

ESTTA Tracking number: **ESTTA638616**

Filing date: **11/12/2014**

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

Proceeding	91210559
Party	Plaintiff NetCloud, LLC
Correspondence Address	MORRIS E TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VILLAGE #220 CHESTERFIELD, MO 63017-8208 UNITED STATES morris@yourtrademarkattorney.com
Submission	Rebuttal Brief
Filer's Name	Morris E. Turek
Filer's e-mail	morris@yourtrademarkattorney.com
Signature	/met20/
Date	11/12/2014
Attachments	NetCloud Rebuttal Brief.pdf(269366 bytes ) Exhibit A to NetCloud Rebuttal Brief.pdf(34060 bytes ) Exhibit B to NetCloud Rebuttal Brief.pdf(1522241 bytes ) Exhibit B to NetCloud Rebuttal Brief (Part 2).pdf(4724222 bytes ) Exhibit C to NetCloud Rebuttal Brief.pdf(26366 bytes )

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

NetCloud, LLC )  
Opposer, )  
v. ) Opposition No. 91210559  
East Coast Network Services, LLC )  
Applicant. )  
\_\_\_\_\_ )

**REBUTTAL BRIEF OF OPPOSER NETCLOUD, LLC**

**TABLE OF AUTHORITIES**

**AUTHORITY**

**PAGES**

*Worldwide Enterprises Group Inc. v. Qinqdao Brewery*  
17 U.S.P.Q.2d 1137 (TTAB 1990)..... 7

**TABLE OF CONTENTS**

Opposer’s Response to Applicant’s Evidentiary Objections..... 4-7

Opposer’s Response to Applicant’s Legal Arguments..... 7-10

Conclusion..... 10

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

NetCloud, LLC )  
Opposer, )  
v. ) Opposition No. 91210559  
East Coast Network Services, LLC )  
Applicant. )  
\_\_\_\_\_ )

**OPPOSER’S REBUTTAL BRIEF**

Opposer Netcloud, LLC (“Opposer”) hereby files this Rebuttal Brief in support of its position that its Notice of Opposition against Application Serial No. 85777557 be sustained and that registration to Applicant be refused. For purposes of brevity, Opposer will only be responding to the specific points raised by Applicant and will refrain from reiterating its case-in-chief as laid out in its trial brief.

**OPPOSER’S RESPONSE TO APPLICANT’S EVIDENTIARY OBJECTIONS**

**A. Hearsay Objections**

In its brief, Applicant objects to the admission of Exhibits 14 through 23 of Mehul Satasia’s testimony deposition on the basis that they are inadmissible hearsay. Applicant’s Brief, 2. Specifically, Applicant asserts that the exhibits consist of third-party business records that have not been properly authenticated or certified under Rule 803(6)(D) of the Federal Rules of Evidence. *Id.* Opposer strongly disagrees with Applicant’s assertions. These exhibits consist of invoices that were paid by Opposer (and its predecessors-in-interest) in the course of rendering its services. Satasia Depo., 31:22 – 45:18. Although the invoices were not created by Mr. Satasia or Opposer, Mr. Satasia testified as to exactly what these invoices were for, the company

from which he received the invoices, the services for which he was invoiced, and the date of the invoices. *Id.* Mr. Satasia also testified that each exhibit was a true, authentic, and accurate copy of the invoice he received from the company. *Id.* Therefore, Exhibits 14 through 23 of Mehul Satasia's testimony deposition are admissible and do not violate any of the Federal Rules of Evidence.

## **B. Relevance Objections**

Applicant next objects to the admission of all evidence purporting to show use of NETCLOUD by any entity or individual other than Opposer on the basis that all such evidence is beyond the scope of the pleadings and, therefore, irrelevant. Applicant's Brief, 5-6.

Specifically, Applicant argues that the Notice of Opposition failed to provide any notice that Opposer intended to rely on use of NETCLOUD by Opposer's predecessors-in-interest. *Id.* In addition, Applicant asserts that it "was not provided any notice that would prompt Applicant to investigate, take discovery, and explore affirmative defenses such as abandonment regarding any usage of the NETCLOUD mark by Opposer's multiple purported predecessors-in-interest."

Applicant's Brief, 6.

