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Filing date: **10/16/2008**

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

Proceeding	92047013
Party	Plaintiff NeTrack, Inc.
Correspondence Address	Carl Oppedahl Oppedahl Patent Law Firm LLC P.O. Box 4850 Frisco, CO 80443-4850 UNITED STATES docket-oppedahl@oppedahl.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Terrence M. Wyles
Filer's e-mail	docket-oppedahl@oppedahl.com
Signature	/s/
Date	10/16/2008
Attachments	2008-10-16-DRAFT-NTer-i007-Notice-of-Reliance-on-Barb-Dijker.pdf ( 2 pages ) (18478 bytes ) Exhibit-AA-2008-10-16-Barb-Dijker-Declaration-01.pdf ( 3 pages ) (54379 bytes )

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

In re Registration No. 3,064,820  
Mark: NETTRAK  
Registered March 7, 2006

NeTrack, Inc., Petitioner	)	
	)	
v.	)	Cancellation No. 92047013
	)	
Internet FX, Inc., Registrant	)	
	)	

**Commissioner for Trademarks**  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF RELIANCE**

Pursuant to TBMP § 704.02, the Petitioner hereby notifies the Board and the Registrant that, in support of the Petitioner's Cancellation Action, the Petitioner is relying on the attached Exhibit AA, which contains the Declaration of Barbara Dijker, Chief Technical Officer for the Petitioner. Accordingly, the Petitioner introduces Exhibit AA and respectfully requests that Exhibit AA be admitted into evidence.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Terrence M. Wyles, Attorney  
Colorado Reg. #39799

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Cancellation No. 92047013

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**DECLARATION OF BARBARA DIJKER**

I, Barbara Dijker, do hereby declare:

1. I am the Chief Technical Officer (CTO) for NeTrack, Inc.
2. NeTrack, Inc. owns and operates websites associated with the domain names, netrack.com and netrack.net.
3. NeTrack, Inc.'s commercial services include, but are not limited to, voice-over IP (VOIP), dial-up access, spam control, web-based e-mail, web hosting, domain registration, and DSL.
4. NeTrack, Inc. is the owner of Trademark Registration No. 2,139,229 for the mark NETRACK, which was based on U.S. Trademark Application Serial No. 75/287,548 filed on May 6, 1997.
5. U.S. Trademark Application Serial No. 75/287,548 was filed based on actual use of the mark NETRACK.
6. Trademark Registration No. 2,139,229 for the mark NETRACK claims goods and services in International Class 038, for 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. NeTrack Inc. first used the mark NETRACK at least as early as March 6, 1996.
8. NeTrack, Inc. first used the mark NETRACK in commerce at least as early as April 29, 1996.
8. NeTrack, Inc. submitted a Specimen of Use in support of U.S. Trademark Application Serial No. 75/287,548 for the mark NETRACK showing actual use in commerce as early as May 6, 1997.
9. U.S. Trademark Application Serial No. 75/287,548 matured to Trademark Registration No. 2,139,229 (Principal Register) for the mark NETRACK on February 24, 1998.
10. NeTrack, Inc. filed for Lanham Act Section-8 renewal of the mark NETRACK on April 19, 2003, and said renewal was accepted by the United States Patent and Trademark Office on July 10, 2003.
11. NeTrack, Inc. filed for Lanham Act Section-15 incontestability status for the mark NETRACK on April 19, 2003, and said incontestability status was acknowledged by the United States Patent and Trademark Office on July 10, 2003.
12. NeTrack, Inc. filed for Lanham Act Section-8 and 9 renewals of the mark NETRACK on February 25, 2008, and said renewals were granted by the United States Patent and Trademark Office on March 1, 2008.
13. On November 9, 2006, I received a telephone call at NeTrack, Inc. from a consumer who thought that NeTrack, Inc. was the same entity as the owner of U.S. Registration No. 3,064,820 for the mark NETTRAK.
14. In my opinion, the consumer who I spoke to on November 9, 2006 was clearly confused regarding whether the mark NeTrack was the same as NetTrak.
15. Prompted by the November 9, 2006 telephone call from the confused consumer, I investigated further and discovered that, on information and belief, the owner of U.S. Registration No. 3,064,820 for the mark NETTRAK operated and maintained the websites www.leadcrm.com and www.nettrak.com, both of which were displaying the mark NetTrak in a font and stylization very similar to that displayed by NeTrack, Inc. for its mark NeTrack.
16. On information and belief, the owner of U.S. Registration No. 3,064,820 for the mark NETTRAK owns and operates websites that offer goods and services that potentially overlap the goods and services offered by NeTrack, Inc. For example, on information and belief, one of the services offered by the owner of the mark NETTRAK pertains to providing e-mail notifications to consumer hand-held communication devices, while NeTrack, Inc. offers e-mail forwarding services.

I make this declaration under penalty of perjury and am aware that willful or false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001) and may adversely impact the resolution of the Cancellation Proceeding No. 92047013 before the Trademark Trials and Appeals Board. All statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

10/16/08  
Dated

  
Barbara Dijker  
Chief Technical Officer,  
NeTrack, Inc.