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Filing date: **02/12/2008**

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

Proceeding	91180025
Party	Plaintiff Celestron Acquisition, LLC
Correspondence Address	Michael K. Grace, Jill M. Abasto GRACE & GRACE LLP 444 S. Flower St., Ste. 3875 Los Angeles, CA 90071 UNITED STATES mgrace@gracelaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Jill M. Abasto
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Date	02/12/2008
Attachments	Motion to Suspend.pdf (4 pages)(132398 bytes) Motion to Suspend - Exhibit A.pdf (15 pages)(1007436 bytes) Motion to Suspend - Exhibit B.pdf (14 pages)(829296 bytes)

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

In the matter of trademark application Serial No. 77/001,790

MARK: NEXSTAR

FILED: September 18, 2006

PUBLISHED: August 14, 2007

CELESTRON ACQUISITION, LLC,
a Delaware limited liability company,

Opposer,

Opposition No. 91180025

v.

NEXSTAR (HONG KONG) LIMITED,
a Hong Kong corporation,

Applicant.

**OPPOSER'S MOTION TO SUSPEND PROCEEDINGS PENDING DISPOSITION OF
U.S. DISTRICT COURT ACTION**

Opposer, Celestron Acquisition, LLC ("Celestron"), manufactures and sells telescopes and telescope accessories, including a global positioning system ("GPS") unit for telescopes, under the registered trademark NEXSTAR[®]. Applicant, Nextar (Hong Kong) Limited ("Applicant"), is using and seeking registration of the name and mark NEXSTAR to identify, advertise and sell portable GPS navigation units for cars. Applicant's use of NEXSTAR as a trademark on GPS devices is confusingly similar to Celestron's use of NEXSTAR for GPS devices, causing widespread actual confusion and a likelihood of confusion.

///

On August 16, 2007, Celestron filed an action against Applicant for trademark infringement, trademark dilution, false designation of origin and unfair competition in the United States District Court, Central District of California, based on Nextar's use of NEXTAR, USDC Case No. CV 07-05368 DDP (JCx) (the "District Court Action"). The District Court Action is currently pending. A true and correct copy of the First Amended Complaint in the District Court Action is attached hereto as Exhibit A. A true and correct copy of Applicant's Answer in the District Court Action is attached hereto as Exhibit B.

The issues to be decided in the District Court Action will have a direct bearing on the issues to be decided in this Opposition Proceeding. 37 CFR § 2.117(a) provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

Pursuant to 37 CFR § 2.117(a) and TBMP §§ 510.01 and 510.02(a), Celestron respectfully requests that the Board suspend proceedings on the Opposition until final disposition of the District Court Action, so that the parties may avoid unnecessary expenses and avoid potentially inconsistent rulings in pretrial and at trial.

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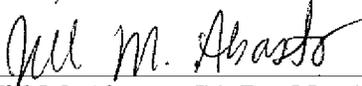
///

Applicant has stated that it opposes this motion to suspend

RESPECTFULLY SUBMITTED,

GRACE & GRACE LLP

Dated: February 12, 2008

By: 
Jill M. Abasto, CA Bar No. 190622
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Attorneys for Opposer
Celestron Acquisition, LLC

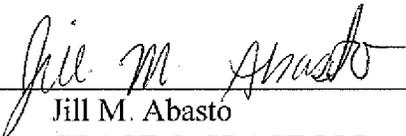
CERTIFICATE OF MAILING

I certify that on **February 12, 2008**, the foregoing **OPPOSER'S MOTION TO SUSPEND PROCEEDINGS PENDING DISPOSITION OF U.S. DISTRICT COURT ACTION** is being deposited with the United States Postal Service by first-class mail addressed to:

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7 Celestron Acquisition, LLC

8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 CELESTRON ACQUISITION, LLC, a) Case No : CV 07-05368 DDP (JCx)
13 Delaware limited liability company;)

14 Plaintiff,

) **FIRST AMENDED COMPLAINT**
) **FOR DAMAGES AND**
) **INJUNCTIVE RELIEF FOR**

15 v.