Besides the fact that Applicant *failed to object on the record* to any of the oral testimony of Mr. Satasia or Mr. Viradia during their testimony depositions and objected only to the admission of some of Opposer's exhibits, Applicant's assertion that it was not put on notice of Opposer's predecessors-in-interest is a bald-faced lie. On October 29, 2013 (almost three months before the close of discovery), Opposer served on Applicant (1) Supplemental Responses to Applicant's First Set of Requests for the Production of Documents and Things, and (2) Revised and Supplemental Responses to Applicant's First Set of Interrogatories (attached as **Exhibit A**). Applicant concurrently served on Applicant documents labeled NC000018 through

NC000038 (attached as **Exhibit B**). NC000018 through NC000029 show the formation of Opposer and the purported transfer of the NETCLOUD name from Raj Viradia to Mehul Satasia, and then from Mehul Satasia to Opposer. NC000030 through NC000038 prominently show use of the NETCLOUD mark by an individual named “Raj Viradia.” Furthermore, Exhibit 2 of Mr. Viradia’s deposition (NC000016) was served on Applicant on September 24, 2013, which purportedly shows Raj Viradia as the “Owner” of “NetCloud Web Hosting Solutions.” All documents testified to by Mr. Viradia and Mr. Satasia during their testimony depositions were served on Applicant early in the discovery period such that Applicant had ample time and opportunity to conduct further discovery on the issue of alleged prior use of NETCLOUD. Moreover, Opposer’s Initial Disclosures specifically listed Raj Viradia and Mehul Satasia as potential witnesses (attached as **Exhibit C**). Therefore, Applicant’s claim that it was not put on notice of Opposer’s predecessors-in-interest and that it was deprived of an opportunity to meet Opposer’s evidence at trial is wholly without merit.

Finally, Applicant objects to all evidence proffered by Opposer to establish priority through use analogous to service mark use on the basis that analogous use was not pleaded in the Notice of Opposition. Applicant’s Brief, 6. Again, Applicant *failed to object on the record* to any of the oral testimony of Mr. Satasia or Mr. Viradia during their testimony depositions (although Applicant did object to the admission of some of the exhibits). But even so, Opposer is not relying solely on use that may or may not be considered technical service mark use. Rather, Opposer is relying on actual service mark usage of NETCLOUD in commerce by Opposer’s predecessors-in-interest (Raj Viradia and Mehul Satasia) dating back prior to the November 12, 2012 filing date of Applicant’s application. Furthermore, Applicant has cited no

case which holds that Opposer cannot admit evidence of non-technical service mark use which may help to support Opposer's allegations of actual service mark use.

### **OPPOSER'S RESPONSE TO APPLICANT'S LEGAL ARGUMENTS**

Applicant asserts that since its application filing date of November 12, 2012 precedes the formation of Opposer in December 2012, Applicant's constructive first use of NETCLOUD *ipso facto* precedes Opposer's usage of any similar mark. Applicant's Brief, 7. Although Opposer admits that it was not legally formed until after Applicant's application was filed, Opposer acquired all rights in the NETCLOUD name and associated goodwill from Mehul Satasia, who had previously acquired all rights in the NETCLOUD name and associated goodwill from Raj Viradia back in February 2012. Viradia Depo., Ex. 13; Satasia Depo., Exs. 6, 10. As such, Applicant's argument has no merit.

Applicant next argues that the use of NETCLOUD by Opposer's predecessors-in-interest was illegal under state law and should not be credited for the purpose of establishing or maintaining priority in the NETCLOUD trademark. Applicant's Brief, 7-8. First of all, Applicant has not submitted into evidence copies of the state laws alleged to have been violated by Mr. Satasia and Mr. Viradia. Second, even if the Board was to consider Applicant's paraphrasing of the statutes as set forth in its trial brief, the statutes do not state that any commerce is considered *per se* illegal if there is a lack of compliance with the statutes. And third, the "lawful use" in commerce doctrine is based solely upon the USPTO's interpretation of the use in commerce requirement of the Trademark Act, as necessitating use in compliance with the other Acts of Congress. *Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery*, 17 U.S.P.Q.2d 1137, 1141 (TTAB 1990). Consequently, "unlawful" must be held to imply only such commerce as is unlawful under the Acts of Congress. *Id.* Of course, neither of the state

statutes cited by Applicant are “Acts of Congress.” Therefore, the use of NETCLOUD by Opposer’s predecessors-in-interest is lawful under the Trademark Act.

