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

Proceeding	91173094
Party	Defendant Deutsche Telekom AG Deutsche Telekom AG Friedrich-Ebert-Allee 140 , DE 53113
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Ser. No. 78/219,684
Published in the Official Gazette on May 23, 2006
Mark: t finance (& Design)
Opposed Class: 9 (not opposing classes 16, 35, 36, 38, 41 and 42)

Trend Micro Kabushiki Kaisha, Opposer, vs. Deutsche Telekom AG, Applicant.	Opposition No. 91173094

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant Deutsche Telekom AG (hereinafter "Applicant") hereby answers the Notice of Opposition (hereinafter the "Opposition") of Trend Micro Kabushiki Kaisha (hereinafter "Opposer"). Any allegation not specifically admitted hereinafter is denied by Applicant.

1. As is evidenced by the publication of the t finance (& Design) mark in the Official Gazette on pages 59-61 of the May 23, 2006 issue, Applicant Deutsche Telekom AG seeks to register a mark containing of a lower case letter t with an extended "tail" curving counter-clockwise on a circle design, accompanied by the word finance:

"t finance (& Design)"

The Application encompasses a very wide variety of goods in Class 9, including, among other goods, "software for network access control, creating and maintaining firewalls"; "network management software"; computer proxy software for use with other software programs"; "computer programs and databases for use in operating...business management systems"; "software used for the provision of online information services"; "computer programs for

accessing a global computer network and interactive computer communications network"; "portable computer devices, namely laptops, handheld and pocket computers"; and "personal digital assistants." Applicant filed its application on February 27, 2003.

ANSWER: Applicant admits its pending application Serial No. 78/219,684 is for a stylized t design in Class 9, among others. Applicant filed its application on February 27, 2003, and its basis for its application was both 1(b) and 44(d). Applicant denies the remaining allegations of paragraph 1.

2. Opposer is the parent corporation of wholly owned subsidiary, Trend Micro Incorporated, a California corporation ("Trend Micro California"). Trend Micro California is responsible for Trend Micro-branded products and services in the United States. Opposer and Trend Micro California offer a wide variety of computer and network security products in connection with a mark consisting of a lower case letter T with an extended "tail" curving counter-clockwise on a circle design:

"T Ball Logo"

The T Ball Logo is and has been used in connection with software and hardware for a variety of computing and communication platforms, including servers, desktop computers, laptop computers, personal digital assistants, and mobile phones, as well as other goods and services.

ANSWER: Applicant is without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and therefore Applicant denies the same.

3. Opposer owns United States Trademark Registration No, 2,913,480, for computer antivirus and related software in Class 9 and related computer services in Class 42, for the T Ball Logo:

"T Ball Logo"

The T Ball Logo Application was filed April 24, 2001, and the mark has been in continuous use in commerce for the majority of the applied-for goods and services since March 1998. The Registration is valid and in good standing, and Opposer's use of the T-Ball Logo pre-dates the earliest priority of Applicant's t finance (&

Design) Application. The Registration is not limited to any particular colors. In addition, the "common law" rights of Opposer and Trend Micro California in the T-Ball Logo pre-date the Application.

ANSWER: Applicant denies that Opposer's application predates the earliest priority of Applicant's application. Applicant is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 and therefore Applicant denies the same.

4. Opposer and Trend Micro California use a logo combining the T Ball Logo with the TREND MICRO mark in connection with software and hardware for a variety of computing and communication platforms, including servers, desktop computers, laptop computers, personal digital assistants, and mobile phones, as well as other goods and services:

"Composite Logo"

ANSWER: Applicant is without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and therefore Applicant denies the same.

5. Trend Micro California owns United States Trademark Registration No. 2,402,444 for the Composite Logo, in connection with "computer utility software; computer antivirus software; computer network security software; computer software for use with electronic mail; local area network, internal corporate network, file, groupware application, and proxy servers; computer software for filtering information retrieved from computer networks, including global computer information networks; computer software for diagnosing and repairing computers and computer software; instruction manuals supplied as a unit with the foregoing," in International Class 9.

"Composite Logo"

The Composite Logo Registration is valid and in good standing and has the priority of its February 23, 1998 filing date, prior to the earliest priority of the Applicant's t finance (& Design) Application. The Registration is not limited to any particular colors. In addition, the "common law" rights of Opposer and Trend Micro California in the Composite Logo pre-date the Application.

ANSWER: Applicant denies that Opposer's registration has priority over Applicant's application. Applicant is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 and therefore Applicant denies the same.

6. Opposer and Trend Micro California are in the business of providing computer and network security solutions and services for business and home use. Beginning at least as early as 1998, Opposer has used the T Ball Logo and Composite Logo marks in connection with its goods and services. Opposer's nationwide use of its marks has been valid and continuous since their respective dates of first use, and said marks have not been abandoned. Opposer's T Ball Logo and Composite Logo marks have become well-known as identifying Opposer's goods and services, and as a result, have become valuable assets of Opposer and the principal symbols of its goodwill.

ANSWER: Applicant is without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 6 and therefore Applicant denies the same.