16
17 NEXTAR, INC., a California)
18 corporation; NEXTAR (HONG KONG))
19 LIMITED, a Hong Kong corporation;)
20 and DOES 1 through 10, inclusive,)

) **1. FEDERAL TRADEMARK**
) **INFRINGEMENT**
) **2. FALSE DESIGNATION OF**
) **ORIGIN**
) **3. COMMON LAW TRADEMARK**
) **INFRINGEMENT**
) **4. UNFAIR COMPETITION**
) **5. FEDERAL TRADEMARK**
) **DILUTION**

21 Defendants

) **DEMAND FOR JURY TRIAL**

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24
25
26 Plaintiff Celestron Acquisition, LLC ("Celestron"), a Delaware limited
27 liability company, alleges as follows:

28 ///
///

COPY

1 trademark NEXSTAR to identify, advertise and promote its telescopes and
2 telescope accessories (the "NEXSTAR Mark").

3 12 On January 23, 2001, Celestron's predecessor registered NEXSTAR
4 as a trademark on the Principal Register in the United States Patent and Trademark
5 Office for use in connection with "telescopes and parts therefor, namely, hand
6 controls, eyepieces, star diagonals, star pointer fingerscopes and mounting
7 brackets, ac adapters, tripods, and motor drives to move the telescopes." At all
8 times relevant to the claims alleged herein, U S. Registration No 2,408,412 has
9 been and remains in full force and effect and the exclusive property of Celestron
10 by assignment duly recorded in the U S. Patent and Trademark Office.

11 13 On January 23, 2001, Celestron's predecessor registered NEXSTAR
12 (and design) as a trademark on the Principal Register in the United States Patent
13 and Trademark Office for use in connection with "telescopes and parts therefor,
14 namely, hand controls, eyepieces, star diagonals, star pointer fingerscopes and
15 mounting brackets, ac adapters, tripods, and motor drives to move the telescopes."
16 At all times relevant to the claims alleged herein, U S. Registration No 2,423,081
17 has been and remains in full force and effect and the exclusive property of
18 Celestron by assignment duly recorded in the U S. Patent and Trademark Office

19 14 Since as least as early as December 2001, Celestron and its
20 predecessor have continuously owned and used and now owns and uses the
21 NEXSTAR Mark to identify, advertise and promote Celestron's GPS telescopes
22 and GPS telescope accessory kits. Celestron's NEXSTAR branded GPS
23 Accessory Kit is more fully described in the attachment marked as Exhibit "1."

24 15 Defendants are using and displaying NEXSTAR (the "Infringing
25 Mark") to identify, advertise and sell portable GPS navigation units for cars.

26 16 The Infringing Mark is virtually the same in appearance and sounds
27 the same as Celestron's registered mark. Defendants have not obtained or sought
28

1 permission from Celestron to use the Infringing Mark or any variation thereof for
2 any purpose whatsoever.

3 17 On information and belief, Defendants have intentionally and
4 knowingly used, and continue to use the Infringing Mark for the purpose of trading
5 off Celestron's reputation and the goodwill associated with NEXSTAR for the
6 purpose of causing confusion, mistake or deception as to the sponsorship of
7 Defendants' GPS devices.

8 18 Celestron has been contacted by Defendants' irate customers who
9 have complained about the inferior quality of Defendants' GPS devices under the
10 mistaken belief that Celestron has authorized the sale of these products.

11 19 Celestron notified Nextar U S. of the exclusive rights of Celestron to
12 NEXSTAR as its trademark and demanded that Defendants cease and desist from
13 all further use of the Infringing Mark. Nextar U S has refused to comply with this
14 demand, thereby forcing Celestron to file this action

15
16 FIRST CLAIM FOR RELIEF

17 Federal Trademark Infringement

18 15 U S C § 1114(a) - Against All Defendants

19 20 Celestron realleges herein paragraphs 1-19 of this complaint.

20 21 Defendants are using and displaying the Infringing Mark to identify,
21 advertise and promote their GPS devices, which wrongful conduct creates a
22 likelihood of confusion and caused actual confusion as to the origin of Defendants'
23 GPS devices and whether Defendants are affiliated with or authorized by
24 Celestron.

25 22 On information and belief, Defendants have intentionally and
26 knowingly used, and continue to use the Infringing Mark for the purpose of trading
27 off Celestron's excellent reputation and deceiving the public as to the origin of
28 Defendants' goods.

1 23. Celestron has been damaged by the wrongful conduct of Defendants
2 as alleged above.