Applicant further argues that Mr. Viradia’s acquisition of domain names incorporating the NETCLOUD name does not constitute trademark use for the purpose of establishing priority. Applicant’s Brief, 8. Opposer agrees that such domain acquisition is not trademark use. The testimony of Mr. Viradia regarding the domain names was merely to show the Board the development of his web hosting business and the reasoning behind the price for which he eventually sold his NETCLOUD business to Mehul Satasia.

Finally, Applicant argues that Opposer has failed to demonstrate use of its NETCLOUD mark sufficient to acquire common law rights prior to the filing date of Applicant’s application for NETCLOUD. Applicant’s Brief, 9-10. Although Applicant attempts to diminish and make light of the use by Raj Viradia of NETCLOUD in connection with his web hosting services, he had at least three ongoing, paying clients at the time he sold the business and transferred the NETCLOUD mark to Mehul Satasia. He deliberately and continuously rendered web hosting services under the NETCLOUD mark to Hilltop Hospitality from December 2009 through at least the beginning of 2012. Viradia Depo., 16:15 – 21:11, Exs. 4-8. He deliberately and continuously rendered web hosting services under the NETCLOUD mark to Ohmshiv Construction from September 2010 through at least the beginning of 2012. Viradia Depo., 21:15 – 23:12, Exs. 9-10. He deliberately and continuously rendered web hosting services under the NETCLOUD mark to Schematic Design from November 2009 through at least the beginning of 2012. Viradia Depo., 23:16 – 26:4, Exs. 11-12. It is true that Mr. Viradia’s NETCLOUD web hosting business was not very large, but it was also being conducted while Mr. Viradia was

employed full-time keeping books at a construction company of which he was a partner. Viradia Depo., 5:11-20, 7:14-20.

In contrast to Applicant's assertions, there is absolutely nothing in the record that suggests Mr. Viradia's NETCLOUD business was a casual, sporadic, illegitimate, or transitory commercial enterprise. In fact, he even purchased a domain name (<netcloud.com>) for \$25,000 at the beginning of 2012 in anticipation of "getting more serious" about growing the NETCLOUD business. Viradia Depo., 10:9 – 11:16. Opposer also notes that Mr. Viradia previously owned and sold two other web hosting businesses, which tends to indicate that Mr. Viradia is a legitimate businessman. Viradia Depo., 12:21 – 13:5, 10:14-22.

When Mr. Viradia sold his business to Mehul Satasia in February 2012, the three or four clients he was servicing were transferred to Mr. Satasia. Satasia Depo., 20:21-21-5, Ex. 6. Opposer continues to service those clients. Satasia Depo., 21:4-5. Mr. Satasia continued to provide cloud hosting and email service under the NETCLOUD trademark after purchasing the business from Mr. Viradia. Satasia Depo., 29:11 – 30:6, Ex. 12; Satasia Depo., 30:23 – 31:16, Ex. 13. He also continued to actively advertise his business under the NETCLOUD mark through the distribution of flyers at business networking events and meet-ups. Satasia Depo., 27:19 – 28:17, Ex. 11. All of this was done prior to the filing date of Applicant's application for NETCLOUD.

On December 31, 2012, Mr. Satasia transferred all assets of his web hosting business to Opposer. Satasia Depo., 25:3-14, 26:5-11, Ex. 10. This included all tangible and intangible assets, including the service mark NETCLOUD and its associated goodwill. Satasia Depo., 26:12-22, Ex. 10. Mr. Satasia retained no ownership interest in any of the assets transferred to Opposer, including the NETCLOUD service mark. Satasia Depo., 26:23 – 27:4, 27:8-10.





# **EXHIBIT A**

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

NetCloud, LLC )  
Opposer, )  
v. ) Opposition No. 91210559  
East Coast Network Services, LLC )  
Applicant. )  
\_\_\_\_\_ )

**OPPOSER’S REVISED AND SUPPLEMENTAL RESPONSES TO  
APPLICANT’S FIRST SET OF INTERROGATORIES**

Opposer NetCloud, LLC (“Opposer”), hereby provides, under oath, revised and supplemental responses to Applicant’s First Set of Interrogatories as follows:

1. Please identify the date on which Opposer intends to rely in this proceeding for its first use of the NETCLOUD Mark.

**RESPONSE:** November 2009.

2. Please identify the date on which Opposer intends to rely in this proceeding for its first use of the NETCLOUD Mark in interstate commerce.

**RESPONSE:** Opposer objects to this Request on the basis of relevancy. Opposer need only prove a first use of the NETCLOUD Mark, not a first use in interstate commerce.

