

ESTTA Tracking number: **ESTTA914937**

Filing date: **08/10/2018**

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	Douglas Phillips
Granted to Date of previous extension	08/11/2018
Address	1927C 8th Avenue W. Seattle, WA 98119 UNITED STATES

Attorney information	Eleanor M. Lackman Cowan, DeBaets, Abrahams & Sheppard LLP 41 Madison Avenue 38th Floor New York, NY 10010 UNITED STATES Email: elackman@cdas.com, tm@cdas.com, ledelstein@cdas.com Phone: 2129747474
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Applicant Information

Application No	87763989	Publication date	06/12/2018
Opposition Filing Date	08/10/2018	Opposition Period Ends	08/11/2018
Applicant	HTJB, Inc. 60 East Terrace Portsmouth, RI 02871 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2015/04/14 First Use In Commerce: 2015/04/14 All goods and services in the class are opposed, namely: Series of downloadable fiction books; audio books in the nature of novels
Class 016. First Use: 2015/04/14 First Use In Commerce: 2015/04/14 All goods and services in the class are opposed, namely: Series of fiction books

Grounds for Opposition

The mark is generic	Trademark Act Sections 1, 2 and 45
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Quantum Series Notice of Opposition.pdf(33899 bytes)
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Signature	/Eleanor M. Lackman/
Name	Eleanor M. Lackman
Date	08/10/2018

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

In the Matter of Application Serial No. 87/763,989
For the Mark: QUANTUM SERIES
Filed on January 22, 2018
Published in the *Official Gazette* on June 12, 2018

DOUGLAS PHILLIPS,

Opposer,

- *against* -

HTJB, Inc.,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Douglas Phillips (hereinafter “Phillips” or “Opposer”), an individual residing at 1927C 8th Avenue W., Seattle, WA 98119, believes that he will be damaged by the issuance of a registration for the mark QUANTUM SERIES, Application Serial No. 87/763,989 (the “Application”), registered in International Class 9 for a “[s]eries of downloadable fiction books; audio books in the nature of novels” and International Class 16 for a “[s]eries of fiction books,” filed on January 22, 2018 and published for opposition on June 12, 2018 (the “Mark”) by HTJB, Inc. (hereinafter “HTJB” or “Applicant”), and having been previously granted an extension of time to oppose, hereby opposes the same.

The grounds for opposition are as follows:

The Opposer, Douglas Phillips

1. Phillips is a self-published author, a scientist, and a member of the Science Fiction and Fantasy Writers of America, an organization dedicated to promoting, advancing, and

supporting science fiction and fantasy writing around the world.

2. As the author of what he references at the point of sale as the “Quantum Series” – a trilogy of science fiction thrillers set in the fascinating world of particle physics where protagonists have to solve mysteries using intellect, not weapons – Phillips has been able to turn his scientific knowledge into the types of stories he always wanted to read.

3. The series also has romantic elements, featuring a budding relationship between scientists Daniel Rice and Nala Pasquier, whose sexual tension builds as they work together to solve a scientific puzzle.

4. In 2016, Phillips began writing what would become “Quantum Space,” the first novel in the “Quantum Series” collection (the “Phillips Quantum Series”). The novel – which was first published in e-book and paperback formats on Amazon.com (“Amazon”) on April 10, 2017 – was a huge success, selling over 36,000 copies, and consistently ranking in the top 20 “Hard Science Fiction” novels on Amazon.com. Additionally, “Quantum Space” was selected by Amazon to be included in its Prime Reading Program and is currently ranked #3 in Prime Reading Science Fiction.

5. Following the success of “Quantum Space,” Phillips penned the novels “Quantum Incident,” and “Quantum Void,” which were published in 2017 and 2018, respectively. Phillips is in the process of writing the fourth installment of the Phillips Quantum Series, entitled “Quantum Time.”

6. The Phillips Quantum Series has garnered interest from various literary agents who seek to pursue traditional publication of the series, as well as television and film agents interested in producing a television series and/or motion picture based on the novels.

7. In fact, Phillips has already entered into an agreement with Tantor Media to

produce audiobooks of the Phillips Quantum Series, two of which are already completed and available online for purchase.