3 24. By reason of Defendants' wrongful conduct, Celestron is entitled to
4 recover Defendants' wrongful profits and Celestron's actual damages plus treble
5 damages and plus attorneys' fees and costs as an exceptional case within the
6 meaning of the Lanham Act, 15 U.S.C. § 1117(a).

7 25. Unless preliminarily and permanently enjoined by this Court,
8 Defendants will continue to infringe Celestron's registered trademarks, forcing
9 Celestron to file multiple actions to defend its trademark rights and to prevent
10 Celestron's actual and potential customers from becoming confused.

11
12 SECOND CLAIM FOR RELIEF

13 False Designation of Origin, 15 U.S.C. § 1125(a)

14 (Against All Defendants)

15 26. Celestron realleges herein paragraphs 1-19 of this complaint

16 27. Defendants' unauthorized use and display of the Infringing Mark to
17 identify, advertise and promote Defendants' GPS devices create a likelihood of
18 confusion and actual confusion as to the origin of Defendants' GPS devices and
19 Defendants' affiliation with Celestron.

20 28. Defendants conduct as alleged above has damaged, and unless
21 restrained and enjoined by this Court, will continue to cause great and irreparable
22 damage to Celestron, which damage cannot be adequately compensated or
23 measured by money alone. Celestron has no adequate remedy at law

24 29. Defendants have engaged in the foregoing conduct knowingly and
25 willfully. As a result, Celestron is entitled to Defendants' wrongful profits and
26 Celestron's actual damages, plus treble damages and plus attorneys' fees and costs
27 as an exceptional case within the meaning of the Lanham Act, 15 U.S.C. § 1117(a)

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6. For an order requiring Defendants to disgorge all revenues received from the sale of GPS devices bearing the Infringing Mark;

7 For Celestron's reasonable attorneys' fees and costs of suit incurred herein; and

8 For such other and further relief as this Court may deem just and appropriate.

DATED: October 19, 2007

Respectfully submitted,
GRACE & GRACE LLP


Michael K. Grace
Attorneys for Plaintiff
Celestron Acquisition, LLC

1 DEMAND FOR JURY TRIAL

2
3 Pursuant to FRCP Rule 38, plaintiff Celestron Acquisition, LLC demands a
4 jury trial on all issues so triable.

5
6
7 DATED: October 19, 2007

Respectfully submitted,
GRACE & GRACE LLP

8 

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10 Michael K. Grace
11 Attorneys for Plaintiff
12 Celestron Acquisition, LLC

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GRACE & GRACE LLP
444 South Flower Street, Suite 3875
Los Angeles, CA 90071

EXHIBIT 1



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UP LEVEL

NAVIGATIONAL ACCESSORIES

SkyScout™ Personal Performance

RELATED ITEMS

SkyScout NEW
item no. 93970



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GPS Accessory Kit CN16 (NexStar I, Nexstar SE)
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GPS Accessory Kit CN16 (CGE)
item no. 93967



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NexRemote Telescope Control Software
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NexRemote CD Only
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SEE MORE

Buy Now

GPS Accessory Kit CN16 (NexStar i, Nexstar SE) (item no. 93963)

\$ 273.95

Description

REGISTER

WARRANTY



DESCRIPTION

TOP ▲

Improve the accuracy of your initial star alignments by plugging in the GPS module into your telescope's drive base port. The CN-16 will link up and automatically download the exact time, date longitude and latitude from one of many global positioning satellites.

*The GPS accessory #93963 is designated for use with the NexStar 5i and 8i telescopes

**The GPS accessory #93963 will also work with NexStar SE series computerized telescopes, however, it can not be mounted to the optical tube as pictured. You may simply set the GPS accessory into the accessory tray.

PREMIER DEALERS

TOP ▲

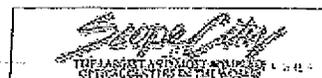
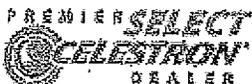


EXHIBIT 1
PAGE 12

EXHIBIT A

8/16/2007

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PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18, employed in the County of Los Angeles, State of California, and not a party to the within action. My business address is 444 South Flower Street, Suite 3875, Los Angeles, California 90071.

