

ESTTA Tracking number: **ESTTA122770**

Filing date: **02/01/2007**

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

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

Name	NeTrack, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	3080 Valmont Road, Suite 200 Boulder, CO 80301 UNITED STATES		

Attorney information	Carl Oppedahl / Jessica L Olson Oppedahl Patent Law Firm LLC P O Box 4850 Frisco, CO 80443-4850 UNITED STATES carl2@oppedahl.com Phone:970 468 8600		
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#### Registration Subject to Cancellation

Registration No	3064820	Registration date	03/07/2006
Registrant	Internet FX, Inc. 19202 Foxtree Lane Houston, TX 77094 UNITED STATES		
Goods/Services Subject to Cancellation	Class 009. First Use: 2000/01/10 , First Use In Commerce: 2000/02/01 Goods/Services: COMPUTER SOFTWARE FOR USE BY AUTOMOBILE DEALSHIP MANAGEMENT IN TRACKING WEB BASED SALES		

Attachments	20070101-pet-to-cancel-1.pdf ( 5 pages )(179746 bytes )
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Signature	/s/
Name	Carl Oppedahl
Date	02/01/2007

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Registration Number: 3064820

Mark: NETTRAK

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NeTrack, Inc.  
v.  
Internet FX, Inc.  
-----X

Cancellation No. 92/ \_\_\_\_\_

Petition For Cancellation

The Petitioner

1. NeTrack, Inc. is a Colorado corporation and for purposes of this Petition is a successor in interest to NeTrack LLC, collectively and individually referred to as Petitioner. Petitioner's business address is

3080 Valmont Road, Suite 200  
Boulder CO 80301.

2. Petitioner has been actively engaged in providing Internet-related services since March 1996, including but not limited to providing Internet connectivity, web hosting, email hosting, server colocation, domain name registration, voice over IP, and consulting services. Petitioner's Internet connectivity services have included frame relay, leased-line, asynchronous transfer mode, digital subscriber line, and dialup services. Various of Petitioner's services are offered throughout the United States.

3. Petitioner registered the Internet domain name NETRACK.COM at least as early as February 25, 1996.

4. Petitioner filed its trademark application for NETRACK on May 6, 1997.

5. Petitioner's trademark NETRACK was registered February 24, 1998.

6. Petitioner's trademark registration lists the following services:

telecommunications services, namely, providing access to a global computer network by server colocation, and providing computer leased line and frame relay connectivity for electronic transmission and reception of information.

7. Petitioner's NETRACK trademark registration became incontestable no later than July 10, 2003.

8. Petitioner's NETRACK trademark registration is valid and subsisting.

#### The Registrant

9. On information and belief, Registrant's first use of its mark was no earlier than January 2000.

10. On information and belief, Registrant's first use of its mark was no earlier than January 10, 2000.

11. On information and belief, Registrant's first use of its mark in commerce was no earlier than February 1, 2000.

12. On information and belief, Registrant filed its trademark application no earlier than August 23, 2004.

13. On information and belief, Registrant filed its trademark application on paper and not electronically.

14. On information and belief, Registrant's trademark application received serial number 76/608,800.

15. The Registrant's application as filed listed the goods as:

Computer software for web based sales lead management for automobile dealerships

16. The Registrant's registration lists the goods as:

Computer software for use by automobile dealership [sic] management in tracking web based sales

17. On information and belief, Registrant registered the Internet domain name NETTRAKLM.COM.

18. On information and belief, Registrant registered the domain name NETTRAKLM.COM no earlier than March 28, 2005.

19. On information and belief, Registrant selected the domain name NETTRAKLM.COM only after finding that other shorter and simpler Internet domain names had already been registered.

20. On information and belief, Registrant selected the domain name NETTRAKLM.COM only after finding that NETTRAK.COM had already been registered.

21. On information and belief, Registrant selected the domain name NETTRAKLM.COM only after finding that NETRACK.COM had already been registered.

22. Registrant uses its mark NETTRAK with a capital N and a capital T.

23. The last-known address for the Registrant is that listed in the records of the USPTO, namely:

Internet FX, Inc.  
19202 Foxtree Lane  
Houston, TX 77094

Grounds for Cancellation

24. Registrant's use of the mark NETTRAK for software using for tracking sales inquiries received electronically by means of the Internet causes confusion with respect to Petitioner's use of the mark NETRACK for Internet electronic communications services.

25. Potential consumers of Registrant's goods are also potential consumers of Petitioner's services.

26. Registrant offers its goods over the Internet by means of its web site at <http://www.nettraklm.com/>.

27. Petitioner offers its services over the Internet by means of its web site at <http://www.netrack.com>.

28. Petitioner believes that it is being damaged, and will continue to be damaged, by the Registrant's

registration.

29. The mark NETTRAK is phonetically identical to the mark NETRACK.

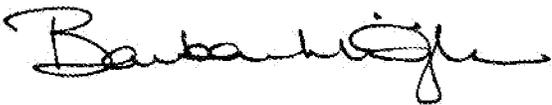
30. Registrant's goods are related to Petitioner's services in several ways, including that both relate to Internet electronic communications.

31. The mark NETTRAK is descriptive of the goods. The goods are used to "track" sales leads received on the "net".

32. By reason of the foregoing, it is requested that US trademark registration number 3064820 be canceled in its entirety.

Petitioner appoints as its attorney in this matter Carl Oppedahl, Jessica L. Olson, and Inna Shestul of the firm of Oppedahl Patent Law Firm LLC.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barb Dijker".

Barb Dijker, CTO  
NeTrack, Inc.