8. Despite his investment of substantial time and resources in writing, developing, and promoting the Phillips Quantum Series novels, Phillips did not attempt to apply to register a trademark in connection with the series because of the widespread use of the word “Quantum” in the fiction market.

9. Indeed, the generic or merely descriptive term “Quantum” has been used in the title of numerous fiction novels, as well as in the series title of many fiction novels, since as early as 1992. A non-exhaustive list of these prior works includes: the “Quantum Leap” series by various authors (first published in 1992), “Quantum Prophecy” by Michael Carroll (first published in 2006), “The Quantum Thief (Jean le Flambeur)” by Hannu Rajaniemi (first published in 2010); the “Quantum Entity Trilogy” by Bruce M. Firestone (first published in 2012), the “Quantum Vibe” series by Scott Bieser (first published in 2013), “Quantum Tangle” by Chris Reher (first published in 2014); “Quantum Lens,” by Douglas Richards (first published in 2014), “Quantum: An Espionage and Techno Thriller Mystery Novel” by Dean De Servient (first published in 2016), the “Quantum Series” by Douglas Phillips (first published in 2017), “Quantum Synapse” by Russell Blake (first published in 2018); “Quantum: Civil War” by Stephen Arseneault (first published in 2018), and the “Quantum Society Series” by Dagny Rand (first published in 2018).

10. Furthermore, the term “Quantum” has been used in novels involving romance since as early as 1999. A non-exhaustive list of these prior works includes: “The Quantum Rose” by Catherine Asaro (first published in 1999), “Galimar: Rise of the Quantum Traveler” by Dan Adrian (first published in 2016), “Quantum (Atrophy)” by Jess Anastasi (first published in

2016), and “Quantum Lace – Book One” by Leigh (Bella) St. John (first published in 2017).

11. Catherine Asaro’s novel “The Quantum Rose,” in particular, has received positive reviews for bridging the gap between the science-fiction and romance genres. See Laurie Shallah, *Review of The Quantum Rose*, ALL ABOUT ROMANCE BLOG (April 27, 1999), <https://allaboutromance.com/book-review/the-quantum-rose/> (stating that “[The Quantum Rose] . . . has its roots firmly imbedded in the romance genre”). Publisher’s Weekly even called the novel “a freestanding page-turner as a romance, with a hard science framework[,]” (*Review of the Quantum Rose*, PUBLISHERS WEEKLY, <https://www.publishersweekly.com/978-0-312-89062-9>), and SFSite.com found the romance element to be the “heart of the story.” Jeri Wright, *The Quantum Rose Review*, SF SITE (1999), <https://www.sfsite.com/04b/qua55.htm>. Asaro herself is a member of the Romance Writers of America.

12. A search on Amazon of the word “Quantum” in the “Books” category, produces over 30,000 results for book titles containing the word “Quantum,” and over 30 “Books Series” containing the word “Quantum.”

13. The market is also saturated with over 750 live trademarks containing the word “Quantum,” and over 200 live trademarks in International Classes 9 and 16 alone. See, e.g., U.S. Reg. Nos. 2,701,379 (“QUANTUM CRITTERS”) (registered in International Class 16 for, *inter alia*, a series of books based on fictional characters); 3,693,402 (“QUANTUM OF SOLACE”) (registered in International Class 16 for, *inter alia*, literary works); 4,044,331 (“DR. QUANTUM”) (registered in International Class 9 for, *inter alia*, audio tapes); and 3,671,046 (“QUANTUM KITTY”) (registered in International Class 9 for, *inter alia*, DVDs featuring entertaining works of art and electronic publications). Additionally, there is an intent-to-use trademark application filed for the mark “TAKE THE QUANTUM LEAP” (Ser. No.

87/235,495) in, *inter alia*, International Class 16 for “Series of fiction books.”

The Applicant, HTJB, Inc.

14. Upon information and belief, Applicant is Rhode Island corporation located and doing business at 60 East Terrace, Portsmouth, Rhode Island 02871.

15. Upon information and belief, HTJB, Inc. is the publishing company owned and/or operated by an individual who writes under the name Marie Force.

