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

Proceeding	91186373
Party	Defendant Weather Decision Technologies, Inc.
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Date	10/24/2008
Attachments	53789A Motion for Judgment.pdf (5 pages)(41380 bytes)

53789A

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

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In re Application of: :

WEATHER DECISION TECHNOLOGIES, INC. :

Serial No.: 77/193,495 :

Filed: May 30, 2007 :

Mark: CLEARPOINT HD WEATHER :

Published: May 13, 2008 :

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PEERSAT, :

Opposer, :

v. : Opposition No. 91186373

WEATHER DECISION TECHNOLOGIES, INC., :

Applicant. :

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MOTION FOR JUDGMENT

Applicant, Weather Decision Technologies, Inc., who intended to file in the U.S. Patent and Trademark Office Trademark Trial and Appeal Board (hereinafter, "Board") this motion as a Motion To Dismiss For Failure To State A Claim concurrent with its October 22, 2008 answer to the Notice of Opposition, hereby respectfully moves for dismissal grounded on the Opposer's failure to state a claim upon which the Board can grant relief.

Applicant lists as follows a number of bases for the Board to grant this motion, and any single one is respectfully believed sufficient support for the Board to grant this motion.

1. Opposer, PeerSat, has no standing as memorialized in the Notice of Opposition.

2. Opposer improperly alleges standing only and specifically in the name of an individual identified as Roscoe M. Moore and/or Roscoe M. Moore III.

3. Opposer fails to allege likelihood of confusion under Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d) with any mark or identifier of Opposer, PeerSat.

4. Opposer improperly alleges purported marks only and specifically in the name of an individual identified as Roscoe M. Moore and/or Roscoe M. Moore III to assert likelihood of confusion under Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d),

5. Roscoe M. Moore or Roscoe M. Moore III has no standing alleged or implied in the Notice of Opposition or to be a party to the subject opposition, or both, since PeerSat, and not Roscoe M. Moore and/or Roscoe M. Moore III, filed in the United States Patent and Trademark Office Trademark Trial and Appeal Board (hereinafter, "Board") on June 9, 2008 a ninety (90) extension of time though and until September 10, 2008 to file the subject opposition, and which extension request was granted to PeerSat also on June 9, 2008.

6. No *likelihood of confusion* exists or is possible for numerous and compelling reasons, and including the fact the Notice of Opposition should be summarily denied because the alleged service mark WEATHER HD, the subject of U.S. Registration No. 3,086,331, in the name of an individual identified as Roscoe M. Moore III, and not the Opposer, PeerSat, comprises, in its entirety, terms which are and/or have become generic and incapable of functioning as a registrable service mark denoting the source or origin of any and all services identified as

"electronic delivery of images, pictures, video, and other data describing or displaying the earth's weather and environment which can be used for weather forecasting and weather reporting via a global computer network," in International Class 38; and "displaying images, pictures, video, and other data of others describing or displaying the earth's weather and environment which can be used for weather forecasting and weather reporting via a global computer network," in International Class 42, or which convey and/or have come to convey a generic meaning for goods and services in a wide range of fields and industries, and including multimedia, computer, Internet video, science, technology and weather, and which cannot be exclusively appropriated to the exclusion of Applicant or others in the multimedia, computer, Internet video, science, technology and weather fields and related industries.

7. No *likelihood of confusion* exists or is possible for numerous and compelling further reasons, and including the fact the Notice of Opposition should be summarily denied because the alleged service mark claimed service mark HD WEATHER, the subject of U.S. Registration No. 3,161,100, in the name of an individual identified as Roscoe M. Moore, and not the Opposer, PeerSat, comprises, in its entirety, terms which are and/or have become generic and incapable of functioning as a registrable service mark denoting the source or origin of any and all services identified as "electronic delivery of images, pictures, video, and other data describing or displaying the earth's weather and environment which can be used for weather forecasting and weather reporting via a global computer network," in International Class 38; and "displaying images, pictures, video, and other data of others describing or displaying the earth's weather and environment which can be used for weather forecasting and weather reporting via a global computer network," in International Class 42, or which convey and/or have come to convey a

generic meaning for goods and services in a wide range of fields and industries, and including multimedia, computer, Internet video, science, technology and weather, and which cannot be exclusively appropriated to the exclusion of Applicant or others in the multimedia, computer, Internet video, science, technology and weather fields and related industries.

8. The Notice of Opposition also should be summarily denied because Opposer lacks standing, in part attributable to the irrefutable material fact that Opposer's allegations are based on erroneous, exclusive claims in and to the terms HD and WEATHER, which have been in extensive use as descriptive or generic identifiers of goods and services in a wide range of fields and industries, and including multimedia, computer, Internet video, science, technology and weather.

WHEREFORE, Applicant respectfully requests that this motion be granted and the Opposition be dismissed.

Respectfully submitted,

WEATHER DECISION TECHNOLOGIES, INC.

Dated: October 24, 2008

By: _____

~~Stephen G. Janoski~~
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CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing Motion For Judgment was served by first class mail, postage prepaid, this 24th day of October, 2008, upon PeerSat 1111 Army Navy Drive, Suite 1203, Arlington, Virginia 22202, the Opposer.

Stephen A. Straub