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

Proceeding	91198355
Party	Defendant Think Computer Corporation
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Date	03/07/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FACEBOOK, INC.

Opposer,

v.

THINK COMPUTER CORPORATION,

Applicant.

Opposition No. 91198355

**ANSWER TO NOTICE OF
OPPOSITION**

Mark: FACEMAIL

Serial No. 85/056,260

Filing Date: June 7, 2010

ANSWER

Think Computer Corporation (“Applicant”) answers the Notice of Opposition filed by Facebook, Inc. as follows:

1. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 of Opposer’s Notice of Opposition. Accordingly, the allegation is denied.
2. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of Opposer’s Notice of Opposition. Accordingly, the allegation is denied.
3. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 of Opposer’s Notice of Opposition. Accordingly, the allegation is denied.
4. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 4 of Opposer’s Notice of Opposition. Accordingly, the allegation is denied.
5. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 of Opposer’s Notice of Opposition. Accordingly, the allegations are denied.
6. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6 of Opposer’s Notice of Opposition. Accordingly, the allegations are

denied.

7. Admits the allegations in paragraph 7 of Opposer's Notice of Opposition.
8. Admits the allegations in paragraph 8 of Opposer's Notice of Opposition.
9. Admits the allegations in paragraph 9 of Opposer's Notice of Opposition.
10. Admits the allegations in paragraph 10 of Opposer's Notice of Opposition.
11. Denies the allegations in paragraph 11 of Opposer's Notice of Opposition.
12. Admits the allegations in paragraph 12 of Opposer's Notice of Opposition.
13. Admits the allegations in paragraph 13 of Opposer's Notice of Opposition.
14. Admits the allegations in paragraph 14 of Opposer's Notice of Opposition.
15. Admits the allegations in paragraph 15 of Opposer's Notice of Opposition.
16. Admits the allegations in paragraph 16 of Opposer's Notice of Opposition.
17. Denies information or knowledge sufficient to form a belief as to the truth of the

allegations in paragraph 17 of Opposer's Notice of Opposition. Accordingly, the allegations are denied.

18. Denies the allegations in paragraph 18 of Opposer's Notice of Opposition.
19. Admits the allegations in paragraph 19 of Opposer's Notice of Opposition.
20. Denies information or knowledge sufficient to form a belief as to the truth of the

allegations in paragraph 20 of Opposer's Notice of Opposition. Accordingly, the allegations are denied.

21. Admits the allegations in paragraph 21 of Opposer's Notice of Opposition.
22. Admits the allegations in paragraph 22 of Opposer's Notice of Opposition.
23. Denies the allegations in paragraph 23 of Opposer's Notice of Opposition.
24. Denies the allegations in paragraph 24 of Opposer's Notice of Opposition.
25. Denies the allegations in paragraph 25 of Opposer's Notice of Opposition.
26. Denies the allegations in paragraph 26 of Opposer's Notice of Opposition.
27. Denies the allegations in paragraph 27 of Opposer's Notice of Opposition.
28. Denies the allegations in paragraph 29 of Opposer's Notice of Opposition.
29. Denies the allegations in paragraph 30 of Opposer's Notice of Opposition.
30. Admits the allegations in paragraph 31 of Opposer's Notice of Opposition.
31. Denies the allegations in paragraph 32 of Opposer's Notice of Opposition.
32. Denies the allegations in paragraph 33 of Opposer's Notice of Opposition.
33. Denies the allegations in paragraph 34 of Opposer's Notice of Opposition.
34. Denies the allegations in paragraph 36 of Opposer's Notice of Opposition.
35. Admits the allegations in paragraph 37 of Opposer's Notice of Opposition.
36. Admits the allegations in paragraph 38 of Opposer's Notice of Opposition.
37. Admits the allegations in paragraph 39 of Opposer's Notice of Opposition.

- 38. Admits the allegations in paragraph 40 of Opposer's Notice of Opposition.
- 39. Admits the allegations in paragraph 41 of Opposer's Notice of Opposition.
- 40. Denies information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 42 of Opposer's Notice of Opposition. Accordingly, the allegations are denied.
- 41. Denies the allegations in paragraph 43 of Opposer's Notice of Opposition.
- 42. Denies the allegations in paragraph 44 of Opposer's Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

43. Applicant is a well-known and highly respected software company that has conducted business worldwide since 1998. It has been firmly established in the media and through prior proceedings before the Trademark Trial and Appeal Board (the TTAB) that Applicant was the originator of a unique computer software application referred to interchangeably as "The Universal Face Book," "The Face Book," "The Facebook" and later, "FaceNet," at Harvard University in 2003.