3. For each document and thing produced in response to Applicant’s First Set of Requests for the Production of Documents and Things, please provide the approximate month

and year in which the document or thing was first distributed and/or displayed to a potential purchaser of Opposer's services.

**RESPONSE:** Most of the documents produced by Opposer already show the date of the document. In regard to NC000016 and NC000017, the documents were first used in 2011. In regard to NC000030, the document was first used in 2009.



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

NetCloud, LLC )  
Opposer, )  
v. ) Opposition No. 91210559  
East Coast Network Services, LLC )  
Applicant. )  
\_\_\_\_\_)

**OPPOSER’S SUPPLEMENTAL RESPONSES TO APPLICANT’S FIRST SET OF  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Opposer NetCloud, LLC (“Opposer”), hereby provides supplemental responses to Applicant’s First Set of Requests for the Production of Documents and Things, as well as additional documents, as follows:

1. Please produce all non-privileged documents and things which support Opposer’s response to Interrogatory #1 of Applicant’s First Set of Interrogatories to Opposer.

**RESPONSE:** Opposer will produce relevant, non-privileged documents in its possession, custody, or control that are responsive to this request and that a diligent search and reasonable inquiry will uncover. These supplemental documents are labeled NC000018 through NC000038.

2. Please produce all non-privileged documents and things which support Opposer’s response to Interrogatory #2 of Applicant’s First Set of Interrogatories to Opposer.

**RESPONSE:** Opposer objects to this Request on the basis of relevancy. Opposer need only prove a first use of the NETCLOUD Mark, not a first use in interstate commerce.

3. Please produce a representative sampling of all non-privileged documents and things which demonstrate continuous use of the NETCLOUD Mark from its inception to the date of Opposer's response to this First Set of Requests for the Production of Documents and Things.

**RESPONSE:** Opposer will produce relevant, non-privileged documents in its possession, custody, or control that are responsive to this request and that a diligent search and reasonable inquiry will uncover. These supplemental documents are labeled NC000018 through NC000038. Furthermore, Opposer's website is located at [www.netcloud.com](http://www.netcloud.com). Opposer's social media accounts are located at:

<https://twitter.com/NetCloudLLC>

<https://www.facebook.com/NetCloudLLC>

<https://plus.google.com/110690177135755978150/about>

<http://www.linkedin.com/company/netcloud>

Respectfully submitted,

NETCLOUD, LLC

By: \_\_\_\_\_/met20/

Dated: \_\_\_\_\_ 10/29/2013

Morris E. Turek  
YourTrademarkAttorney.com  
167 Lamp and Lantern Village, #220  
Chesterfield, MO 63017-8208  
Tel: (314) 749-4059  
Fax: (800) 961-0363  
[morris@yourtrademarkattorney.com](mailto:morris@yourtrademarkattorney.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served by sending said copy on \_\_\_\_\_ 10/29/2013 \_\_\_\_\_ via First-Class Mail, postage pre-paid, to:

Russell Logan  
Attorney at Law  
2735 Westminster Rd.  
Ellicott City, MD 21043-3599

and via email to:

Russell Logan  
Attorney for Applicant  
[russell.logan@gmail.com](mailto:russell.logan@gmail.com)

\_\_\_\_\_/met20/  
Morris E. Turek, Attorney for Opposer

# **EXHIBIT B**

## ASSET PURCHASE AGREEMENT

THIS Agreement is made as of February 9, 2012 (the "Effective Date"), by and between Raj Viradia d/b/a NetCloud with an address of 3462 Lockmed Drive, Norcross, GA 30092, hereinafter referred to as "Seller", and Mehul Satasia with an address of 8813 Glen Canyon Drive, Round Rock, TX 78681, hereinafter referred to as "Buyer"

WHEREAS, Buyer desires to purchase the Business (as hereinafter defined) and substantially all of the assets of the Business owned by Seller; and

WHEREAS, Seller desires to sell the Business and substantially all of the assets of the Business to Buyer; and

WHEREAS, Seller and Buyer are desirous of reducing to writing the terms of their understanding with regard to the purchase and sale of the Business and substantially all of the assets of the Business.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. SALE OF BUSINESS. Subject to the terms and conditions provided herein, Seller shall transfer, assign, sell and convey to Buyer, except as described below, all of its rights, title and interest, tangible or intangible, in and to the web hosting business currently conducted by NetCloud and the assets used in the operation of the business (the "Business"), including but not limited to, those assets set forth on Schedule A attached hereto and made a part hereof (the "Transferred Assets") relating to NetCloud property (the "Property"), including all accounts, goodwill, trade names including the trade name "NetCloud" and domain names, service marks, customer lists, customer records and related customer information in whatever form contained or maintained, contract rights, lease rights, and other assets used in the business by Seller. **THE FOLLOWING ASSETS AND LIABILITIES WILL BE RETAINED BY SELLER:** (a) cash and bank accounts; (b) payments received for goods and services rendered through February 9, 2012; (c) accounts payable and accrued liabilities for goods and services rendered through February 9, 2012.