On October 22, 2007, I caused the foregoing document described as **FIRST AMENDED COMPLAINT** to be served on counsel for the parties in this action in the manner indicated below:

Jon M. Leader
Gary J Gorham
LEADER KOZMOR GORHAM LLP
1990 South Bundy Drive, Suite 390
Los Angeles, CA 90025
310.696.3300 Telephone
310.696.3305 Facsimile

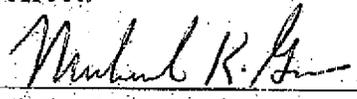
Counsel for Defendants:
Nextar, Inc. and Nextar (Hong Kong) Limited

X (BY HAND DELIVERY) by personally delivering the document(s) listed above to the person(s) at the following address: 312 N. Spring St., Los Angeles, CA 90012.

Executed on October 22, 2007, at Los Angeles, California

I hereby certify that I am a member of the Bar of the United States District Court, Central District of California

I hereby certify under penalty of perjury that the foregoing is true and correct.



Michael K. Grace

1
2 **PROOF OF SERVICE**

3 I, the undersigned, certify and declare that I am over the age of 18, employed
4 in the County of Los Angeles, State of California, and not a party to the within
5 action; my business address is 444 South Flower Street, Suite 3875, Los Angeles,
6 California 90071.

7 On October 31, 2007, I served true copies of **FIRST AMENDED**
8 **COMPLAINT** by depositing said documents in the United States Mail in a sealed
9 envelope with the postage thereon fully prepaid to the following

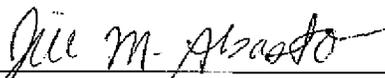
10 Nextar (Hong Kong) Limited
11 Citicorp Centre Unit 1712, 17/F , 18 Whitfield Road
12 Causeway
13 Hong Kong

14 I am readily familiar with the firm's practice of collection and practicing
15 correspondence for mailing. Under that practice it would be deposited with U.S.
16 postal service on that same day with postage thereon fully prepaid at Los Angeles,
17 California in the ordinary course of business. I am aware that on motion of the
18 party served, service is presumed invalid if postal cancellation date or postage
19 meter date is more than one day after date of deposit for mailing in affidavit

20 Executed on October 31, 2007, at Los Angeles, California.

21 I hereby certify that I am a member of the Bar of the United States District
22 Court, Central District of California

23 I hereby certify under penalty of perjury that the foregoing is true and
24 correct.

25 
26 Jill M. Abasto
27
28

1 Jon M. Leader (Cal. Bar No 147059)
jleader@lkglaw.com
2 Gary J. Gorham (Cal. Bar No 171061)
ggorham@lkglaw.com
3 LEADER KOZMOR GORHAM LLP
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5 Telecopy: (310) 696-3305

6 Attorneys for Defendants
Nextar, Inc. and
7 Nextar (Hong Kong) Limited

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 CELESTRON ACQUISITION, LLC, a
Delaware limited liability company;

13 Plaintiff,

14 vs.

15 NEXTAR, INC., a California
16 corporation; NEXTAR (HONG KONG)
LIMITED, a Hong Kong corporation;
17 and DOES 1 through 10, inclusive,

18 Defendants.

Case No. CV 07-05368 DDP (JCx)

**DEFENDANT NEXTAR (HONG
KONG) LIMITED'S ANSWER TO
FIRST AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

19 Defendant Nextar (Hong Kong) Limited ("Defendant"), for itself and
20 for no other persons or entities, responds to the First Amended Complaint for
21 Damages and Injunctive Relief (the "FAC") filed by plaintiff Celestron
22 Acquisition, LLC ("Plaintiff") as follows:

23 1. Defendant denies the allegation in paragraph 1 of the FAC that
24 Defendant has engaged in any trademark infringement. Defendant further
25 denies that it has engaged in any acts that are deceiving the public or that it
26 refuses to cease and desist from infringing any rights that Plaintiff actually
27 has. Defendant lacks sufficient information upon which to admit or deny
28

1 Plaintiff's allegation that it is a "leading designer and manufacturer of
2 telescopes with GPS attachments under the NEXSTAR trademark."

3 2. Defendant admits the allegation in paragraph 2 of the FAC that
4 this Court has subject matter jurisdiction over Plaintiff's claims under 28
5 U.S.C §§ 1331 and 1338, but denies that any such claims have merit.