44. Applicant and Opposer are in fact closely connected in that the CEO of Applicant, Aaron Greenspan, and the CEO of Opposer, Mark Zuckerberg, were simultaneously enrolled at Harvard University in 2003 and 2004, and further enrolled in the very same independent study computer science course in the spring of 2004. During the time period in which they overlapped, Mr. Zuckerberg was a heavy user of Applicant's Facebook software application, and without Applicant's permission or consent, he deliberately reverse engineered Applicant's work in order to create his own software application, which he referred to by the same name and publicized without Applicant's involvement. Mr. Zuckerberg did all of this despite communicating informally with Mr. Greenspan on a regular basis.

45. Completely independent of Opposer, Applicant's CEO studied facial recognition at Harvard University as early as 2001. These studies, and not Opposer (which did not yet exist), provided ample basis for Applicant's later innovations concerning faces and related computer technology.

46. For decades prior to Applicant's existence, Harvard University and many other universities nationwide had already used the term "facebook" to refer to an annual class register (in other words, a physical book) in which students' biographical details were presented next to images of their respective faces. The name of Applicant's software application was directly based upon this rich history of usage by educational institutions. At some point before the existence of Opposer, the term was adopted by corporations wishing to provide employee directories, as well. These circumstances formed the basis of a trademark dispute between

Applicant and Opposer beginning in 2008.

47. Applicant and Opposer reached a settlement agreement in May, 2009 concerning Applicant's two Petitions to Cancel Opposer's FACEBOOK and THEFACEBOOK trademarks (Cancellation Nos. 92049206 and 92050675). The goal of reaching such a settlement was undoubtedly, among other things, to avoid further unnecessary litigation related to trademarks. Nonetheless, Opposer has persisted in pursuing legal action against Applicant related to trademarks.

SECOND AFFIRMATIVE DEFENSE

48. Opposer's actions have consistently demonstrated that Opposer lacks credibility. Up until February 27, 2011, Opposer's web site contained a press release with the heading "May 22, 2009: Facebook and Think Computer Corporation Resolve Trademark Dispute." On February 27, 2011, this release suddenly vanished, replaced instead by the words "February 27, 2011" (or the present date). It is virtually impossible that such an omission is purely the result of a software error or mere coincidence given that the problem seems to affect only one press release out of many. Opposer's blatantly revisionist policy, which is also in direct violation of Opposer's settlement agreement with Applicant, demonstrates Opposer's clear willingness to bend or ignore the truth as it sees fit.

49. Upon information and belief, Opposer has filed its Notice of Opposition as a means of harassing the Applicant.

50. Upon information and belief, Opposer has a documented history of willful negligence and hostility based upon numerous civil disputes nationwide.

51. Upon information and belief, Opposer has in the past perpetrated and is presently perpetrating fraud on the USPTO by making sworn false statements, by maintaining these proceedings against Applicant, which are completely without merit, and by expressly holding the authority of the USPTO in contempt.

52. As a result of the foregoing, the claims made in Opposer's Notice of Opposition must fail under the doctrines of fraud and unclean hands.

THIRD AFFIRMATIVE DEFENSE

53. Opposer is well-known as a "trademark bully." With billions of dollars in outside investment, Opposer appears to consider the court system, the United States Patent and Trademark Office and the TTAB within it to be nothing more than tools it can use to fend off potential competitive threats before they actually materialize.

54. Opposer callously disregards the TTAB's resources and wastes taxpayer dollars on a frequent basis. Opposer has instantiated unjustified trademark litigation against Lamebook LLC, Teachbook.com LLC, Femillionaires LLC, Vision Promotions, Inc., Applicant, and many others for the independent use of the common words "face" and "book," to which Opposer owns no legal rights whatsoever in the United States of America.

55. Opposer has never used the word "face" in the context of a trademark apart from the word "book." Nor has Opposer ever used the word "mail" in a trademark context to describe its communications software.