2. PURCHASE TERMS/CLOSING. Subject to the terms hereof, Buyer will pay Seller \$26,656.50 USD, which shall be paid in two installments:

(1) \$1 upon the execution of this Agreement.

(2) Remaining balance of \$26,655.50 to be paid by 12/31/2012.

Upon execution of this of agreement, Buyer will assume responsibility for operating the Business.

3. TRANSFER OF ASSETS. Seller shall deliver to Buyer at closing conveyance documents as are necessary or appropriate to transfer the assets of the Business to Buyer, free and clear of any liens or encumbrances of any nature whatsoever except as specifically set forth in this Agreement.

4. TAXES. Seller shall be liable and responsible for all taxes arising from Seller's operation of the Business up to and including the day of closing.

5. PRORATION. Seller and the Buyer hereby acknowledge and agree that any and all taxes, insurance, rents, payroll, deposits and other expenses which are unbilled but have accrued as of the Closing Date shall be prorated between the parties outside of closing as of the end of business on the date of closing.

6. DEFERRED REVENUE FROM SERVICE. Buyer shall assume all of Seller's liabilities relating to services that have been paid for but not yet rendered as of closing. Buyer will honor all existing customer contracts in effect at the time of closing.

7. LIABILITIES OF SELLER. It is expressly agreed and understood between Seller and Buyer that Buyer is acquiring the assets of the Business, and that Buyer is not assuming any debts or liabilities of Seller.

8. NOTICE. All notices, requests, demands and other communications hereunder shall be delivered to the respective parties either personally, by registered or certified mail, return receipt requested, first class postage prepaid, at the addresses set forth herein or by recognized overnight courier (FedEx, UPS).

If to Seller: Raj Viradia  
3462 Lockmed Drive  
Norcross, GA 30092

If to Buyer: Mehul Satasia  
8813 Glen Canyon Drive  
Round Rock, TX 78681

9. CONSTRUCTION AND SURVIVAL. This Agreement is the complete agreement between the parties and any contracts previously executed between the parties, along with such other written or verbal representations or warranties as may have been made by either party, their broker, agents, or assigns, are merged into this Agreement and are extinguished, except as set forth herein. The warranties, representations, covenants and provisions contained in this Agreement shall survive the closing and shall continue in full force and effect.

10. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns and legal representatives.

11. BREACH. In the event of a breach or threatened breach by either party of any of the provisions of this Agreement, or collateral documents, the other party shall have the right to invoke any remedy allowed at law or in equity; reference to any particular remedy shall not preclude the exercise of any other remedies, all of which being cumulative, and the failure of a party to exercise any power hereunder or to insist upon strict compliance for the other party with any obligations hereunder, shall not constitute a waiver of any rights to demand compliance with the terms thereof.

12. ATTORNEY'S FEES. The prevailing party in any action or procedure in court or mutually agreed arbitration proceeding to enforce terms of this Agreement is entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expense from the non-prevailing party.

13. GOVERNING LAW. This Agreement shall be governed by and construed according to the laws of the State of Texas.

14. SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be enforceable and valid under applicable law, but if any provision of this Agreement, or any word, phrase, clause, sentence or other portion thereof shall be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

15. RELIANCE. The parties do agree and affirm that no representations, warranties, or inducements are relied upon by either party except those set forth herein in the execution of this Agreement.

16. ENTIRE AGREEMENT. This Agreement and the other agreements or instruments expressly referred to herein and executed concurrently with this Agreement, supersede and cancel all prior negotiations, agreements, representations, warranties and communications, whether oral or written, between the parties hereto relating to the transactions contemplated hereby or the subject matter herein. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

17. FURTHER ASSURANCES. At any time and from time to time after the closing, at Buyer's request and without further consideration, Seller shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation and take such action as Buyer may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to Buyer, and to confirm Buyer's title to, all of the assets transferred, to put Buyer in actual possession and operating control thereof, and to assist Buyer in exercising all rights with respect thereto.

