TITANS, U.S. Reg. No. 4384539, registered on August 13, 2013 based on a first use in commerce on June 26, 2012 for “Downloadable films and movies featuring WRATH OF THE TITANS provided via a video-on-demand service; Downloadable films featuring WRATH OF THE TITANS provided via a video-on-demand service; Downloadable multimedia file

containing artwork and Internet Web links relating to WRATH OF THE TITANS” in International Class 9.

The registrations relied upon herein are valid, subsisting, and in full effect and serve as prima facie evidence of the validity of the marks and of Opposer’s exclusive right to use the mark in connection with the goods identified therein, pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. § 1115(a). In addition, the registrations relied upon herein have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serve as conclusive proof of Opposer’s exclusive right to use the mark in connection with the goods identified therein, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

11. Upon information and belief, Applicant is an Ohio limited liability company with an address of 2445 Belmont Avenue, Youngstown, Ohio 44505-2405.

12. On December 6, 2019, Applicant filed Application Serial No. 88717454 to register the mark FLASH OF THE TITANS (“Applicant’s Mark”) for use in connection with “fireworks” in International Class 13 based on an intent to use the mark under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

13. Opposer’s CLASH OF THE TITANS and WRATH OF THE TITANS marks have been used continuously and/or registered by Opposer since a date prior to any date on which Applicant can rely.

14. Upon information and belief, prior to any date on which Applicant can rely, Applicant was on actual notice of Opposer’s prior rights in and to Opposer’s CLASH OF THE TITANS and WRATH OF THE TITANS marks.

15. The earliest date upon which Applicant can rely is long after the use and acquisition of rights in the CLASH OF THE TITANS and WRATH OF THE TITANS marks by

Opposer. As such, Opposer's rights in the CLASH OF THE TITANS and WRATH OF THE TITANS marks are prior and superior to any rights Applicant may claim in Applicant's Mark. The registration of Applicant's Mark is inconsistent with Opposer's prior rights and statutory grant of exclusivity of use.

16. Applicant's Mark is highly similar to Opposer's CLASH OF THE TITANS and WRATH OF THE TITANS marks in sight, sound, and commercial impression.

17. Applicant's goods to be offered under Applicant's Mark are highly related to goods sold and services offered under Opposer's CLASH OF THE TITANS and WRATH OF THE TITANS marks and, upon information and belief, are or will be sold to the same customers or types of customers who are familiar with Opposer's CLASH OF THE TITANS and WRATH OF THE TITANS marks.

18. Based on the similarity of the marks and goods and services, consumers are likely to be deceived into falsely believing that the goods offered by Applicant under Applicant's Mark originate from or are otherwise associated with or endorsed by Opposer, or that there is some relationship between Applicant and Opposer or the goods and services of Applicant and Opposer, all to Opposer's injury and harm.

19. Thus, registration of Applicant's Mark in connection with the goods set forth in Application Serial No. 88717454 is likely to cause confusion, cause mistake, or to deceive the public into the false belief that the goods offered by Applicant under Applicant's Mark come from or are otherwise sponsored by or connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

20. Moreover, Opposer's CLASH OF THE TITANS mark is famous, and became famous long before the earliest priority date upon which Applicant can rely. Because the

CLASH OF THE TITANS mark has become famous, Applicant's use and registration of Applicant's Mark will damage Opposer by trading on the enormous goodwill associated with the CLASH OF THE TITANS mark and diluting its distinctiveness. Moreover, Applicant intends to use Applicant's mark in connection with fireworks, which are potentially unsafe products. Thus, Applicant's use and registration of Applicant's Mark in connection with the goods identified in the Application is likely to cause dilution by blurring and tarnishment of the famous CLASH OF THE TITANS mark, in violation of Sections 13(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1063(a), 1125(c).

21. By reason of the foregoing, Opposer is likely to be harmed by the registration of Application Serial No. 88717454 for Applicant's Mark.

THEREFORE, it is respectfully requested that this opposition be sustained and that registration of the mark shown in Application Serial No. 88717454 be refused in its entirety.

Dated: New York, New York
April 30, 2020

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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