

ESTTA Tracking number: **ESTTA1313146**
Filing date: **09/29/2023**

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	Gametech Holdings, LLC		
Entity	LLC	Incorporated or registered in	Delaware
Address	777 TERRACE AVE, STE 503 HASBROUCK HEIGHTS, NJ 07481 UNITED STATES		

Correspondence information	ANDREW GERBER KUSHNIRSKY GERBER PLLC 27 UNION SQUARE WEST, SUITE 301 NEW YORK, NY 10003 UNITED STATES Primary email: andrew@kgfirm.com Secondary email(s): trademark@kgfirm.com 2128821320
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Applicant information

Application no.	86209920	Publication date	09/26/2023
Opposition filing date	09/29/2023	Opposition period ends	10/26/2023
Applicant	Dong Nguyen Ha VAN PHUC WARD, HA DONG DISTRICT HANOI CITY VIET NAM		

Goods/services affected by opposition

Class 009. First Use: May 24, 2013 First Use In Commerce: May 24, 2013
All goods and services in the class are opposed, namely: Computer game programmes downloadable via the Internet; computer game programs; computer game software downloadable from a global computer network; computer software, namely, game engine software for video game development and operation; downloadable computer game software via wireless devices; downloadable electronic game software for use on mobile devices, personal computers, consoles, tablets; electronic game programs; downloadable electronic game programs; electronic game software; downloadable computer game programs; interactive game programs; interactive game software; downloadable graphics featuring flying animals for use on electronic game equipment for playing video games; downloadable ring tones and graphics for mobile phones; downloadable ring tones, graphics and music via a global computer network and wireless devices

Grounds for opposition

No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Section 1(a) and (c)
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Other	Abandonment, Trademark Act Section 45
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Attachments	FLAPPYBIRD Notice of Opposition_Final2.pdf(177454 bytes)
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Signature	/Andrew Gerber/
Name	Andrew Gerber
Date	09/29/2023

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

In re Serial No. 86/209,920 – FLAPPYBIRD

Filed: March 4, 2014

Published: September 26, 2023

GAMETECH HOLDINGS, LLC	:	
	:	
<i>Opposer,</i>	:	
	:	Opposition No. _____
v.	:	
	:	
DONG NGUYEN HA,	:	
	:	
<i>Applicant.</i>	:	
	:	
	:	

NOTICE OF OPPOSITION

Gametech Holdings, LLC (“Opposer”), a Delaware limited liability company with a primary place of business at 777 Terrace Ave, STE 503 Hasbrouck Heights, New Jersey 07481, believes it will be damaged by the registration of the mark shown in application Serial No. 86/209,920 – FLAPPYBIRD (the “Application”) for “Computer game programmes downloadable via the Internet; computer game programs; computer game software downloadable from a global computer network; computer software, namely, game engine software for video game development and operation; downloadable computer game software via wireless devices; downloadable electronic game software for use on mobile devices, personal computers, consoles, tablets; electronic game programs; downloadable electronic game programs; electronic game software; downloadable computer game programs; interactive game programs; interactive game software; downloadable graphics featuring flying animals for use on electronic game equipment for playing video games; downloadable ring tones and graphics for mobile phones; downloadable

ring tones, graphics and music via a global computer network and wireless devices” (together, “Applicant’s Goods”) filed on a 1A basis on March 04, 2014 by Dong Nguyen Ha, an individual having an (apparently incomplete as provided in the application) address at Van Phuc Ward, Ha Dong District, Hanoi City, Vietnam (“Applicant”); and hereby opposes the same pursuant to §13 of the Trademark Act of 1946 (15 U.S.C. §1063).

As grounds for opposition, it is alleged that:

1. Opposer is a Delaware limited liability company located at 777 Terrace Ave, STE 503 Hasbrouck Heights, New Jersey 07481.

2. Opposer is the owner of the following valid and subsisting registration: Registration No. 5,430,683 – FLAPPY BIRD in Class 9 for “Computer game programs; Computer game software; Computer game software downloadable from a global computer network; Computer game software focusing on achieving a set of goals, positions, ownership, and credentials, and professional and social status, and good fortune necessary to succeed professionally and personally, and not referring either to a group of software for use in commerce or to a group of offices; Computer game software for personal computers and home video game consoles; Computer game software for use on mobile and cellular phones; Computer game software for use with personal computers, home video game consoles used with televisions and arcade-based video game consoles; Computer programs for video and computer games; Computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; Computer software, namely, game engine software for video game development and operation; Computer-gaming software; Downloadable computer game programs; Downloadable computer game software via a global computer network and wireless devices; Downloadable electronic

game programs; Downloadable electronic game software for use on mobile phones and tablets; Downloadable image file containing artwork, text, audio, video, games and Internet Web links relating to sporting and cultural activities; Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to video game technology; Downloadable game software via the Internet and wireless devices; Electronic game programs; Electronic game software; Electronic game software for cellular telephones; Electronic game software for handheld electronic devices; Electronic game software for wireless devices; Game software; Games that accept virtual or monetary wagers sold as a feature of game software; Interactive game programs; Interactive game software; Interactive multimedia computer game programs; Interactive video game programs; Recorded computer game programs; Video and computer game programs; Video game cartridges; Video game cartridges and cassettes; Video game cartridges and discs; Video game discs; Video game software; Video game tape cassettes”; filed on February 10, 2014 and registration was issued on March 27, 2018 (“Opposer’s Registration”).