[SIGNATURE PAGE FOLLOWS]

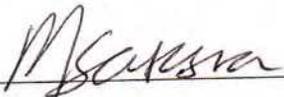
*MS* *MS*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SELLER  
Raj Viradia d/b/a NetCloud

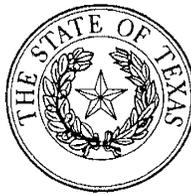
By:  02/09/2012  
Raj Viradia

BUYER  
Mehul Satasia

By:  02/09/2012  
Mehul Satasia

**Schedule A**  
**Assets**

1. Customer list: sdiengineers.com, schematicdesigninc.com, ohmshiv.com, daysinn-atlanta.com
2. Domain names: netcloud.com, netcloud.us
3. Web Hosting Reseller Account: HostRocket RocketOrbit



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

NetCloud, LLC  
File Number: 801699693

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 12/11/2012

Effective: 01/01/2013



A handwritten signature in black ink that reads "John Steen".

John Steen  
Secretary of State

**Form 403**  
**(Revised 05/11)**

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
**Filing Fee: \$15**



This space reserved for office use.

## Certificate of Correction

### Entity Information

1. The name of the filing entity is:

NETCLOUD, LLC

State the name of the entity as currently shown in the records of the secretary of state. If the certificate of correction corrects the name of the entity, state the present name and not the name as it will be corrected.

The file number issued to the filing entity by the secretary of state is: 801699693

### Filing Instrument to be Corrected

2. The filing instrument to be corrected is : Effectiveness of Filing

The date the filing instrument was filed with the secretary of state: 12/14/2012

*mm/dd/yyyy*

### Identification of Errors and Corrections

(Indicate the errors that have been made by checking the appropriate box or boxes; then provide the corrected text.)

The entity name is inaccurate or erroneously stated. The corrected entity name is:

The registered agent name is inaccurate or erroneously stated. The corrected registered agent name is:

Corrected Registered Agent  
(Complete either A or B, but not both.)

A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

*First*

*Middle*

*Last Name*

*Suffix*

The person executing this certificate of correction affirms that the registered agent, whose name is being corrected by this certificate, consented to serve as registered agent at the time the filing instrument being corrected took effect.

The registered office address is inaccurate or erroneously stated. The corrected registered office address is:

Corrected Registered Office Address

<i>Street Address (No P.O. Box)</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
		TX	

The purpose of the entity is inaccurate or erroneously stated. The purpose is corrected to read as follows:

The period of duration of the entity is inaccurate or erroneously stated. The period of duration is corrected to read as follows:

**Identification of Other Errors and Corrections**

(Indicate the other errors and corrections that have been made by checking and completing the appropriate box or boxes.)

**Other errors and corrections.** The following inaccuracies and errors in the filing instrument are corrected as follows:

**Add** Each of the following provisions was omitted and should be added to the filing instrument. The identification or reference of each added provision and the full text of the provision is set forth below.

**Alter** The following identified provisions of the filing instrument contain inaccuracies or errors to be corrected. The full text of each corrected provision is set forth below:  
Effectiveness of filing for NETCLOUD, LLC needs to be corrected from 01/01/2013 to 12/31/2012.

**Delete** Each of the provisions identified below was included in error and should be deleted.

**Defective Execution** The filing instrument was defectively or erroneously signed, sealed, acknowledged or verified. Attached is a correctly signed, sealed, acknowledged or verified instrument.

### Statement Regarding Correction

The filing instrument identified in this certificate was an inaccurate record of the event or transaction evidenced in the instrument, contained an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged or verified. This certificate of correction is submitted for the purpose of correcting the filing instrument.

### Correction to Merger, Conversion or Exchange

The filing instrument identified in this certificate of correction is a merger, conversion or other instrument involving multiple entities. The name and file number of each entity that was a party to the transaction is set forth below. (If the space provided is not sufficient, include information as an attachment to this form.)

Entity name

SOS file number

Entity name

SOS file number

### Effectiveness of Filing

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed except as to persons adversely affected. As to persons adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed by the secretary of state.

### Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: 12/28/2012

By: Manager

M. Satasia  
Signature of authorized person

MEHUL K. SATASIA  
Printed or typed name of authorized person (see instructions)



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

NetCloud, LLC  
801699693

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Correction relating to an instrument that has been filed by the Secretary for the above named entity has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing.