16. Upon information and belief, Force is a contemporary romance novelist, who has authored the indie-published “Gansett Island Series,” the “Fatal Series,” “The Butler,” the “Vermont Series,” and the “Green Mountain Series.”

17. Force’s latest series, also entitled “Quantum Series,” (the “Force Quantum Series”) marks her first foray into *erotic* romance, and details the lives of fictional celebrities working and playing while pursuing their passions for dominant sexual relationships. Upon information and belief, the books are named under the “Quantum Series” moniker because each main character is a principal of “Quantum Production Company.”

18. There are currently seven books in the Force Quantum Series, which are titled, variously, “Virtuous,” “Valorous,” “Victorious,” “Rapturous,” “Ravenous,” “Delirious,” and “Outrageous.”

19. Upon information and belief, on or around April of 2015, the first book in the series, “Virtuous,” was self-published by Force.

20. By April of 2015, before the Force Quantum Series even became a “series,” various other series titles contained the word “Quantum,” including, but not limited to, the “Quantum Leap” series, the “Quantum Entity Trilogy,” and the “Quantum Vibe” series. Additionally, by the time Force published the initial Force Quantum Series novel, Asaro’s “The

Quantum Rose” had been in the marketplace for five years.

21. On January 22, 2018, within one year of the publication of the Phillips Quantum Series books entitled “Quantum Space” and “Quantum Incident,” as well as following the publication of numerous books by other novelists using the word “Quantum” in the title, Applicant filed its Application, based on Section 1(a) of the Lanham Act, to register the QUANTUM SERIES Mark (Application Serial No. 87/763,989) in International Classes 9 (“Series of downloadable fiction books; audio books in the nature of novels) and 16 (“Series of fiction books”).

22. No claim was made to the exclusive right to use SERIES apart from the Mark as shown.

23. In the Application, Applicant declared that, “to the best of the signatory’s knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such person, to cause confusion, mistake, or to deceive.”

24. This statement is false, as many other authors (who are not concurrent users in distinct markets or regions) have used – and continue to use – the word “Quantum” in the titles of individual novels, as well as in series titles, since as early as 1992.

25. Applicant’s bid to claim ownership for all fiction books and novels of a generic term already widely used in fiction novels reflects an alarming new trend that will effectively chill other authors’ right to use such generic terms in their titles. See Alison Flood, *Cockybot Flies to the Rescue in Literature’s Trademark Wars*, The Guardian (June 28, 2018), <https://www.theguardian.com/books/booksblog/2018/jun/28/cockybot-flies-to-the-rescue-in->

literatures-trademark-wars (detailing trademark bids over the generic terms “cocky,” “weird fantasy,” and “big”). *See also* Order, *Hop Hop Productions, Inc. et al v. Kneupper et al*, No. 18 Civ. 04670 (AKH) (S.D.N.Y. June 5, 2018) (Dkt. No. 30) (denying motion for preliminary injunction filed by romance novelist attempting to enforce trademark in the word “cocky”). Significantly, during oral argument on the *Hop Hop* plaintiff’s motion, Judge Hellerstein noted that plaintiff could not demonstrate that her “trademark [in the generic word cocky] merits protection.” Transcript of Oral Argument at 42, *Hop Hop*, No. 18 Civ. 04670 (Dkt. No. 33).

26. The QUANTUM SERIES Mark was published in the *Official Gazette* on June 12, 2018.

27. Applicant attached specimens to its Application that consist of printouts of the Amazon.com page for Force’s “Delirious,” which purports to be the sixth book in the Force Quantum Series. The printout also includes a “Books in this Series” section, which lists the six other books in the claimed Force Quantum Series, as well as a “Customers who bought this item also bought,” section, which only contains other novels by Force.

28. Applicant’s Application to register as a trademark a generic term that has been used in literature for decades would be prejudicial to all authors, including Opposer, who have published – and who intend to publish – fictional novels relating to quantum physics, fantasy, time travel, and/or romance.

29. If the Application herein opposed is allowed to mature to registration, Applicant will be granted rights in a generic and descriptive term that should be freely available for use by authors, and Opposer will be prejudiced and harmed thereby.

