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

Proceeding	92046796
Party	Defendant eSpeedient Systems, LLC eSpeedient Systems, LLC 225 West Huron, Suite 217 Chicago, IL 60610
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Date	01/26/2007
Attachments	92046796 TTAB.pdf (7 pages)(1165971 bytes)

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

ESPEED, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92046796
	)	
ESPEEDIENT SYSTEMS, LLC	)	
	)	
Respondent.	)	

ANSWER TO PETITION FOR CANCELLATION

eSpeedient Systems, LLC ("Respondent"), by and through its attorneys, hereby answers the Petition for Cancellation of eSpeed, Inc. as follows:

1. *eSpeed, Inc., along with its affiliates (collectively "eSpeed" or "Petitioner"), is the largest broker of U.S. government securities, and is a well-known and respected provider of U.S. and international financial brokerage services and information throughout the world. Since at least as early as January, 1999, Petitioner has continuously used and promoted the trademarks ESPEED and E-SPEED (the "ESPEED Mark") and the ESPEED trade name in connection with a wide variety of online brokerage, financial, information, technological, software, e-commerce and communication services. In particular, Petitioner uses its ESPEED Mark and trade name for a network and internet-based communication and distribution system that provides customers with immediate access to real-time financial market information and to a global interactive electronic marketplace that enables the instantaneous trading of financial instruments and other products.*

Answer to Paragraph 1:

Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Petition for Cancellation.

2. *In addition, eSpeed uses its ESPEED Mark for its proprietary transaction software that can process millions of transactions in milliseconds and in connection with its telecommunication services to provide users with secure, point-to-point communication links for the delivery of data, the execution of transactions and access to the Internet. In total, the*

ESPEED service is not only a global interactive electronic trading network that can be adapted to virtually any market of any size, but a technological system that powers marketplaces for any type of tradable products.

Answer to Paragraph 2:

Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Petition for Cancellation.

3. *Petitioner has invested a significant amount of time and effort promoting its ESPEED services and in developing goodwill associated with the ESPEED Mark and trade name. Further, Petitioner has obtained several federal registrations for its ESPEED Mark. It owns, inter alia, registration number 2,535,418, registered on February 5, 2002, for ESPEED for "computer software that enables trading in financial instruments, provides trade execution and trade confirmation capabilities, and provides access to financial information and financial market information, real time and otherwise" in International Class 9, "telecommunications services, namely, electronic transmission of data via computer terminals" in International Class 38, and for a variety of financial services in International Class 36, including, inter alia, "providing a trading network via an electronic private intranet network and global computer network" and "providing information relating to financial instruments, brokerage, trading investments, companies, and financial markets through a global computer network." Petitioner is also the owner of registration number 2,500,080, registered October 23, 2001, for ESPEED (stylized) for "telecommunication services, namely, electronic transmission of data; leasing telecommunications equipment and telecommunications lines; providing telecommunications connection to the global computer network" in International Class 38.*

Answer to Paragraph 3:

Respondent admits that Petitioner owns the federal registrations listed in Paragraph 3. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of the allegations contained in Paragraph 3 of the Petition for Cancellation.

4. *In addition, Petitioner also owns stylized registrations for ESPEED, including registration number 2,729,582, registered June 24, 2003, for "Computer software that enables trading in financial instruments, provides trade execution and trade confirmation capabilities, and provides access to financial information and financial market information, real time and otherwise, " and registration number 2,484,458, registered September 4, 2001, for ESPEED (stylized) for "providing multiple-user access to a global computer information network and providing electronic mail services" in International Class 38.*

Answer to Paragraph 4:

Respondent admits that Petitioner owns the federal registrations listed in Paragraph 4 of the Petition for Cancellation.

5. *Petitioner is also the owner of registration number 2,424,609, registered January 30, 2001, for E-SPEED for "brokerage services for transacting financial securities via a global computer network" in International Class 36. This registration has become incontestable pursuant to Section 15 of the Lanham Act , 15 U.S.C. § 1065, and, as such, is conclusive evidence of the validity of the mark, of Petitioner's exclusive ownership of the mark and of its right to the exclusive use of the mark.*

Answer to Paragraph 5:

Respondent admits the allegations contained in Paragraph 5 of the Petition for Cancellation.

6. *Petitioner has offered and continues to offer and make available its ESPEED and E-SPEED services to consumers and the trade online through the Internet and through a proprietary electronic network.*

Answer to Paragraph 6:

Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Petition for Cancellation.