A true and correct copy of the registration certificate is attached hereto as Exhibit A.

3. Opposer has consistently used its FLAPPY BIRD mark in connection with computer game programs, software, and hardware since as least February 2014.

4. During this time, Opposer has spent considerable amounts of money to advertise, use, promote, and develop public awareness for and goodwill in its FLAPPY BIRD mark. As a result of such expenditures and efforts, Opposer has developed a valuable reputation and critical goodwill in its FLAPPY BIRD mark and has created, launched, and maintained a range of computer game products and related offerings under its registered FLAPPY BIRD mark.

5. Opposer was aware that Applicant had filed its own FLAPPYBIRD Application one month after opposer had filed theirs and that Applicant’s Application was suspended soon

after filing. Opposer was immediately suspicious of the Application and the timing thereof as Applicant began publicly stating that he had fully abandoned his FLAPPYBIRD mark in February 2014.

6. Indeed, in a Forbes interview on February 11, 2014, Applicant stated that he was no longer using, would no longer use his FLAPPYBIRD mark in connection with computer games or applications, and completely and permanently abandoning the mark and computer game bearing the FLAPPYBIRD mark.

7. That same month, Applicant repeatedly confirmed this in his social media accounts and reiterated that he was no longer involved in any use of the FLAPPYBIRD mark in connection with computer games. Applicant's own website also confirms that he had permanently "removed the app" from sale at that time. And in fact Applicant had completely abandoned all use of his FLAPPYBIRD mark at that time, completely removed his game from all platforms, and ceased all support and updates.

8. Well before the March 04, 2014 filing date of the Application, Applicant had already ceased all use of his FLAPPYBIRD mark and was no longer using the mark at the time of filing.

9. Opposer thereafter continued building and developing its own FLAPPY BIRD computer game and related products while the Application remained suspended.

10. In a September 2017 press interview – over three years after his initial announcement of full and permanent abandonment - Applicant again confirmed that he had fully abandoned his FLAPPYBIRD mark and that he would not be taking any further action to resume use in the future.

11. On August 23, 2023, the Application came out of suspension and a Notice of Publication was filed on September 6, 2023 setting a publication date of September 26, 2023.

12. Applicant was not using the FLAPPYBIRD mark in connection with any Class 9 goods or services on the March 04, 2014 filing date of the Application. Indeed, Applicant had confirmed as much on his website, in his social media accounts, and in public interviews in the weeks prior and had permanently abandoned all such use of his FLAPPYBIRD mark in the weeks before the filing date.

13. As Applicant had not used his mark in connection with the listed goods at the time he filed his use-based Application, the Application is void *ab initio* as a consequence.

14. Additionally, Applicant has failed to use the FLAPPYBIRD mark in U.S. interstate commerce for a period of at least three years in connection with the claimed goods and services and did not intend to resume use of the mark.

15. Extensive online research failed to reveal any evidence that Applicant was using the FLAPPYBIRD mark in connection with the goods and services in the Application within at least the last three years in addition to the three-year period beginning just before the Application filing date. This fully aligns with Applicant's own public statements regarding such permanent abandonment.

16. Based on the foregoing, Applicant is not using the FLAPPYBIRD mark in U.S. interstate commerce, nor does he intend to resume such use.

17. If Applicant is awarded a registration for the FLAPPYBIRD mark in connection with Class 9 goods and services, Applicant would be entitled to the presumptions flowing from such registration, all to the injury of Opposer.

18. Given that the Application claims a first use date prior to the claimed first use date in Opposer's Registration, Opposer is filing the instant opposition as the Application will pose a direct and immediate threat to Opposer's Registration and Opposer's ability to use its FLAPPY BIRD mark in connection with computer games should the Application be allowed to proceed to registration.

WHEREFORE, Opposer believes that he will be damaged by registration of Applicant's FLAPPYBIRD mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Andrew Gerber and Ilya Kushnirsky (members of the bar of the State of New York) and the firm Kushnirsky Gerber PLLC, 27 Union Square West, Suite 301, New York, NY 10003. Please address all communications to Andrew Gerber at the address listed below.

Dated: New York, New York
September 29, 2023

Respectfully submitted,

KUSHNIRSKY GERBER PLLC

By:  _____

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