7. Registration of the mark as depicted in the drawing may damage Opposer and Trend Micro California by preventing them from making further registrations for the T Ball Logo and Combination Logo in connection with the applied-for goods, by casting doubt on the permissibility of their use of those marks in connection with the applied-for goods, and by misleading third parties as to the scope of their exclusive rights in relation to the T Ball Logo and Combination Logo.

ANSWER: Applicant denies the allegations contained in paragraph 7.

8. The Application was filed on a Section 44(e) basis, requiring Applicant to aver that it has a *bona fide* intention to use the applied-for mark in commerce in connection with all of the goods and services in the Application. On information and belief, the scope of the identification of goods in the Application far exceeds the current business of the Applicant, and any realistic plans for the applied-for mark. The Application thus was infected by fraud from the time of filing, is void, and also should be denied registration on these grounds.

ANSWER: Applicant objects to assertions in paragraph 8 to the extent they imply an obligation to prove actual use under Section 44(e) or that the assertions made provide any basis for fraud or any cause of action for which relief can be granted. Applicant denies the allegations contained in paragraph 8.

9. Registration of the mark for goods on which Applicant has no *bona fide* intention to use its mark may damage Opposer and Trend Micro California by preventing them from making further registrations for the T Ball Logo and Combination Logo in connection with the applied-for goods, by casting doubt on the permissibility of their use of those marks in connection with the applied-for goods, and by misleading third parties as to the scope of their exclusive rights in relation to the T Ball Logo and Combination Logo.

ANSWER: Applicant objects to the conclusion presented which has no legal basis or support. Applicant denies the allegations contained in paragraph 9.

AFFIRMATIVE DEFENSES

A. Opposer fails to state a claim upon which relief can be granted.

B. Applicant owns a U.S. registration in the challenged T design incorporated in its application. Registration No. 2,367,890 for use in connection with the telecommunications services offered by Applicant, was filed on a priority basis in 1998 and registered on July 18, 2000 with a priority date of April 9, 1998.

C. The T designs are not confusingly similar. Applicant's T design, protected by federal registration is a small letter "t" that wraps around itself forming a design similar to the @ symbol. In contrast, Opposer's T design deemphasizes the small T and puts emphasis on the tail which creates a near oval look. While Applicant's design is precise and symmetrical, Opposer's design is asymmetrical with a tapering end florish. The visual result is two distinct and distinguishable marks.

D. Applicant's ⓒ mark is easily distinguishable from Opposer's TREND MICRO mark. The terms "TREND MICRO" are major components of Opposer's registration that create a distinct commercial impression. Applicant's "T" design has not only a different design, but the

mark when considered as a whole are completely distinct and dissimilar, eliminating any likelihood of confusion.

E. In addition to its registration, Applicant has a family of "T" design mark applications for use in connection with its wide array of telecommunication goods and services. A chart of Applicant's family of marks is attached hereto as Exhibit A. As indicated on Exhibit A, a large number of these applications have a claim of priority.

F. There is no likelihood of confusion, mistake or deception as to the source, origin, or sponsorship based on Applicant's use of the "T" design and Opposer's use of a different and distinct "T" design.

G. Opposer uses its "T" Design in connection with software protection and support.

H. Applicant uses its "T" Design in connection with its telecommunications and related goods and services and not directed at software antivirus or other protection system.

I. There is no likelihood of confusion, mistake or deception given the distinct markets in which Opposer's and Applicant's products are sold and used.

J. The fact that Opposer's corporation had business interactions with Application's subsidiary, T-Systems, is not relevant to this opposition. Opposer's registration and application for its different T Design, the basis for its opposition, does not cover goods or services similar to Applicant's.

In view of the foregoing, Applicant contends that the Opposer has failed to show any likelihood of confusion between its registration and Applicant's application or that it will be damaged by the registration of Applicant's trademark. Applicant prays that this opposition be dismissed and that Applicant be granted registration of its trademark.

Respectfully submitted,

DEUTSCHE TELEKOM AG

By: _____

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** was served by overnight delivery on counsel for Opposer at the following address:

Jefferson F. Scher
Joi A. White
Carr & Ferrell LLP
2200 Geng Road
Palo Alto, CA 94303

