

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

In the matter of U.S. Registration No.: 2520801
Registered on: December 18, 2001

TTAB

15, 742606

)
DEEPSEA POWER & LIGHT, INC.)
)
Petitioner)
)
v.)
)
POWERLINX, INC.)
)

Registrant)

Cancellation No.: 92046649

OPPOSITION TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT AND
MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME
AND SUPPORTING BRIEF

Registrant respectfully opposes Petitioner's motion for default judgment, and requests that the Board allow Registrant leave to file its Answer out of time. A copy of said **Answer** is attached hereto as **Exhibit A**.

The Petition for Cancellation was mailed by the Patent and Trademark Office on November 21, 2006 to an old address and was never received by the Registrant. (Registrant has now updated its address with the Office.) Rather, this cancellation proceeding was discovered on January 16, 2007 by Registrant's attorneys in a routine audit of its files. Immediately upon obtaining Registrant's instructions, the undersigned attorney prepared to file the instant motion, brief, and answer without delay. In the course of such preparation, Registrant's attorney noted that on January 18, 2007, the Board accepted an Amended Petition for Cancellation filed by the Petitioner,

and allowed the Registrant forty days to file an answer. Accordingly, the Answer attached as Exhibit A responds to the Amended Petition for Cancellation.

Given the additional 40 days granted by the Board on January 18, 2007, Registrant is uncertain whether a motion to file the Answer out of time is even required in this instance, but given the Motion for Default Judgment recently filed by the Petitioner, Registrant would rather make sure that all issues have been clearly addressed. Registrant respectfully requests that the Board accept the attached Answer as timely filed, as there will clearly be no damage as a result to Opposer in light of the Board's January 18, 2007 order. In addition, the failure on Registrant's part to Answer the originally filed Petition for Cancellation was not motivated by bad-faith or willful misconduct, but was simply a result of an error in the address to which the original Petition for Cancellation was sent. Applicant respectfully requests that the Answer be filed and entered.

"Good cause" is usually found to have been established if the delay in filing an answer is not the result of willful conduct or gross negligence, if it will not result in substantial prejudice to the Opposer, and if Applicant has a meritorious defense. Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc., 21 USPQ2d 1556, 1557 (TTAB 1992). In Fred Hayman, the attorney inadvertently failed to note that the completed answer had not been filed prior to taking a vacation, and the Board held that inadvertence did not amount to willful conduct or gross neglect. Id. As in that case, Applicant herein has realized its error prior to the Entry of Default Judgment, and even responded within a 40-day period granted by the Board to respond to an amended Petition, it is believed that such delay should not prove prejudicial to Opposer.

The facts set forth in this Motion and Brief are verified by the signature of the undersigned attorney; all statements made of her own knowledge are true and all statements made on information and belief are believed to be true.

WHEREFORE, Registrant respectfully requests that it be granted leave to file the Answer out of time.

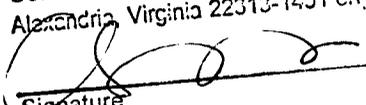
Respectfully submitted,

POWERLINX, INC.

Date: January 30, 2007

By: 
Lori Stockton Kozak

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1431, Alexandria, Virginia 22313-1431 ca. 1/30/07
 1/30/07
Signature Date

PROOF OF SERVICE

I, Amie Park, hereby declare that I am employed by the law firm of BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, 12400 Wilshire Boulevard, Seventh Floor, Los Angeles, California 90025-1026; that I am over 18 years of age and not a party to the within action; and that I served the following document: OPPOSITION TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT AND MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME AND SUPPORTING BRIEF, relating to CANCELLATION NO. 92046649 this 30th day of January 2007, by causing a true copy to be deposited in the United States Mail, first class postage prepaid to Petitioner's attorney as follows:

Michael H. Jester
505 D. Grand Caribe Causeway
Coronado, California 92218

Date: _____

1/30/07



Amie Park

Exhibit A

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

In the matter of Registration No. 2520801
For the mark: SEALITE
Registration Date: December 18, 2001

_____)	
DeepSea Power & Light, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No.: 92046649
)	
Powerlinx, Inc.)	
)	
Registrant)	
_____)	

ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION

Registrant, by and through its undersigned attorneys, answers the First Amended Petition for Cancellation as follows:

1. In answering Paragraph 1 of the First Amended Petition for Cancellation, Registrant is without sufficient information or knowledge to form a belief about the truth of the allegations contained therein, and thus denies the same.
2. In answering Paragraph 2 of the First Amended Petition for Cancellation, Registrant is without sufficient information or knowledge to form a belief

about the truth of the allegations contained therein, and thus denies the same.

