TTAB

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

BOX TTAB NO FEE

FRAM TRAK INDUSTRIES, INC., Petitioner,	
v.	CANCELLATION NO.: 92043947
WIRETRACKS LLC, Registrant.	*(Reg. No. 2883311)*

Box TTAB NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

January 11, 2005

ANSWER

Registrant, WireTracks LLC, through its attorney, hereby responds to the Cancellation Petitioner's Petition for Cancellation having a mailing date of December 3, 2004.

This Answer is timely filed by the certificate of mailing procedure on January 11, 2005, which is within the set period of 40 days, which period would expire on January 12, 2005.

01-13-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #66

FIRST DEFENSE

The Petition for Cancellation fails to state a claim upon which a Petition for Cancellation can be sustained.

SECOND DEFENSE

For answer to the paragraphs of the Petition for Cancellation, without waiver of any defense available or recognizable at law, Registrant, Wiretracks LLC, answers as follows:

1. Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of Paragraph 1 of the Petition for Cancellation.

2. Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of Paragraph 2 of the Petition for Cancellation.

3. Pending receipt of a certified copy of the file history referred to in the Petition for Cancellation, Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of Paragraph 3 of the Petition for Cancellation.

4. Pending receipt of a certified copy of the file history referred to in the Petition for Cancellation, Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of Paragraph 4 of the Petition for Cancellation.

5. Admitted as to the date named of March 3, 2003, except this date is not the earliest date on which the mark was used. The date claimed is that the mark was used at least as early as March 3, 2003. Thus, the date of March 3, 2003 does not represent the earliest date of use, which was earlier.

6. Denied. Petitioner's goods are for surface mounted products, whereas Registrant's goods are completely hidden in use, or at least mostly hidden in use. Further, while Registrant believes the goods do not travel in the same channels of trade, Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of the channels of trade of Paragraph 6 of the Petition for Cancellation. Also, regarding the allegation in paragraph 6 that the goods "could be offered for sale by the same retail outlets", Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations of the retail outlets of Paragraph 6 of the Petition for Cancellation.

7. Denied. The marks are different: Registrant's mark is a single word, while Petitioner's mark consists of two separate words. Registrant's mark is plural, ending in the letter "s", whereas Petitioner's mark is singular. Further, Registrant's mark consists of 10 letters including the letter "c", whereas Petitioner's mark consists of merely 8 letters and does not include the letter "c" anywhere.

8. Denied.

9. Denied, as to the allegation that Petitioner is entitled to registration rather than Registrant. Petitioner's alleged date of first use is unknown to Registrant, who has actively practiced, advertised, and marketed his mark in interstate commerce, and therefore with respect to the allegation of the Petitioner's date of first use, and Registrant was completely unaware of Petitioner's mark despite Registant's knowledge of his competitors in this industry; and therefore Registrant, Wiretracks LLC, has no information sufficient to form a belief with respect to the allegations usage of the mark "WIRE TRAK" of Paragraph 9 of the Petition for Cancellation. Even since that time, as evidenced by an online search for the respective marks by Registrant, it is believed that Registrant has made greater and more substantial marketing efforts than Petitioner, and has invested much more heavily in promotion of the mark: as of January 2, 2005; for example, a Google® search revealed 2,980 hits for the mark "wiretracks", whereas there were only 156 such its for the mark "wire trak".

THIRD DEFENSE

Registrant has extensively marketed and sold its products since a date at least as early as the filing date of Registrant's mark. During that time, Registrant has not experienced even a single instance of confusion of its mark with that of the Petitioner's.

FOURTH DEFENSE

Petitioner evidently was fully aware of the existence of Registrant's mark during the period for Opposition of Registrant's mark. Petitioner's failure to Oppose the mark during this period is believed to be a waiver of rights, or at the least to constitue evidence a belief on the part of Petitioner that there was no likelihood of confusion between the marks.

Wherefore Registrant, Wiretracks LLC, prays that the Petition for Cancellation be denied and that no relief be granted to Petitioner.

Respectfully submitted,

Michael J. Foycik, Jr.
Attorney for Registrant (DC Bar)
Reg. No. 30,928

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CERTIFICATE OF MAILING

Mark: WIRETRACKS

CANCELLATION NO. 92043947

Petitioner FRAM TRAK INDUSTRIES, INC., v. WIRETRACKS LLC, Registrant.

Type of Filing: ANSWER

I do hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on January 11, 2005 .

January 11, 2005
(date of deposit)

(Signature)

Michael J. Foycik, Jr.
(Typed or printed name of the person signing the certificate)

CERTIFICATE OF SERVICE

This is to certify that a true copy of the ANSWER was served by first-class mail, postage prepaid on January 11, 2005 on:

Todd A. Denys
Attorney for Petitioner
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Michael J. Foycik, Jr.

1/11/2005
Date signed