7. *As a result of Petitioner's usage and promotion of its ESPEED Mark, a very valuable and inestimable goodwill has been built up in the ESPEED Mark.*

Answer to Paragraph 7:

Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Petition for Cancellation.

8. *On December 21, 2004, a date well after Petitioner first used the ESPEED Mark, eSpeedient Systems, LLC ("Respondent") obtained a registration for the mark ESPEEDIENT SYSTEMS, Registration No. 2,912,657, for "providing a financial system integrating a browser based account management and customer relationship management system within one central database to provide banking, debit card, stored value and digital currency products in a host system or proprietary deployment system" in International Class 42. Respondent claimed a date of first use in commerce of January 3, 2001, a date well after Petitioner had first used the ESPEED Mark.*

Answer to Paragraph 8:

Respondent lacks knowledge or information sufficient to form a belief as to the date when Petitioner first used the ESPEED Mark. Respondent admits the remaining allegations contained in Paragraph 8 of the Petition for Cancellation.

9. *Respondent has promoted and sold its ESPEEDIENT SYSTEMS products and/or services to financial services firms and/or to businesses, consumers and/or users in the financial services field.*

Answer to Paragraph 9:

Respondent admits the allegations contained in Paragraph 9 of the Petition for Cancellation.

10. *Respondent's ESPEEDIENT SYSTEMS mark, the dominant component of which is ESPEED, is identical to Petitioner's ESPEED Mark. Further, the ESPEEDIENT portion of Respondent's ESPEEDIENT SYSTEMS mark is confusingly similar in sound to Petitioner's ESPEED Mark. With regard to commercial meaning, the ESPEEDIENT SYSTEMS mark is virtually indistinguishable from the ESPEED Mark, particularly as the mere addition of the word "Systems," and/or the suffix "ient," does not distinguish the mark in any meaningful way. Moreover, the goods and/or services described in Respondent's registration are closely related or similar to those offered by Petitioner under its ESPEED Mark.*

Answer to Paragraph 10:

Respondent denies the allegations contained in Paragraph 10 of the Petition for Cancellation, and believes such allegations are unfounded.

11. *The continued registration by Respondent of the mark ESPEEDIENT SYSTEMS, the overall commercial impression of which is similar to Petitioner's ESPEED Mark, used on goods and services closely related or similar to the goods and/or services of Petitioner, is likely to cause confusion or to cause mistake, or to deceive, and will tend to damage Petitioner's goodwill in its ESPEED Mark. Respondent's continued registration and use of the ESPEEDIENT SYSTEMS mark will cause the public to believe mistakenly that Respondent's goods and/or services originate with, or are approved or licensed by Petitioner, or are otherwise connected or associated with Petitioner or Petitioner's goods and services in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).*

Answer to Paragraph 11:

Respondent denies the allegations contained in Paragraph 11 of the Petition for Cancellation, and believes such allegations are unfounded.

12. *Petitioner is and will be irreparably damaged by the continued registration of the mark ESPEEDIENT SYSTEMS in Class 42 based on its prior use of the ESPEED Mark.*

Answer to Paragraph 12:

Respondent denies the allegations contained in Paragraph 12 of the Petition for Cancellation, and believes such allegations are unfounded.

AFFIRMATIVE DEFENSES

1. Some or all of Petitioner's claims are barred by the doctrine of laches.

2. Some or all of Petitioner's claims are barred by the doctrine of estoppel.

3. Some or all of Petitioner's claims are barred by the doctrine of acquiescence.

WHEREFORE, Registrant prays that the Petition for Cancellation be denied.

Dated: 1/26/04

Respectfully submitted,

ESPEEDIENT SYSTEMS, LLC

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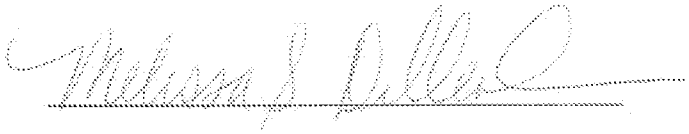
CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing ANSWER TO PETITION FOR CANCELLATION was served on Petitioner this 26th day of January, 2007, by depositing a copy thereof in the United States Mail, First Class, postage prepaid, addressed to:

Georges Nahitchevansky
Kilpatrick Stockton LLP
31 W. 52nd Street
New York, NY 10019



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