6 Defendant admits that this Court has the discretion to exercise supplemental
7 jurisdiction over Plaintiff's state law claims for relief, but does not concede
8 that the Court should do so, and denies that any such claims have merit.

9 3. Defendant denies the allegation in paragraph 3 of the FAC that
10 Defendant has transacted, operated or solicited business in this District.

11 4. Defendant admits the allegation in paragraph 4 of the FAC that
12 venue is proper in this judicial district

13 5. Defendant lacks sufficient information upon which to admit the
14 allegations in paragraph 5 of the FAC.

15 6. Defendant lacks sufficient information upon which to admit or
16 deny the allegations in paragraph 6 of the FAC.

17 7. Defendant admits the allegation in paragraph 7 of the FAC that it
18 is a corporation duly organized and existing under the laws of Hong Kong.
19 Defendant further admits that owns its company name "Nextar" and that it
20 has granted a license to defendant Nextar, Inc. to use the name "Nextar" in
21 connection with its business in the United States. Defendant denies each and
22 every other allegation in paragraph 7 of the FAC.

23 8. Defendant lacks sufficient information or other belief upon which
24 to admit or deny the allegations in paragraph 8 of the FAC.

25 9. Defendant denies the allegation in paragraph 9 of the FAC that it
26 is the agent, servant, employee, co-conspirator and/or associate of any other
27 defendant(s) in this action, or that it has acted in the course and scope of any
28 such relationship.

1 10. Defendant lacks sufficient information upon which to admit or
2 deny the allegations in paragraph 10 of the FAC.

3 11. Defendant lacks sufficient information upon which to admit or
4 deny the allegations in paragraph 11 of the FAC.

5 12. Defendant lacks sufficient information upon which to admit or
6 deny the allegations in paragraph 12 of the FAC.

7 13. Defendant lacks sufficient information upon which to admit or
8 deny the allegations in paragraph 13 of the FAC.

9 14. Defendant lacks sufficient information upon which to admit or
10 deny the allegations in paragraph 14 of the FAC.

11 15. Defendant denies the allegation in paragraph 15 of the FAC that it
12 has directly used its company name in advertising and selling portable GPS
13 automobile navigation units. Defendant further denies that the company
14 name "Nextar" is an "Infringing Mark."

15 16. Defendant denies the allegation in paragraph 16 of the FAC that
16 the company name "Nextar" is virtually the same in appearance and sounds
17 the same as any marks that Plaintiff claims to have registered. Defendant
18 admits that it has not sought permission from Plaintiff to use the company
19 name "Nextar", and denies that it was obligated to do so.

20 17. Defendant denies each and every allegation in paragraph 17 of the
21 FAC.

22 18. Defendant denies that any products associated with the "Nexstar"
23 company name are of "inferior quality." Defendant lacks sufficient
24 information upon which to admit or deny the other allegations in paragraph
25 18 of the FAC.

26 19. Defendant lacks sufficient information upon which to admit or
27 deny the allegations in paragraph 19 of the FAC.

28

1 20 With regard to paragraph 20 of the FAC, which incorporates the
2 allegations in paragraphs 1-19 of the FAC, Defendant also incorporates all of
3 its denials and admissions to the incorporated paragraphs.

4 21 Defendant denies that it has directly used its company name
5 "Nextar" in connection with its advertisement, promotion, and sale of GPS
6 automobile navigation units in the United States. Defendant denies each and
7 every other allegation in paragraph 21 of the FAC.

8 22 Defendant denies each and every allegation in paragraph 22 of the
9 FAC.

10 23. Defendant denies each and every allegation in paragraph 23 of the
11 FAC.

12 24. Defendant denies each and every allegation in paragraph 24 of the
13 FAC.

14 25. Defendant denies each and every allegation in paragraph 25 of the
15 FAC.

16 26. With regard to paragraph 26 of the FAC, which incorporates the
17 allegations in paragraphs 1-19 of the FAC, Defendant also incorporates all of
18 its denials and admissions to the incorporated paragraphs.

19 27. Defendant denies each and every allegation in paragraph 27 of the
20 FAC.

21 28. Defendant denies each and every allegation in paragraph 28 of the
22 FAC.

23 29. Defendant denies each and every allegation in paragraph 29 of the
24 FAC.

