

09/23/2003 TTAB

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7

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

10

11 Applicant: NORTECH INVESTMENTS
LTD
12 Mark: **RACEBOOK BIZ and Design**
13 Serial Number: 76/330664
14 Class: Class 38
15 Filing Date: October 25, 2001
16

APPEAL OF FINAL REFUSAL TO REGISTER



09-23-2003

U.S. Patent & TMO/c/TM Mail Ropt Dt. #22

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Commissioner for Trademarks
19 2900 Crystal Drive
Arlington, Virginia 22202-3513
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21 Applicant NORTECH INVESTMENTS LTD (the "Applicant") hereby appeals the final refusal of
22 the United States Patent and Trademark Office ("USPTO") examining attorney ("Examiner") in the final
23 USPTO Action ("Final Action") issued against the captioned mark application (the "Application").

24 The Examiner refuses registration of the captioned mark RACEBOOK BIZ and Design ("Mark"),
25 contending that the Applicant must insert a disclaimer of the text "RACEBOOK BIZ" ("Relevant Text")
26 based upon the contention that the Relevant Text is descriptive of the services provided under the Mark.
27 Applicant maintains that the Relevant Text cannot be descriptive of the services provided under the Mark
28 as the Relevant Text does not immediately convey to the viewing public the claimed services. At worst,

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1 the Relevant Text is merely suggestive of such services. Applicant, therefore, appeals the Examiner's
2 requirement to disclaim the Relevant Text and supports such appeal by the following argument, the
3 responses to all USPTO actions on the Application and all exhibits and other documents attached hereto
4 and/ or filed in association with such Application.

5 **I. BACKGROUND**

6 On October 25, 2001, Applicant filed the Application in the following class for the following
7 services (the "Original Services"):

8 Class 38: Broadcasting and netcasting services on and through a
9 global computer network featuring sports events, contests,
10 sweepstakes, casino events, athletic events and entertainment
events.

11 On February 11, 2002, the Examiner filed the First Office Action¹, refusing registration for the
12 Application on the ground that the Applicant must disclaim the Relevant Text because "it is merely
13 descriptive" of the Original Services under Section 6 and requiring that Applicant submit clarification of
14 services, suggesting the following services ("Alternative Services"):

15 Class 38: Netcasting services, namely, broadcasting programs
16 through a global computer network featuring sports events,
17 contests, sweepstakes, casino events, athletic events and
entertainment events.

18 First Office Action at 2.

19 On August 9, 2002, Applicant filed the First Response amending the Original Services to the
20 Alternative Services (while still maintaining that the Original Services are appropriate and classifiable in
21 Class 38), but maintained that the Relevant Text was not descriptive of the Original Services or the
22 Alternative Services (the Original Services and the Alternative Services, either in the alternative being the
23 "Claimed Services").

24 On January 30, 2003, the Examiner filed the Final Action noting acceptance of the Alternative
25 Services, but maintaining refusal on Section 6 grounds. Final Action at 1.

26 On July 25, 2003, Applicant timely filed a Notice of Appeal via U.S. Express Mail.

27 _____
28 ¹ For the purpose of this appeal, office actions filed by the USPTO are referenced as "First Office Action" and "Final
Action" and the response by Applicant are referenced as "First Response".

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1 On August 19, 2003, the USPTO mailed the notice indicating receipt of the Notice of Appeal and
2 provided the date of September 23, 2003 as the date for filing a brief in support of the Notice of Appeal.
3 This Appeal timely follows. See 37 C.F.R. §2.142(b)(1).