Dated: October 11, 2006

Joan L. Long
Attorney for Applicant

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Exhibit A

Deutsche Telekom AG

Mark	Serial/Reg. No.	Filing Date	Status	Priority	Priority Date
	2367890	29-Dec-1998	Reg. 18-Jul-2000	German app. 39818949	09-Apr-1998
info	2921902	07-Dec-2000	Reg. 01-Feb-2005	German app. 30043206	07-Jun-2000
info	2969056	12-Mar-2001	Reg. 19-Jul-2005	German app. 30068725	13-Sep-2000
info	2975016	07-Dec-2000	Reg. 26-Jul-2005	German app. 30043200	07-Jun-2000
info	3061438	07-Dec-2000	Reg. 28-Feb-2006	German app. 30043204	07-Jun-2000
jobs	3071161	18-Aug-2005	Reg. 21-Mar-2006	German reg. 30217930	18-Jun-2002
jobs	3093322	18-Aug-2005	Reg. 16-May-2006	German reg. 30217930	18-Jun-2002
	3139397	18-Sep-2000	Reg. 05-Sep-2006	None	None
	76/130251	18-Sep-2000	Published	German reg. 30020659	17-Mar-2000
	76/222033	18-Sep-2000	Published	German app. 30067629	08-Sep-2000
info	76/177036	07-Dec-2000	Published	German app. 30043201	07-Jun-2000
	76/262559	24-May-2001	Published	German reg. 30067627	20-Sep-2001
kids	76/459065	15-Oct-2002	Published	German app. 30217932	12-Apr-2002
[illegible]	76/459066	15-Oct-2002	Published	German app. 30217935	12-Apr-2002
lifestyle	76/459068	15-Oct-2002	Pending	German app. 30217934	12-Apr-2002
music	76/460027	17-Oct-2002	Published	German reg. 30054563	21-Jul-2000
email	78/179124	28-Oct-2002	Approved for publication	German app. 30221215	29-Apr-2002
mail	78/179143	28-Oct-2002	Pending	German app. 30221214	29-Apr-2002

Mark	Serial/Reg. No.	Filing Date	Status	Priority	Priority Date
zones	78/184591	13-Nov-2002	Published	German app. 30224473	15-May-2002
[illegible]	78/214540	13-Feb-2003	Published	German app. 30239851	14-Aug-2002
news	78/214543	13-Feb-2003	Published	German app. 30239850	14-Aug-2002
news	78/219565	27-Feb-2003	Published	German reg. 30047580	06-Nov-2000
finance	78/219684	27-Feb-2003	Published	German reg. 30217928	18-Jun-2002
	78/245820	05-May-2003	Published	None	None
	78/245829	05-May-2003	Published	German reg. 30249893	31-Oct-2002
	78/245833	05-May-2003	Published	None	None
	78/245836	05-May-2003	Published	None	None
	78/245837	05-May-2003	Published	None	None
	78/245839	05-May-2003	Published	None	None
	78/245844	05-May-2003	Pending	None	None
	78/245847	05-May-2003	Pending	None	None
	78/245849	05-May-2003	Published	German reg. 30249892	10-Oct-2000
	78/245851	05-May-2003	Pending	None	None
	78/245853	05-May-2003	Pending	None	None
	78/245854	05-May-2003	Published	None	None
	78/245857	05-May-2003	Pending	None	None
	78/245860	05-May-2003	Pending	None	None

Mark	Serial/Reg. No.	Filing Date	Status	Priority	Priority Date
	78/245862	05-May-2003	Pending	None	None
	78/245865	05-May-2003	Published	None	None
	78/245867	05-May-2003	Published	None	None
	78/245869	05-May-2003	Published	None	None
	78/245872	05-May-2003	Pending	None	None
	78/245873	05-May-2003	Pending	None	None
	78/246008	06-May-2003	Published	None	None
	78/246010	06-May-2003	Published	None	None
	78/246011	06-May-2003	Published	None	None
	78/246012	06-May-2003	Published	None	None
channels	78/300572	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300583	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300592	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300597	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300600	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300604	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300607	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
channels	78/300609	15-Sep-2003	Published	German app. 30313110	14-Mar-2003
	78/695218	18-Aug-2005	Pending	German reg. 30217928	18-Jun-2002
	78/695223	18-Aug-2005	Published	German reg. 30217928	18-Jun-2002
	78/695227	18-Aug-2005	Published	German reg. 30217928	18-Jun-2002
	78/695233	18-Aug-2005	Published	German reg. 30217928	18-Jun-2002
	78/695241	18-Aug-2005	Published	German reg. 30217928	18-Jun-2002
	78/695250	18-Aug-2005	Published	German reg. 30217928	18-Jun-2002

Mark	Serial/Reg. No.	Filing Date	Status	Priority	Priority Date
t business	78/695255	18-Aug-2005	Pending	German reg. 30217928	18-Jun-2002
t health	78/695389	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695392	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695398	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695404	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695412	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695420	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t health	78/695425	18-Aug-2005	Published	German reg. 30217929	18-Jun-2002
t jobs	78/695587	18-Aug-2005	Published	German reg. 30217930	18-Jun-2002
t jobs	78/695600	18-Aug-2005	Published	German reg. 30217930	18-Jun-2002
t jobs	78/695618	18-Aug-2005	Published	German reg. 30217930	18-Jun-2002
t jobs	78/695631	18-Aug-2005	Published	German reg. 30217930	18-Jun-2002
t jobs	78/695637	18-Aug-2005	Pending	German reg. 30217930	18-Jun-2002
t junior	78/695703	18-Aug-2005	Published	German reg. 30217931	18-Jun-2002
t	78/701515	26-Aug-2005	Published	German app. 30511585	28-Feb-2005
t	78/701519	26-Aug-2005	Published	German app. 30511585	28-Feb-2005
t	78/701521	26-Aug-2005	Published	German app. 30511585	28-Feb-2005