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05-13-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

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

*Opposition
150590*

In the Matter of Application Serial No. 76/090,263; SM: MEDNET BANK
Published in the Official Gazette on September 4, 2001 at TM545.

NetBank, Inc.,)
)
Opposer,)
)
vs.)
)
Med on Web, Inc.,)
)
Applicant.)
_____)

TRADEMARK TRIAL AND
APPEAL BOARD
02 MAY 18 AM 12:22

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Opposer, NetBank, Inc., a corporation organized and existing under the laws of the State of Georgia, hereby moves, pursuant to 37 C.F.R. § 2.106(a), for entry of default judgment in its favor and against Med on Web, Inc., in this opposition proceeding initiated to prevent registration of Applicant's Intent to Use Application for MEDNET BANK, Serial No. 76/090,263, in connection with services in International Class 36. Med on Web, Inc. has failed to answer NetBank, Inc.'s Notice of Opposition within the forty (40) days prescribed by the United States Patent and Trademark Office ("USPTO"). A true and correct copy of the USPTO Notification and Schedule mailed to Stefan R. Suess, attorney of record for Med on Web, Inc., is attached hereto as Exhibit A.

The grounds for this motion for entry of default judgment are as follows:

1. On December 3, 2001, NetBank, Inc. filed a Notice of Opposition to the Applicant's proposed mark MEDNET BANK on the ground that the proposed mark would cause a likelihood of confusion with NetBank, Inc.'s registered and incontestable mark NETBANK®.

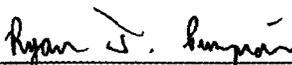
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2. NetBank, Inc. also argued in its Notice of Opposition that the proposed mark MEDNET BANK would dilute the distinctiveness of NETBANK®.
3. NetBank, Inc. has a specific and personal interest in the subject registration and in the disposition of this matter, beyond any interest shared by the general public, and consequently has the requisite standing to bring and prosecute this petition.
4. On January 29, 2002, the USPTO mailed a notification and schedule along with the Notice of Opposition to Stefan R. Suess, Richards & Polansky, 2665 South Bayshore Drive, Suite 703, Miami, FL 33133 on behalf of Med on Web, Inc.
5. Med on Web, Inc. failed to answer within forty (40) days, as prescribed by the Notification Schedule in Exhibit A and 37 CFR § 2.105.
6. Med on Web, Inc has abandoned its proposed mark MEDNET BANK.

Therefore, NetBank, Inc. respectfully requests that the Trademark Trial and Appeal Board enter default judgment in NetBank, Inc's favor and against Med on Web, Inc. and refuse the registration of MEDNET BANK , Serial No. 76/090,263.

Respectfully submitted,

NETBANK, INC

By: 
Elizabeth Ann Morgan
Georgia Bar No. 522206
Ryan T. Pumpian
Georgia Bar No. 589822

POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
191 Peachtree Street, N.E.
Sixteenth Floor
Atlanta, Georgia 30303
Phone: 404-572-6600
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CERTIFICATE OF EXPRESS MAILING

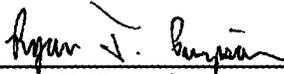
Express Mail Label Number: EL953383156US

Date of Express Mailing: May 13, 2002

I hereby certify that the foregoing Motion for Entry of Default Judgment is being deposited with the United States Postal Service Express Mail Post Office to Addressee under 37 C.F.R. §1.10 on the date above and under the Express Mail Label specified above and is addressed to Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

This is to certify that I have this day served Stefan R. Suess, Esq. with a copy of the foregoing by depositing a copy of same with Federal Express, properly addressed as follows:

Stefan R. Suess, Esq.
Richards & Polansky
Grand Bay Plaza, Suite 703
2665 South Bayshore Drive
Miami, FL 33133



Ryan T. Pumpian
Attorney for NetBank, Inc.

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: January 29, 2002

Opposition No 91150590
Serial No. 76090263

Stefan R. Suess
Richards & Polansky
2665 South Bayshore Drive, Suite 703
Miami, FL 33133

NetBank, Inc.

v.

Med on Web, Inc.

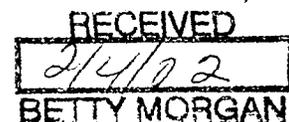
Elizabeth Ann Morgan, Esq.
Powell, Goldstein, Frazer & Murphy, LLP
191 Peachtree Street, NE, 16th Floor
Atlanta, GA 30303

Denise M. DelGizzi, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as



well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: February 18, 2002

Discovery period to close: August 17, 2002

30-day testimony period for party
in position of plaintiff to close: November 15, 2002

30-day testimony period for party
in position of defendant to close: January 14, 2003

15-day rebuttal testimony period
for plaintiff to close: February 28, 2003

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the

pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.