4 **II. ARGUMENT**

5 The only issue identified by the Examiner for refusal is whether the Relevant Text is descriptive of
6 the Claimed Services and thus requires a disclaimer. Applicant argues that registration of the Mark
7 without any disclaimer is appropriate for the services identified in the Claimed Services because the Mark
8 is not descriptive of the Claimed Services. While the Examiner has continued to maintain that the
9 Relevant Text is descriptive of the Claimed Services, the Examiner has combined certain Claimed
10 Services with unclaimed services and thus has not addressed Applicant's contention that the only relevant
11 services of Applicant are those services *claimed* by Applicant. Accordingly, Applicant maintains: (1) that
12 the only services of Applicant at issue are those claimed by Applicant in the recitations of Applicant,
13 namely the Claimed Services; (2) that the Claimed Services are not the services identified by the
14 Examiner; (3) that the Relevant Text is arbitrary and does not immediately convey the qualities or
15 characteristics of the Claimed Services; and (4) that at a minimum, the Relevant Text is merely suggestive
16 of the Claimed Services as at least one imaginative step is required in order to discern such Claimed
17 Services.

18 **A. Only Claimed Services Are Relevant**

19 The Examiner maintains that under 15 U.S.C. §1056, the Relevant Text must be disclaimed
20 because the Relevant Text is "merely descriptive" because the Relevant Text "tell[s] the consumer that a
21 business entity provides racebook information about horse races and dog races." Final Action at 2. In
22 support of this conclusion, the Examiner claims, and therefore deems the Claimed Services to be, the
23 following unclaimed services ("Unclaimed Services"):

24 a. "listing of information about the entities that are racing, such as their rank or placement in
25 racing, and this information is helpful to individuals who may want to wager their chances on the entities
26 that will be participating in any given horse race or dog race"; and

27 b. "term BIZ is merely a top level domain name for a business entity";

28 (Final Action at 1 and 2)

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1 Examiner's further refers to evidence provided in the First Action and Final Action to "show the
 2 meaning of 'facebook'" First Action at 1. Such evidence includes varied and broad services that may or
 3 may not be descriptive of the Relevant Text. Indeed, the evidence provided by the Examiner may support
 4 (if such evidence supports any contention) that: (a) "biz" is a top level domain name and (b) the phrase
 5 "race book" or "racebook" can mean, at a minimum: (i) a listing and location to help individuals wager in
 6 a given horse race or dog race or (ii) "a record journal of your progress in setting up your bike, and helps
 7 you organized the way you approach the sport" (see second reference of evidence provided by Examiner in
 8 First Action), a reference which is similar to the other suggestive interpretations of the Relevant Text
 9 submitted by the Applicant in the First Response and distinctly different from the meaning attributed by
 10 the Examiner in the Unclaimed Services. However, the evidence neither supports the apparent contention
 11 that the Unclaimed Services are the same as or a function, feature or purpose of the Claimed Services, nor
 12 supports the Examiner's conclusion that the Relevant Text describes the Claimed Services. Again, the
 13 Examiner's analysis misses the point of the Applicant's response: that what is at issue is not every service
 14 that may be provided by Applicant now or at some future point, but only those services *claimed* by
 15 Applicant.

16 Section 2(e)(1), provides that "no trademark . . . shall be refused registration . . . unless it –
 17 . . .
 18 (e) Consists of a mark which (1) when used on or in connection
 19 with the goods of the applicant is merely descriptive or
 20 deceptively misdescriptive of them,
 21 15 U.S.C. §1052. Critical to the analysis of descriptiveness, therefore, is an analysis of the goods or
 22 services with which the mark is used "on or in connection." The TMEP expressly identifies these goods or
 23 services as the "specified goods or services." TMEP 1209.01(b). Section 1209.01(b) of the TMEP
 24 provides as follows:

25 To be refused registration on the Principal Register under
 26 §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), a mark
 27 must be merely descriptive or deceptively misdescriptive of the
 28 goods or services *to which it relates*. A mark is considered
 merely descriptive if it describes an ingredient, quality,
 characteristic, function, feature, purpose or use of the *specified
 goods or services*.

1 *Id* (emphasis added). The goods or services “to which [the mark] relates” or the “specified goods or
2 services” are the goods or services claimed by the applicant and not every good or service offered by
3 applicant. This Board reached this conclusion in *H.U.D.D.L.E.*, the case primarily relied upon by
4 Examiner, when it found as follows:

5 In determining whether a designation is merely descriptive, one
6 must consider the term, not in the abstract, but in relation to the
7 goods *for which registration is sought*, the context in which the
8 designation is being used and the possible significance that the
9 term would have to the average prospective purchaser.