Dated: 12/28/2012

Effective: 12/28/2012



A handwritten signature in black ink, appearing to read "John Steen".

John Steen  
Secretary of State

THIS Conveyance Agreement is made as of December 31, 2012 (the "Effective Date"), by and between Mehul Satasia d/b/a NetCloud with an address of 8813 Glen Canyon Drive, Round Rock, TX 78681, hereinafter referred to as "Transferor", and NetCloud, LLC with an address of 8813 Glen Canyon Drive, Round Rock, TX 78681, hereinafter referred to as "Transferee."

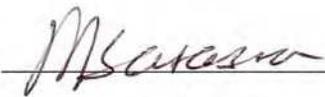
Mehul Satasia dba NetCloud (the "Transferor") shall transfer, assign, sell and convey to NetCloud, LLC (the "Transferee"), all of its rights, title and interest, tangible or intangible, in and to the web hosting business currently conducted by Mehul Satasia dba NetCloud and the assets used in the operation of the business (the "Business"), including but not limited to, those assets set forth on Schedule A attached hereto and made a part hereof (the "Transferred Assets") relating to NetCloud property (the "Property"), including all accounts, goodwill, trade names including the trade name "NetCloud" and domain names, service marks, customer lists, customer records and related customer information in whatever form contained or maintained, contract rights, lease rights, and other assets used in the business by Transferor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

TRANSFEROR  
Mehul Satasia d/b/a NetCloud

By:  \_\_\_\_\_  
Mehul Satasia

TRANSFEE  
NetCloud, LLC

By:  \_\_\_\_\_  
Mehul Satasia  
Managing Member

**Schedule A**  
**Assets**

1. All Customers
2. Service mark and trade name "NetCloud"
3. Domain names: netcloud.com, netcloud.us
4. Web Design, Logos, Website
5. Web Hosting Reseller Account

# INVOICE

Date: 12/01/2009

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Vinod Javer  
Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071

Description	Amount
Netcloud hosting II for daysinnatlanta.com / daysinn-atlanta.com from 12/01/2009 to 03/01/2010	\$ 30.00
<b>Total</b>	<b>\$ 30.00</b>

 **PAID**

# INVOICE

Date: 03/01/2010

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Vinod Javer  
Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071

Description	Amount
Netcloud hosting II for daysinnatlanta.com / daysinn-atlanta.com from 03/01/2010 to 09/01/2010	\$ 50.00
	
<b>Total</b>	\$ 50.00

# INVOICE

Date: 09/01/2010

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Vinod Javer  
Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071

Description	Amount
Netcloud hosting II for daysinnatlanta.com / daysinn-atlanta.com from 09/01/2010 to 03/01/2011	\$ 50.00
<b>Total</b>	\$ 50.00



# INVOICE

Date: 03/01/2011

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Vinod Javer  
Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071

Description	Amount
Netcloud hosting II for daysinnatlanta.com / daysinn-atlanta.com from 03/01/2011 to 09/01/2011	\$ 50.00
<b>PAID</b>	
<b>Total</b>	<b>\$ 50.00</b>

# INVOICE

Date: 09/01/2011

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Vinod Javer  
Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071

Description	Amount
Netcloud hosting II for daysinnatlanta.com / daysinn-atlanta.com from 09/01/2011 to 03/01/2012	\$ 50.00
<b>PAID</b>	
<b>Total</b>	\$ 50.00

# INVOICE

Date: 11/16/2009

From:  
Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:  
Girish Thakkar  
Schematic Design, Inc.  
6500 Papermill Drive  
Knoxville, TN 37919

Description	Amount
Netcloud hosting service - sdiengineers.com / schematicdesigninc.com from 11/16/09 to 11/15/11  	\$ 100.00
<b>Total</b>	<b>\$ 100.00</b>

# INVOICE

Date: 09/01/2010

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Ohmshiv Construction, LLC  
1805 Herrington Rd. B3-E  
Lawrenceville, GA 30043

Description	Amount
Netcloud hosting service II - ohmshiv.com from 09/01/2010 to 09/01/2011	\$ 100.00
<b>Total</b> \$ 100.00	



# INVOICE

Date: 09/01/2011

From:

Raj Viradia  
3462 Lockmed Dr.  
Norcross, GA 30092  
770-884-1524

Bill to:

Ohmshiv Construction, LLC  
1805 Herrington Rd. B3-E  
Lawrenceville, GA 30043

Description	Amount
Netcloud hosting service II - ohmshiv.com from 09/01/2011 to 09/01/2012	\$ 100.00
<b>Total</b>	<b>\$ 100.00</b>

**PAID**

# Web Hosting Solutions

**Netcloud**  
Hosting Service

Plan I:  
1GB Disk Space  
10GB Bandwidth  
Unlimited Emails  
\$5/mo

Plan II:  
3GB Disk Space  
25GB Bandwidth  
Unlimited Emails  
\$10/mo

Plan III:  
5GB Disk Space  
50GB Bandwidth  
Unlimited Emails  
\$15/mo

Raj Viradia  
3462 Lockmed Drive  
Norcross, GA 30092  
770-884-1524  
rviradia@gmail.com

Call or email to order

Get a free month when you pre-pay for 6 months  
or get 2 free months when you pre-pay for a year!

# **EXHIBIT C**

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

NetCloud, LLC )  
Opposer, )  
v. ) Opposition No. 91210559  
East Coast Network Services, LLC )  
Applicant. )  
\_\_\_\_\_ )

**INITIAL DISCLOSURES OF OPPOSER**  
**NETCLOUD, LLC**

In accordance with Federal Rule of Civil Procedure 26(a), Opposer NetCloud, LLC (“NetCloud”) hereby makes the following Initial Disclosures. These Initial Disclosures are based on information now reasonably available to NetCloud and NetCloud further reserves the right to supplement these Initial Disclosures as provided by the applicable rules and as may be necessitated by discovery, or based on other information or developments that may arise after the preparation of these Initial Disclosures. Nothing in these Initial Disclosures is intended to be an admission of fact, an affirmation of the admissibility of any document or testimony, or an acceptance of any of Applicant’s legal theories, claims, or defenses. NetCloud further makes these Initial Disclosures without waiving its right to seek a protective order in this case if necessary, and without waiving any claim of privilege, work product protection, or other basis for non-disclosure, and reserves the right to object to discovery into any listed subject matter.

**Fed. R. Civ. P. 26(a)(1)(A)(i) – Individuals Likely to Have Discoverable Information in Support of NetCloud’s Claims or Defenses**

Mehul Satasia  
Managing Member of NetCloud, LLC  
8813 Glen Canyon Dr.  
Round Rock, TX 78681  
(512) 568-9608

The above-identified individual would have information regarding the selection, creation, adoption, and development of the NETCLOUD trademark, the first use of the NETCLOUD trademark in commerce, the services with which the NETCLOUD trademark is used, the marketing and advertising of the services offered in connection with the NETCLOUD trademark, and the channels of trade in which such services are rendered.

Vinod Javer  
CEO of Hilltop Hospitality, Inc.  
5990 Western Hills Dr.  
Norcross, GA 30071  
(423) 400-0267

Girish Thakkar  
President of Schematic Design, Inc.  
9047 Executive Park Dr., Suite 226  
Knoxville, Tennessee 37923  
(865) 588-6996

Satyakam Misra  
Managing Member of WebProSys LLC  
239 New Road, Suite A321  
Parsippany, NJ 07054  
(973) 396-2727

Richard Sookar  
Owner of 00 Signs  
1590 Hampton Hollow Dr.  
Lawrenceville, GA 30043  
(678) 376-7713

Raj Viradia  
3462 Lockmed Dr.  
Norcross GA, 30092  
(678) 283-5503

The above-identified individuals would have some information regarding the use of the NETCLOUD trademark in commerce by NetCloud, the services with which the NETCLOUD trademark is used, the marketing and advertising of the services offered in connection with the NETCLOUD trademark, and/or the channels of trade in which such services are rendered.

**Fed. R. Civ. P. 26(a)(1)(A)(ii) – Category and Location of Documents, Electronically Stored Information and Tangible Things**

1. Documents and things relating to the selection, creation, adoption, and development of the NETCLOUD trademark.
2. Documents and things relating to the first use of the NETCLOUD trademark in commerce.
3. Documents and things relating to the services with which the NETCLOUD trademark is used.
4. Documents and things relating to the advertising and marketing of the services offered in connection with the NETCLOUD trademark.
5. Sales records, receipts, and other financial records related to the operation of NetCloud and the offering of its services under the NETCLOUD trademark.

These documents, electronically stored information, and tangible things would primarily be located at:

NetCloud, LLC  
8813 Glen Canyon Dr.  
Round Rock, TX 78681