4. In answering Paragraph 3 of the First Amended Petition for Cancellation, Registrant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.
5. In answering Paragraph 4 of the First Amended Petition for Cancellation, Registrant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.
6. In answering Paragraph 5 of the First Amended Petition for Cancellation, Registrant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.
7. In answering Paragraph 6 of the First Amended Petition for Cancellation, Registrant admits that U.S. Trademark Registration No. 2,520,801 for the mark SEALITE on the Principal Register listing “illuminated fish attractants” was granted to Sea View Underwater Research, Inc., a Florida corporation. Registrant also admits that the address listed in the registration for Sea View Underwater Research, Inc. is 200 Madonna Blvd., Tierra Verde, Florida 33715 and the date of first use in commerce is listed in the registration is July, 1999. Registrant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations regarding the date of first use of the mark SEALITE by Petitioner’s predecessor in interest, and thus denies the same.

8. In answering Paragraph 7 of the First Amended Petition for Cancellation, Registrant admits that Sea View Underwater Research, Inc. was renamed Sea View Video Technology, Inc.
9. In answering Paragraph 8 of the First Amended Petition for Cancellation, Registrant admits that Sea View Video Technology, Inc. assigned U.S. Trademark Registration No. 2,520,801 to Powerlinx, Inc., a Nevada corporation, the Respondent in this proceeding.
10. In answering Paragraph 9 of the First Amended Petition for Cancellation, Registrant admits that it is the current owner of U.S. Trademark Registration No. 2,520,801.
11. In answering Paragraph 10 of the First Amended Petition for Cancellation, Registrant denies the allegations set forth in this paragraph. Registrant states that its current address is 10901 A Roosevelt Blvd North, Suite 200, St. Petersburg, Florida 33716.
12. In answering Paragraph 11 of the First Amended Petition for Cancellation, denies the allegations set forth in this paragraph.
13. In answering Paragraph 12 of the First Amended Petition for Cancellation, denies the allegations set forth in this paragraph

AFFIRMATIVE DEFENSES

In further answer to the First Amended Petition for Cancellation, without waiver of any objection or an admission of sufficiency of the First Amended Petition for Cancellation, Registrant asserts upon information and belief that:

1. Petitioner's First Amended Petition for Cancellation fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the cancellation.
2. Registrant's use of its mark will not mistakenly be thought by the public to derive from the same source as Petitioner's goods, nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval.
3. Registrant's mark, when used on Registrant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Registrant with Petitioner, or as to the origin, sponsorship, or approval of Registrant's goods by Petitioner.
4. Petitioner's claims are barred by the doctrine of laches.

RELIEF REQUESTED

WHEREFORE, Registrant prays that the First Amended Petition for Cancellation be dismissed and the registration remain in full force and effect.

Respectfully submitted,

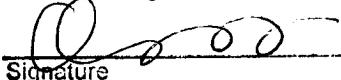
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: January 30, 2007

By: 

Lori Stockton Kozak
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1431, Alexandria, Virginia 22313-1431 on 1/30/07


Signature

1/30/07
Date

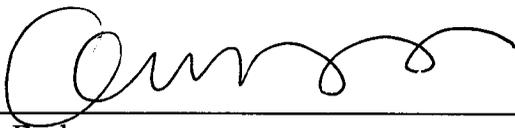
Attorney for Applicant

PROOF OF SERVICE

I, Amie Park, hereby declare that I am employed by the law firm of BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, 12400 Wilshire Boulevard, Seventh Floor, Los Angeles, California 90025-1026; that I am over 18 years of age and not a party to the within action; and that I served the following document: ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION, relating to CANCELLATION NO. 92046649 this 30 day of January 2007, by causing a true copy to be deposited in the United States Mail, first class postage prepaid to Petitioner's attorney as follows:

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