10 216 USPQ 358 (TTAB 1982), citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979) (emphasis
11 added). The U.S. Court of Customs and Patent Appeals reached the same conclusion in *Abcor*
12 *Development* when it found that “whether or not a term is merely descriptive in a trademark sense must
13 necessarily be considered in relation to the specific goods for which registration is sought” 588 F.2d
14 811, 812 (C.C.P.A. 1978). However, in contrast to the facts identified in *Abcor* wherein the mark
15 GASBADGE was refused registration in association with “chemically treated **badge** to determine and to
16 monitor the amount of personal exposure of an individual to **gaseous** pollutants”, as discussed *infra* the
17 services in this case “for which registration is sought” under the recitation provided by Applicant are not
18 described by the term “RACEBOOK” or the term “BIZ,” alone or in conjunction with each other.
19 Accordingly, the Relevant Text is not descriptive of the Claimed Services, which as elaborated below, are
20 not the Examiner Services, and need not be disclaimed.

21 Additionally, the whole scheme for which Congress enacted the laws regulating the registration of
22 trademarks and service marks provides that an assessment of descriptiveness must be made in the context
23 of the services claimed by an applicant. As a mark registration only provides the holder “prima facie
24 evidence of the exclusive right to use the registered mark *on the goods specified in the registration.*”
25 *Safeguard Business Systems, Inc., v. New England Business Systems*, 696 F.Supp. 1041, 1046 (ED Penn.
26 1998), it follows, therefore, that the assessment of whether a mark is descriptive must be made in the
27 context of the goods specified in the application. To baggage an applicant seeking registration of a mark
28 with services other than those claimed in an application is an exercise contrary to every practice of the
29 USPTO and the principles underlying the Lanham Act. The USPTO is exacting of applicants generally to

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1 ensure that there is either a *bona fide* intent to use a mark with certain goods or services in an intent-to-use
2 based application and is equally exacting with respect to the depiction of services in a use-based matrix –
3 as evidenced by the proceedings regarding recitation of services with respect to the instant application.

4 An applicant, therefore, is not precluded from actually providing other goods or services. An
5 applicant is only precluded from *claiming* an exclusive right to use the mark with respect to the unclaimed
6 goods or services. By way of analogy, an applicant may claim mark protection for computers under the
7 mark APPLE, even while also selling the fruit, apples. Such an applicant would only be prohibited from
8 excluding others from using the term “APPLE” with respect to the sale of apples. Furthermore, the
9 quantity of the apples or computers sold by the APPLE mark holder would not in any way diminish the
10 holders’ rights to the APPLE mark for the sale of computers. Indeed, the holder of the APPLE mark could
11 at times sell very few computers while predominately selling apples, yet the APPLE mark would remain a
12 viable mark for the provision of computers. Furthermore, the consumers of the computers under the
13 APPLE mark may at times use such computers to purchase apples, yet the APPLE mark would remain a
14 viable mark for the provision of computers. Here, the Claimed Services may at times be used by
15 consumers in conjunction with the Unclaimed Services, but the Relevant Text remains a viable mark for
16 the provision of the Claimed Services.

17 ***B. Claimed Services Are Not the Unclaimed Services***

18 The Examiner concluded that the Relevant Text was descriptive by comparing the Relevant Text
19 to the Unclaimed Services (some of which may be provided by Applicant, but all of which were not
20 claimed by Applicant) and apparently indicating (by using the services interchangeably) that the
21 Unclaimed Services are the same as or a function, feature, or purpose of the Claimed Services. However,
22 as detailed above, no recitation of service ever proffered by Applicant includes the Unclaimed Services
23 and, as set forth below, the Claimed Services are not the same as, nor a function, feature or purpose of the
24 Unclaimed Services.