COUNT I
THE TRADEMARK IS UNREGISTRABLE BECAUSE IT IS GENERIC

30. Opposer incorporates paragraphs 1 through 29 by reference and realleges the same as if originally set forth herein.

31. As applied to the services described in Applicant's Application, the term "Quantum" is a non-distinctive, common, generic term used in the titles and series titles of many fiction novels spanning many decades.

32. The American Heritage Dictionary defines the noun form of "Quantum" as "Physics," and the adjective form of "Quantum" as "[r]elating to or based upon quantum theory."

33. The word "Quantum" itself – standing on its own – is a word that has long been used in the industry in titles, covers, keywords, advertising, and book descriptions to describe themes frequently encountered in science fiction novels – like physics, science, fantasy, and time travel.

34. Even though Applicant uses the word "Quantum" to describe a production company, rather than to identify a science-fiction related aspect of her novels, her registration would make a generic term – that has been used in series titles for over twenty years before Applicant's books were even published – unusable for all fiction authors alike. Such generic terms cannot be subject to trademark protection.

35. Indeed, the sheer number of book titles containing the word "Quantum" – coupled with the number of live trademarks containing the word "Quantum" in International Classes 9 and 16 alone – demonstrate that the term "Quantum" is a generic term, commonly used to describe goods and services that involve scientific, time-travel, fantasy, and romantic elements.

36. Accordingly, the term "Quantum" is incapable of distinguishing Applicant's works and is incapable of functioning as a source identifier, and therefore, the term "Quantum"

is incapable of registration.

COUNT II
FALSE, MATERIAL REPRESENTATION OF FACT (FRAUD)
ON THE U.S. PATENT AND TRADEMARK OFFICE

37. Opposer incorporates paragraphs 1 through 36 by reference and realleges the same as if originally set forth herein.

38. In seeking registration of the Mark pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), Applicant declared that, “to the best of the signatory’s knowledge and belief, **no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce**, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such person, to cause confusion, mistake, or to deceive.” (Emphasis added).

39. This statement is false, as many other authors have used – and continue to use – the word “Quantum” in the titles of individual novels, as well as in series titles, since as early as 1992 across all relevant markets and geographic regions, well before Applicant’s owner published the first book in the Force Quantum Series.

40. It is implausible that a well-seasoned author, such as Force, would not be aware of the pervasive use of the term “Quantum” in book titles, and therefore she must have known that she did not have rights to claim exclusive ownership for any books, much less all manner of books.

41. To the extent that “QUANTUM” is a trademark that can be owned by anyone at all in the category of fiction series and novels, Applicant’s statements to the Patent and Trademark Office claiming that no other persons have the right to use the mark “QUANTUM” in commerce for fiction series and novels were false.

42. Applicant's conduct constitutes fraud on the Patent and Trademark Office.

43. As a result of Applicant's false statements, Applicant's Mark has been passed to publication.

44. A presence of a registration for the word "Quantum" on the federal trademark register would constitute an obstacle to Opposer's use of the term "Quantum" in selling, marketing, and advertising the Phillips Quantum Series, and would also serve as an obstacle to his creation of future works, as well as an obstacle to any author seeking to use the word "Quantum" in the series title of a fiction novel. A registration, thus, would cause injury and damage to Opposer, as well as to all other authors of fiction works and novels.

WHEREFORE, Opposer respectfully requests that the opposition be sustained in favor of Opposer and that registration to Applicant be refused, and that the Board grant such other relief as may be just and proper.

To the best of Opposer's knowledge, the current email address for the correspondent of record for the above-referenced application is trademarks@legalforce.com.

Please recognize Eleanor M. Lackman, member of the Bar of the States of New York and California and the firm Cowan, DeBaets, Abrahams & Sheppard LLP, located at 41 Madison Avenue, 38th Floor, New York, New York 10010, as attorney for Opposer.

Dated: New York, New York
August 10, 2018

COWAN, DeBAETS, ABRAHAMS &
SHEPPARD LLP

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CERTIFICATE OF SERVICE

I, Lindsay R. Edelstein, hereby certify that on this 10th day of August, 2018, I caused to be served a true and complete copy of the foregoing Notice of Opposition to counsel of record for HTJB, Inc. by first class mail and electronic mail on the following:

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By: /Lindsay R. Edelstein/