25 30. With regard to paragraph 30 of the FAC, which incorporates the
26 allegations in paragraphs 1-19 of the FAC, Defendant also incorporates all of
27 its denials and admissions to the incorporated paragraphs.

28

1 31. Defendant denies that it directly uses its company name "Nextar"
2 in connection with the advertisement, promotion, and sale of GPS automobile
3 navigation units. Defendant further denies each and every other allegation in
4 paragraph 31 of the FAC.

5 32. Defendant denies each and every allegation in paragraph 32 of the
6 FAC.

7 33. Defendant denies each and every allegation in paragraph 33 of the
8 FAC.

9 34. Defendant denies each and every allegation in paragraph 34 of the
10 FAC.

11 35. Defendant denies each and every allegation in paragraph 35 of the
12 FAC.

13 36. With regard to paragraph 36 of the FAC, which incorporates the
14 allegations in paragraphs 1-19 of the FAC, Defendant also incorporates all of
15 its denials and admissions to the incorporated paragraphs.

16 37. Defendant admits that it uses its company name "Nextar" in
17 connection with its advertisement, promotion, and sale of GPS automobile
18 navigation units, but denies that such conduct constitutes "unlawful or unfair
19 actions in violation of California Business & Professions Code §§ 17200 *et*
20 *seq.*"

21 38. Defendant denies each and every allegation in paragraph 38 of the
22 FAC.

23 39. Defendant denies each and every allegation in paragraph 39 of the
24 FAC.

25 40. Defendant denies each and every allegation in paragraph 40 of the
26 FAC.

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SIXTH AFFIRMATIVE DEFENSE

(Fair Use)

Plaintiff's claims are barred, in whole or in part, because any conduct by Defendant constitutes a fair use under the Lanham Act.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Prior Use)

Plaintiff's claims are barred, in whole or in part, because any use by Defendant of its company name in connection with the advertisement and sale of any products would have taken place prior to Plaintiff's use of any marks that Plaintiff alleges to be similar.

ELEVENTH AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

Plaintiff's claims are barred, in whole or in part, because any conduct by Defendant does not result in a likelihood of confusion.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (No Actual Injury)

3 Plaintiff's claim for unfair competition and dilution is barred because
4 Plaintiff has not sustained an actual injury as a result of any conduct by
5 Defendant.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 (No Likelihood of Deception)

8 Plaintiff's claim for unfair competition is barred, in whole or in part,
9 because no likelihood of deception exists.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (Justification)

12 Plaintiff's claims are barred, in whole or in part, because any conduct
13 by Defendant was justified.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Adequate Legal Remedies)

16 Plaintiff's claims for equitable relief are barred, in whole or in part,
17 because Plaintiff's legal remedies are adequate.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 (No Reasonable Probability of Success on the Merits)

20 Plaintiff's claims for injunctive relief are barred, in whole or in part,
21 because no reasonable probability exists that Plaintiff will succeed on the
22 merits of its claims.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 (Balance of Hardships)

25 Plaintiff's claims for injunctive relief are barred, in whole or in part,
26 because the hardship and prejudice that would be imposed on Defendant if
27 such relief is granted outweigh any hardship or prejudice that would be
28 imposed on Plaintiff if such relief is not granted.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 (Lack of Distinctive Mark)

3 Plaintiff's claims are barred, in whole or in part, because Plaintiff's
4 purported marks at issue in its claims are not distinctive.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 (Innocent Local Use)

7 Plaintiff's claims are barred, in whole or in part, because any use by
8 Defendant of its company name constitutes an innocent local use under the
9 Lanham Act and common law

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 (Business Judgment Rule)

12 Plaintiff's claims are barred, in whole or in part, by the business
13 judgment rule.

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

15 (Good Faith)

16 Plaintiff's claims are barred, in whole or in part, because Defendant
17 acted in good faith.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19 (Trademark is Functional)

20 Plaintiff's claims are barred, in whole or in part, because Plaintiff's
21 trademark is functional.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 (Generic Trademark)

24 Plaintiff's claims are barred, in whole or in part, because Plaintiff's
25 trademark is generic.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 (Descriptive Trademark)

3 Plaintiff's claims are barred, in whole or in part, because Plaintiff's
4 trademark is descriptive.

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 (No Secondary Meaning)

7 Plaintiff's claims are barred, in whole or in part, because Plaintiff's
8 trademark lacks any secondary meaning.

9 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

10 (Non-Famous Mark)

11 Plaintiff's claim of dilution is barred, in whole or in part, because
12 Plaintiff's trademark is not famous.

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 (Blurring)

15 Plaintiff's claim of dilution is barred, in whole or in part, because
16 Plaintiff's selling power and trademark value has not been diluted by
17 blurring.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 (Tarnishment)

20 Plaintiff's claim of dilution is barred, in whole or in part, because
21 Plaintiff's trademark has not been tarnished.