25 Indeed, the very fact that the services under the Mark may be classified in at least two (2) distinct
26 classes (see the refusal by the Examiner with respect to the Mark RACEBOOK BIZ, Serial Number:
27 76/330665) inherently obviates the suggestion of descriptiveness. Separate international classes are
28 “general indications relating to the field to which, in principle, the goods or services belong.” TMEP §

1 1401.02(a). Such distinctions in international classes allow for the possibility of the same marks to be
2 applied to distinct services. For example, there are over 300 records incorporating the text "EXCEL" in
3 various classes, including, without limitation, Class 2 for laser printer toner cartridges, Class 9 for pre-
4 recorded audio sales training cassette tapes, Class 10 for exercise equipment, Class 12 for tires and Class
5 35 for arranging and conducting trade shows (as shown on the USPTO database printouts attached hereto
6 as **Exhibit 1**²).

7 In this case, the Unclaimed Services, which Examiner contends are descriptive of the Relevant
8 Text, are more appropriately classified in Class 36, whereas the Claimed Services are appropriately
9 classified in Class 38. In the First Action or the Final Action, the Examiner did not suggest (nor should
10 the Examiner suggest) that the Claimed Services ought to be classified in Class 36.

11 In stark contrast to the mark BETONSPORTS.COM (as shown on the USPTO database printouts
12 attached hereto and incorporated herein as **Exhibit 2**) wherein at least a part of the mark describes the very
13 services claimed, namely betting services, in this case, the Applicant is not claiming the very services that
14 the Examiner contends the Relevant Text describes.

15 As such, consistent with the past and present practice of the USPTO, Applicant is seeking
16 protection only for those services claimed, not for all services that are or could be offered by Applicant.
17 Indeed, even if the Relevant Text describes the Unclaimed Services and the Applicant provides such
18 Unclaimed Services at various times on the Applicant's dynamic website, the Unclaimed Services are not
19 claimed³ and the Applicant should not be presumed to claim the Unclaimed Services.

20 ***C. Relevant Text Is Not Descriptive Of Claimed Services***

21 In order for the Relevant Text to be considered descriptive in a manner that would require a
22 disclaimer, the Relevant Text would have to be found by the average purchaser to describe "an ingredient,
23 quality, characteristic, function, feature, purpose or use of the *specified* goods or services, or if it
24 immediately conveys information regarding a function, purpose, use or property of the goods." See TMEP
25 1209.01(a) (emphasis added). Here the specified services are not the Unclaimed Services, but the

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27 ² These USPTO TESS registration documents are properly included herein in accordance with 15 U.S.C.
§1057(f).

28 ³ Furthermore, Applicant does not herein preclude itself from seeking federal registration protection for such
Unclaimed Services if or when offered under the Mark or variants thereto.

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1 provision of netcasting services. To be descriptive, the Mark would have to “immediately convey” the
2 Claimed Services. Examiner indicates that “the term ‘facebook’ is a listing of information about entities
3 that are racing”, but the Claimed Services are not “a listing of information.” Indeed, the Relevant Text
4 does not immediately convey the Claimed Services because the Relevant Text cannot “immediately
5 convey” the provision of any content or service, let alone the Unclaimed Services.

6 The Examiner concludes that the combined terms RACEBOOK and BIZ describe the Unclaimed
7 Services, yet neither term is descriptive *per se* of the provision of information about anything. As
8 identified by the Examiner, the Mark may be the combination of a term referencing a term of art
9 associated with wagering with a word that may be a top level domain name. See generally Final Action.
10 However, neither as individual terms nor in combination do the terms RACEBOOK and BIZ “immediately
11 convey” the concept of the provision of content at all, let alone the provision of content about the
12 Unclaimed Services or the Claimed Services.

13 Indeed, this case is more akin and indeed stronger than the facts and circumstances surrounding
14 the mark NETBANK wherein registration was allowed (U.S. Registration 1913750 as shown on the
15 USPTO database printouts attached hereto and incorporated herein as **Exhibit 3**) and later cancellation
16 proceedings denied and terminated when a court held that such mark was generic as applied to internet
17 banking services, but that “this Court will decline to cancel the registration of the ‘NETBANK’ mark
18 pursuant to 15 U.S.C. § 1119 due to the term’s registration *for another use*.” Interstate Net Bank v.
19 NetB@nk, Inc., et al., 221 F.Supp.2d 513, 527 (D. N.J. 2002) (Emphasis added). In this case, the Mark
20 and the Relevant Text is not descriptive and most certainly sets forth services that are “for another use”
21 than those services identified by the Examiner as being descriptive.

