ESTTA Tracking number: **ESTTA315712**
Filing date: **11/06/2009**

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

Proceeding	91184213
Party	Defendant Direct Access Technology, Inc.
Correspondence Address	MICHAEL C. OLSON 1400 BRISTOL STREET N SUITE 270 NEWPORT BEACH, CA 92660 UNITED STATES molson@lawyer.com
Submission	Other Motions/Papers
Filer's Name	Michael C. Olson
Filer's e-mail	molson@lawyer.com
Signature	/mco/
Date	11/06/2009
Attachments	dat.request.judicial.notice.002.pdf (11 pages)(227447 bytes)

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

In the matter of Trademark Application Serial No. 78914975
For the mark, METAL GEAR

Galaxy Metal Gear, Inc.	)	
	)	**Opposition No. 91184213**
Opposer	)	
	)	
	)	
v.	)	
	)	**REQUEST FOR JUDICIAL NOTICE**
	)	
Direct Access Technology, Inc.	)	
	)	
Applicant	)	

APPLICANT'S REQUEST FOR JUDICIAL NOTICE

Applicant, Direct Access Technology, Inc. hereby requests that the TTAB take judicial notice of the its decision in TTAB Opposition No. 91174214 and the Amended Complaint filed therein, copies of which are attached hereto.

November 6, 2009

Respectfully Submitted,

Michael C. Olson Reg. No. 45,728

LAW OFFICE OF MICHAEL C. OLSON, P.C.
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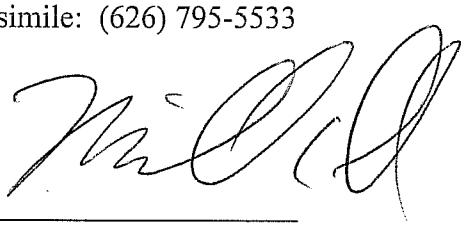
Attorneys for Applicant
Direct Access Technology, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **REQUEST FOR JUDICIAL NOTICE** with attachments was served on Jen-Feng Lee, counsel for applicant on this 6th day of November, 2009 by depositing a copy of the same in the United States mail, first class postage prepaid, addressed to:

Jen-Feng Lee, Esq.
World Esquire Law Firm, LLP
80 South Lake Avenue, Ste 708
Pasadena, CA 91101
Telephone: (626) 795-5555
Facsimile: (626) 795-5533



Michael C. Olson

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

jh/coggins

Mailed: November 20, 2007

Opposition No. 91174214

Direct Access Technology Inc

v.

Galaxy Metal Gear Inc.

On October 26, 2007, applicant filed a stipulated abandonment of its application Serial No. 76643964 with prejudice, and a stipulated withdrawal of the opposition without prejudice.

In view thereof, application Serial No. 76643964 stands abandoned with prejudice, and the opposition is dismissed without prejudice. *See* Trademark Rules 2.106(c) and 2.135.[1]

By the Trademark Trial and Appeal Board

[1] In view of the abandonment and withdrawal, opposer's outstanding motion for summary judgment is moot.

TTAB

In The United States Patent and Trade Office

Before The Trademark Trial and Appeal Board

In the matter of Trademark Application Serial Number: 76/643,964
Filed: 08/01/2005
Mark: GALAXY METAL GEAR

DIRECT ACCESS TECHNOLOGY, INC., Opposer, vs. GALAXY METAL GEAR, INC., Applicant.	Opposition No.: 91174214 **Stipulated Consent Motion for:** **1. First Amended Statement of Opposition** Action filed: 11/28/2006

COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
ALEXANDRIA, VIRGINIA 22313-1451

STIPULATED MOTION TO FILE FIRST AMENDED STATEMENT OF OPPOSITION

Whereas, the Opposer, by and through its counsel, Mr. Michael C. Olson, Esq. of Law Offices of Michael C. Olson, and the Applicant, by and through his counsel, Mr. Jen-Feng Lee, Esq. of WorldEsquire Law Firm, LLP, agreed to stipulate to move the Trademark Trail and Appeal Board for an order for the following:

1. that the attached proposed First Amended Statement of Opposition in above-entitled proceeding ("Proceeding") be accepted,

Whereas, the Applicant herein believe that this stipulation would save Opposer time and money to file Motion for leave to amend,

06-14-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

2. that Parties shall re-open discovery, including deposition(s) if concluded/closed, for inquiry into facts for claims/defenses for issues raised in the proposed First Amended Statement of Opposition.