FOURTH AFFIRMATIVE DEFENSE

56. Opposer's attempts to enforce its alleged rights are arbitrary and inconsistent, reflecting the fact that Opposer's rights are not nearly as strong as it claims. Opposer has never contested the use of the FACEBOOK mark by Harvard University or any other educational institution, when such institutions use the mark to describe the same goods and services as those provided by Opposer.

57. Applicant is the owner of Registration No. 3,779,390 for FACECASH. Opposer did not oppose Applicant's application for this registration and never made an attempt to cancel the registration, despite the clear fact that like FACEMAIL, FACECASH contains the distinctive "face" prefix. If Opposer's claims regarding its effectively exclusive right to this prefix were valid, Opposer would have sought to prevent said registration, but it did not, reflecting the fact that Opposer presently has no rights to the word "face" in the United States of America and the fact that Opposer does not consider the existence of all "face" prefix trademarks—even "face" prefix trademarks related to the domain in which it conducts business—to be confusing or misleading.

58. Despite more than ample resources and opportunity, Opposer did not oppose Applicant's application Serial No. 85/020,189 for FACEPASS, despite the clear fact that like FACEMAIL, FACEPASS contains the distinctive "face" prefix. If Opposer's claims regarding its effectively exclusive right to this prefix were valid, Opposer would have opposed both applications, but it did not, reflecting the fact that Opposer presently has no rights to the word "face" in the United States of America and the fact that Opposer does not consider the existence of all "face" prefix trademarks—even "face" prefix trademarks related to the domain in which it conducts business—to be confusing or misleading.

59. Widespread uses of the words "face" and "book" in trademarks registered with the United States Patent and Trademark Office pre-date Opposer's existence by decades, if not centuries.

FIFTH AFFIRMATIVE DEFENSE

60. No matter how large Opposer claims its customer base to be, there will always be far more users of the internet than there are paying customers of Opposer who engage in interstate commerce.

61. Opposer routinely fails to clearly distinguish between the number of customers who pay for its goods and services in interstate commerce, the number of unique visitors to its web site, and the number unique and valid accounts it maintains on behalf of visitors.

62. Despite Opposer's size, not all internet users are familiar with Opposer. So many people use the internet who are not familiar with Opposer at all, or who deliberately choose not to be a customer of Opposer, that there exists a sizeable market for other companies whose products and services do not overlap at all with Opposer's. Therefore, contrary to Opposer's claims, Applicant's intended product offerings do not by definition overlap with Opposer's product offerings.

SIXTH AFFIRMATIVE DEFENSE

63. Certain marks not belonging to Opposer or Applicant and beginning with the "face" prefix are already famous, specifically in the field of internet-related networking.

64. Consumers with an interest in Applicant's product are likely to be aware of said famous marks, and aware that said famous marks do not originate with Opposer. For this reason as well as others, consumers are unlikely to believe that every mark with the "face" prefix denotes a connection to Opposer, as a clear precedent exists that not all famous "face" prefix-type marks do.

SEVENTH AFFIRMATIVE DEFENSE

65. Opposer fails to provide any documents whatsoever to support its claims of trademark dilution.

66. Opposer fails to provide any documents whatsoever to support its claims of Applicant choosing its FACEMAIL mark based solely upon on the success of Opposer's web site.

67. Opposer fails to provide any documents whatsoever to support its claims of Applicant choosing its FACEMAIL mark with the intent to deceive or confuse consumers.

68. Opposer fails to provide any documents whatsoever to support claims of actual customer confusion in the marketplace.

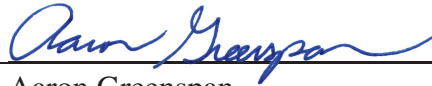
WHEREFORE, Applicant respectfully requests that Opposer's Notice of Opposition be denied, that Opposer be formally rebuked for its repeated waste of taxpayer resources, and that Applicant's application for Serial No. 85/056,260 be permitted to proceed to registration.

Respectfully submitted,

THINK COMPUTER CORPORATION

Dated: March 7, 2011

By



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CERTIFICATE OF MAILING AND SERVICE

I certify that on March 7, 2011, the foregoing **ANSWER** is being electronically transmitted to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on March 7, 2011, the foregoing **ANSWER** is being served by electronic mail to:

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By 

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