22 As a result, the Relevant Text is arbitrary and cannot identify *the significant* ingredient, quality or
23 characteristic of the Claimed Services. See TMEP 1209.01(a) (describing an arbitrary mark as being
24 comprised of words which are in common use, but that when used to identify a particular services, do not
25 suggest or describe “the significant ingredient, quality or characteristic of the [service]”).

26 ***D. The Relevant Text Is At Worst Suggestive***

27 At worst, as discussed in the First Response, the Relevant Text is suggestive of the Claimed
28 Services. Suggestive marks are registrable on the Principal Register without proof of secondary meaning

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1 and are those marks which suggest the nature or characteristics of the goods or services and require an
2 effort of the imagination by the consumer in order to determine the precise nature of the goods or services
3 offered under the mark. *Dieter v. B & H Indus. Of S.W. Fls., Inc.*, 880 F.2d 322, 326 (11th Cir. 1989), cert.
4 denied, 498 U.S. 950, 111 (1990). Accordingly, while the services offered under a suggestive mark are
5 not immediately identified by the mark, those services can be ascertained by consumers through the
6 exercise of imagination.

7 In the instant case, consumers must speculate on a wide range of possibilities, and the greater the
8 range of possibilities the more likely the Mark is an arbitrary mark in the "continuum from arbitrary or
9 fanciful marks." *Induct-O-Matic Corp. v. Inductotherm Corp.*, 747 F.2d 358 (6th Cir. 1984); TMEP
10 1209.01 (discussing the "continuum" concept). Here, as identified in the First Response, the range of
11 possibilities for services is potentially infinite, as such a range incorporates any service or good
12 contemplated that could be offered, discussed, or identified on the Internet having a relation, nexus,
13 contact, connection or association of any type with the text "race," "book" or "biz". For example, as
14 identified in the First Response, the word "book" has the following definitions:

- 15 (1) a set of written sheets of skin or paper or tablets or wood or ivory
- 16 (2) a set of written, printed, or blank sheets bound together into a volume
- 17 (3) to register for some future activity or condition
- 18 (4) to make a reservation
- 19 (5) a record of a business's financial transactions or financial condition (such as "the books show a
- 20 profit")
- 21 (6) something that yields knowledge or understanding
- 22 (7) if capitalized, the Bible
- 23 (8) the standards or authority relevant in a situation
- 24 (9) all the charges that can be made against an accused person (such as "threw the book at him")
- 25 (10) the bets registered by a bookmaker or the business or activity of giving odds and taking
- 26 bets
- 27 (11) the number of tricks a card player or side must win before any trick can have scoring
- 28 value

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The word "race" has the following definitions:

- (1) the act of running
- (2) a family, tribe, people, or nation belong to the same stock
- (3) a breeding stock of animals
- (4) a strong or rapid current of water flowing through a narrow channel
- (5) a watercourse used industrially
- (6) a set course or duration of time
- (7) a contest of speed
- (8) a meeting in which several races (as for horses) are run
- (9) a contest or rivalry involving progress toward a goal (e.g. pennant race)
- (10) a track or channel in which something rolls or slides, specifically a groove (as for the balls) in a bearing.

See First Response at 4-5.

The term BIZ can reasonably be interpreted to mean any number of different words or terms in addition to the information reference apparently identified by the Examiner, including, without limitation: (a) bizarre, (b) business, (c) busy, (d) bi-zonal, or (e) buys (utilizing a pronunciation of the term with a long i). Such words have multiple definitions depending upon the context.

Such words have multiple definitions depending upon the context. Independent of the basis of suggestiveness grounded in juxtapositioning, a "suggestive" mark may also be found if the customer must make an effort of imagination in order to determine the precise nature of the goods or services. *Dieter v. B & H Indus. Of W. W. Fls., Inc.* 880 F.2d 322, 326 (11th Cir. 1989). Numerous imaginative leaps are required in the instant case.