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 (Availability of Additional Affirmative Defenses)

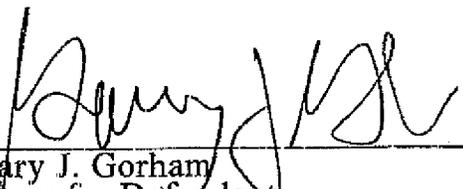
24 Defendant currently has insufficient knowledge or information upon
25 which to form a belief as to the availability of additional, as yet unstated,
26 affirmative defenses. Therefore, Defendant reserves the right to assert
27 additional affirmative defenses in the event that discovery reveals that facts
28 exist to support such additional, and currently unknown affirmative defenses.

1 Wherefore, Defendant Nextar (Hong Kong) Limited prays for relief as
2 follows:

- 3 A. For an Order dismissing Plaintiff's claims for relief, and each of
4 them, with prejudice;
- 5 B. For Judgment in favor of defendants;
- 6 C. For an award of attorneys' fees and costs of suit; and
- 7 D. For such other and further relief as this Court may deem just and
8 proper.

9
10 Dated: November 28, 2007

LEADER KOZMOR GORHAM LLP

11
12 By: 
13 Gary J. Gorham
14 Attorneys for Defendant
15 NEXTAR, INC.

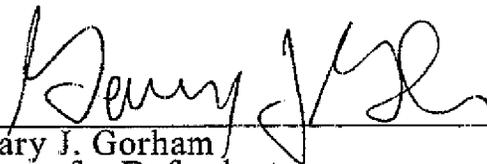
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DEMAND FOR JURY

Defendant Nextar (Hong Kong) Limited hereby demands trial by jury
on all issues so triable.

Dated: November 28, 2007

LEADER KOZMOR GORHAM LLP

By: 
Gary J. Gorham
Attorneys for Defendant
NEXTAR, INC.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

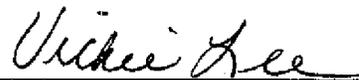
3
4 I am employed in the County of Los Angeles, State of California. I am over the
5 age of 18 and not a party to the within action. My business address is 1990 S. Bundy
6 Drive, Suite 390, Los Angeles, CA 90025. On November 28, 2007, I served the
7 foregoing document described as: **DEFENDANT NEXTAR (HONG KONG)
LIMITED'S ANSWER TO FIRST AMENDED COMPLAINT; DEMAND FOR
JURY TRIAL** on the interested parties in this action by placing the original [] a true
copy [X] thereof enclosed in a sealed envelope addressed as set forth below:

8 Michael K Grace, Esq.
9 Jill M Abasto, Esq.
10 GRACE & GRACE LLP
11 444 South Flower Street, Suite 3875
12 Los Angeles, CA 90071
(213) 452-1222 Facsimile
mgrace@gracelaw.com
jabasto@gracelaw.com

13 **(X) By Mail:** I am readily familiar with this firm's practice for collection and processing
14 of correspondence for mailing. Under that practice it would be deposited with the U S
15 Postal Service on that same day with postage thereon fully prepaid in the ordinary course
16 of business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter date is more than one day after date of deposit
for mailing contained in affidavit

17 **() By Facsimile Transmission:** On November 28, 2007, I caused the above-named
18 documents to be transmitted by facsimile transmission, from fax number (310) 696-3305,
19 to the offices of the addressee(s) at the facsimile number(s) so indicated above. The
20 transmission was reported as complete and without error. A copy of the transmission
report properly issued by the transmitting facsimile machine is attached hereto

21 I declare I am employed in the offices of a member of the State Bar of this Court
22 at whose direction the service was made. I declare under penalty of perjury under the
23 laws of the United States of America that the above is true and correct. Executed on
24 November 28, 2007 at Los Angeles, California

25 

26 Vickie Lee