3. that Parties agree to an additional one-time extension of four (4) months to all case management date, to be applied to the suggested new case management dates, to deal with the discovery related to the foreign entity of Data Stor as revealed by the depositions.

4. Parties proposed new case management as follows:

DISCOVERY PERIOD TO CLOSE	11/08/2007
30-day testimony period for party in position of plaintiff to close:	01/31/2008
30-day testimony period for party in position of defendant to close:	03/31/2008
15-day rebuttal testimony period of close:	05/15//2008

Michael C. Olson, counsel for Opposer, consented to this request and has reviewed and approved this Stipulated Motion.

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It is hereby requested to the Board that the attached proposed First Amended Statement of Opposition be accepted and all case management dates of the Proceeding be set as suggested by the parties herein.

Dated: June 11, 2007

By: /jflee/

Jen-Feng (Jeff) Lee
Attorney for Applicant
WorldEsquire Law Firm, LLP
80 S. Lake Avenue, Suite 708
Pasadena, CA 91101
T: 626-795-5555
F: 626-795-5533

Certificate of Service:
I hereby certify that on 06/11/2007, which is the same date I am signing this certificate, I have served one copy of this correspondence and all listed attachments upon Opposer by mailing the same, first class postage prepaid to *Micahel C. Olson, Law Office of Michael C. Olson, 4400 MacArthur Blvd., Ste. 230, Newport Beach, CA 92660.*
/jflee/
Jen-Feng (Jeff) Lee

ATTACHMENT

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

In the matter of Trademark Application Serial No. 76/643,964
For the mark, GALAXY METAL GEAR

Direct Access Technology, Inc.	)	
	)	**Opposition No. 91174214**
Opposer	)	
	)	**First Amended Statement of**
	)	**Opposition to Trademark**
vs.	)	**Application for the mark**
	)	**GALAXY METAL GEAR**
	)	
	)	
Galaxy Metal Gear, Inc.	)	
	)	
Applicant	)	

FIRST AMENDED STATEMENT OF GROUNDS FOR OPPOSITION

As grounds for its opposition, it is alleged as follows:

1. Galaxy Metal Gear Inc. seeks to register on the Principal Register the mark GALAXY METAL GEAR BOX in International Class 009. The goods on which the mark will be used are listed as EXTERNAL HARD DRIVE AND OPTICAL DRIVE ENCLOSURE CASE. The

application was filed on August 1, 2005, alleging the mark was first used in commerce as of April 1, 2005. Publication for opposition occurred on September 26, 2006. Applicant is a corporation owned by individuals who were prior employees of Opposer and who opened a business to compete with Opposer, selling the same goods as Opposer sells under a confusingly similar mark as Opposer's mark.

2. Opposer is the owner of the common law trademark METAL GEAR, which Opposer has used in Commerce prior to Applicant's filing of the application for GALAXY METAL GEAR BOX . Opposer has used the mark on enclosures for external computer hard drives since at least May 14, 2003. The goods on which the mark has been used are as follows: ENCLOSURES FOR EXTERNAL COMPUTER HARD DRIVES. On June 22, 2006 Opposer filed an application to register its mark METAL GEAR on the principal register.

3. Applicant's mark is confusingly similar to Opposer's mark, and some of the goods of Applicant are identical to some of the goods of Opposer and there is, therefore, a likelihood of confusion between the goods of Opposer and the goods of Applicant.

4. Through its efforts at promotion, and by virtue of the excellence and quality of its products, the Opposer has gained a valuable reputation and distinctiveness in the mark METAL GEAR.

5. If Applicant is permitted to register GALAXY METAL GEAR BOX for the goods in International class 009, as specified in the application herein being opposed, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark and the Opposer's mark are confusingly similar.

6. Applicant alleges in its application that it is the owner of the mark GALAXY METAL

GEAR BOX. In actuality, Applicant's averment is untrue. The Applicant's goods bearing the said mark are imported by an entity known as Tech Depot, which sells the said goods to Applicant and to others. The Applicant is a mere distributor of goods bearing the mark of another.

7. Tech Depot is a former customer of Opposer. While a customer of Opposer, Tech Depot purchased goods bearing the METAL GEAR mark from Opposer. Tech Depot and Applicant have common owners, so at the time Applicant filed it application to trademark GALAXY METAL GEAR BOX it knew that it did not own the mark. Applicant committed fraud at the time it filed its application in averring that it was the owner of GALAXY METAL GEAR BOX. Applicant is perpetuating that fraud by continuing to prosecute its application for registration.

Respectfully Submitted,

Michael C. Olson
Registration No. 45,728