As such, a consumer can reasonably interpret the Relevant Text to be associated with any of the following, at a minimum, or numerous other imaginative wonders:

- (1) RACEBOOK BIZ, a bizarre collection of track and field events.
- (2) RACEBOOK BIZ, a retail bookstore catering to specific ethnic nationalities and races.
- (3) RACEBOOK BIZ, a business providing effective and efficient travel and reservation guides.
- (4) RACEBOOK BIZ, a literary work identifying the busy and stressful nature associated with the

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RESPECTFULLY SUBMITTED this 19th day of September, 2003.

**SANTORO, DRIGGS, WALCH
KEARNEY, JOHNSON & THOMPSON**



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CERTIFICATE OF MAILING BY "EXPRESS MAIL"

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service by "Express Mail Post Office to Addressee" service in an envelope addressed to BOX TTAB - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on September 23, 2003.



Raisha DeLeon, an employee of Santoro, Driggs,
Walch, Kearney, Johnson & Thompson

Date of signature: September 23, 2003

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Excel

Word Mark	EXCEL
Goods and Services	IC 002. US 006 011 016. G & S: Laser Printer Toner Cartridges Remanufactured. FIRST USE: 19980216. FIRST USE IN COMMERCE: 19980216
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	261102
Serial Number	75618905
Filing Date	January 11, 1999
Filed ITU	FILED AS ITU
Published for Opposition	November 2, 1999
Registration Number	2396439
Registration Date	October 17, 2000
Owner	(REGISTRANT) Computer Products Resource, Inc. CORPORATION CALIFORNIA 4901 Morena Blvd. Suite 320 San Diego CALIFORNIA 92117
Type of Mark	TRADEMARK
Register	PRINCIPAL

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**Live/Dead
Indicator**

LIVE

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EXCEL

Word Mark EXCEL

Goods and Services IC 009. US 021 023 026 036 038. G & S: pre-recorded audio sales training cassette tapes, pre-recorded sales training videotapes, and photographic business presentation slide transparencies and overhead transparencies relating to the selling of telecommunications services; computer accessories, namely, mouse pads; decorative refrigerator magnets; satellite dishes; satellite receivers; telephone accessories, namely telephone line detanglers. FIRST USE: 19991231. FIRST USE IN COMMERCE: 19991231

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 260103 260107 260121

Serial Number 75689216

Filing Date April 23, 1999

Filed ITU FILED AS ITU

Published for Opposition July 25, 2000

Registration Number 2476358

09/09/2002TAB

Registration Date August 7, 2001

Owner (REGISTRANT) Excel Telecommunications, Inc. CORPORATION TEXAS 8750 North Central Expwy., 20th Fl., LB 6 Dallas TEXAS 75231

Attorney of Record Marc A. Hubbard

Prior Registrations 1648364;2179089;2193556;2195387;2208473;2217069;AND OTHERS

Description of Mark : The stippling in the drawing of the mark indicates shading and is not a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

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Typed Drawing

Word Mark EXCEL
Goods and Services IC 012. US 019 021 023 031 035 044. G & S: TIRES. FIRST USE: 20000211. FIRST USE IN COMMERCE: 20000211
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75764829
Filing Date July 30, 1999
Filed ITU FILED AS ITU
Published for Opposition March 21, 2000
Registration Number 2470425
Registration Date July 17, 2001
Owner (REGISTRANT) TBC Corporation CORPORATION DELAWARE 4770 Hickory Hill Road Memphis TENNESSEE 381810342
Attorney of Record MARSHA G. GENTNER
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark EXCEL

Goods and Services IC 035. US 100 101 102. G & S: arranging and conducting trade shows and exhibitions in all manner of goods and services specifically related thereto, namely, providing decorating services for others at trade shows and conventions, obtaining rental furnishings for others at trade shows and conventions, providing booth construction and breakdown services for others at trade shows and conventions, receiving and shipping displays for others at trade shows and conventions, and providing an electronic, computer accessible presence for others at trade shows and conventions. FIRST USE: 19670831. FIRST USE IN COMMERCE: 19670831

Mark

Drawing (1) TYPED DRAWING

Code

Serial Number 75439762

Filing Date February 24, 1998

Published for Opposition August 3, 1999

Registration Number 2288627

Registration Date October 26, 1999

Owner (REGISTRANT) EXCEL DECORATORS, INC. CORPORATION INDIANA P.O. Box 42345 3748 Kentucky Avenue Indianapolis INDIANA 462240345

Attorney of Record E VICTOR INDIANO

09/29/2002 09:11:59

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	BETONSPORTS.COM
Goods and Services	IC 036. US 100 101 102. G & S: BETTING SERVICES. FIRST USE: 19970600. FIRST USE IN COMMERCE: 19970600
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76043424
Filing Date	May 8, 2000
Supplemental Register Date	April 24, 2001
Registration Number	2583976
Registration Date	June 18, 2002
Owner	(REGISTRANT) Moishe S.A. CORPORATION COSTA RICA Edificio Equus 6TO Piso Frente A La Facultad De Derecho, U.C.R. San Pedro, San Jose COSTA RICA
Attorney of Record	Kenneth F. Florek
Type of Mark	SERVICE MARK
Register	SUPPLEMENTAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark NETBANK
Goods and Services IC 036. US 102 104. G & S: electronic payment services featuring a system of electronic money coupons that are exchanged by means of an on-line computer service. FIRST USE: 19940505. FIRST USE IN COMMERCE: 19940526
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74548937
Filing Date July 13, 1994
Published for Opposition May 30, 1995
Registration Number 1913750
Registration Date August 22, 1995
Owner (REGISTRANT) Software Agents, Inc. CORPORATION DELAWARE P. O. Box 541 Germantown MARYLAND 20875

(LAST LISTED OWNER) NET.B@NK, INC. CORPORATION BY ASSIGNMENT GEORGIA 950 NORTH POINT PARKWAY, SUITE 350 ALPHARETTA GEORGIA 30005
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Elizabeth Ann Morgan
Type of Mark SERVICE MARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

09/22/2003 10:00:11 AM

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

Applicant: NORTECH INVESTMENTS LTD
Mark: RACEBOOK BIZ and Design
Serial No.: 76/330664
Filing Date: October 25, 2001
Class: 38

NOTICE OF REQUEST FOR ORAL HEARING

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF REQUEST FOR ORAL HEARING

Applicant NORTECH INVESTMENTS LTD (the "Applicant") hereby requests the Trademark Trial and Appeal Board for an oral hearing corresponding with the appeal of final refusal to register the captioned mark RACEBOOK BIZ and Design (the "Mark"). This notice is timely filed within ten (10) days after the due date of the reply brief. 37 C.F.R. §2.142(e)(1).



Steven A. Gibson
Attorney for Applicant

Notice of Request for Oral Hearing

Applicant: NORTECH INVESTMENTS LTD
Mark: RACEBOOK BIZ and Design
Serial No: 76/330664
Filing Date: October 25, 2001
Class: 38

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as "U.S. Express Mail Post Office to Addressee" service on September 23, 2003, and addressed to:

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**RE: Appeals of Final Refusal to Register and Notices of Request for Oral Hearing for:
RACEBOOK BIZ, Class 41, Serial No: 76/330665;
RACEBOOK BIZ and Design, Class 38, Serial No: 76/330664;
RACEBOOK INFO, Class 41, Serial No: 76/330667; and
RACEBOOK INFO and Design, Class 38, Serial No: 76/330666
(the "Marks")**

Dear Sir or Madame:

Enclosed please find four (4) Briefs in support of Appeals of Final Refusal and Notices of Request for Oral Hearing to the Trademark Trial and Appeal Board corresponding with the applications for the Marks.

Please process the notices and acknowledge receipt by stamping the enclosed self-addressed stamped envelopes.

Best regards,

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

Bryce K. Earl

Enclosures

cc: Steven A. Gibson, Esq.