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

Proceeding	92047013
Party	Defendant Internet FX, Inc. Internet FX, Inc. 19202 Foxtree Lane Houston, TX 77094
Correspondence Address	Internet FX, Inc. 19202 Foxtree Lane Houston, TX 77094 UNITED STATES
Submission	Answer
Filer's Name	Chris Garver
Filer's e-mail	cgarver@mywebpager.com, patrademarks@manatt.com
Signature	/Chris Garver/
Date	03/13/2007
Attachments	Answer to Petition to Cancel for NETTRAK.pdf (9 pages)(277763 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,)	
)	Cancellation No. 92047013
v.)	
)	
Internet FX, Inc.,)	
)	
Registrant)	
_____)	

REGISTRANT’S ANSWER TO PETITION TO CANCEL

Registrant Internet FX, Inc. (“Internet FX” or “Registrant”) answers Petitioner NeTrack, Inc.’s (“NeTrack” or “Petitioner”) Petition to Cancel as follows:

1. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 1 of the Petition to Cancel, and therefore denies each and every allegation.
2. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 2 of the Petition to Cancel, and therefore denies each and every allegation.
3. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 3 of the Petition to Cancel, and therefore denies each and every allegation.

4. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 4 of the Petition to Cancel, and therefore denies each and every allegation.

5. Registrant admits that the records from the United States Patent and Trademark Office on-line database shows a registration date of February 24, 1998 for the mark NETRACK, Registration No. 2,139,229. Registrant lacks sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 5 of the Petition to Cancel, and therefore denies each and every such allegation.

6. Registrant admits that the records from the United States Patent and Trademark Office on-line database shows that the following goods are listed for the mark NETRACK, Registration No. 2,139,229: 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. Registrant lacks sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 6 of the Petition to Cancel, and therefore denies each and every such allegation.

7. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 7 of the Petition to Cancel, and therefore denies each and every allegation.

8. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 8 of the Petition to Cancel, and therefore denies each and every allegation.

9. Registrant admits that it claims a date of first use of the mark NETTRAK, as shown in Registration No. 3,064,820, of at least as early as January 10, 2000.

Registrant denies the remaining allegations contained in Paragraph 9 of the Petition to Cancel.

10. Registrant admits that it claims a date of first use of the mark NETTRAK, as shown in Registration No. 3,064,820, of at least as early as January 10, 2000.

Registrant denies the remaining allegations contained in Paragraph 10 of the Petition to Cancel.

11. Registrant admits that it claims a date of first use in commerce of the mark NETTRAK, as shown in Registration No. 3,064,820, of at least as early as February 1, 2000. Registrant denies the remaining allegations contained in Paragraph 11 of the Petition to Cancel.

12. Registrant admits that the records from the United States Patent and Trademark Office on-line database show a filing date of August 23, 2004 for Application Serial No. 76/608,800 for the mark NETTRAK, which application matured to Registration No. 3,064,820. Registrant denies the remaining allegations contained in Paragraph 12 of the Petition to Cancel.

13. Registrant admits that it filed Application Serial No. 76/608,800 for the mark NETTRAK, which application matured to Registration No. 3,064,820, on paper and not electronically.

14. Registrant admits that the application to register the mark NETTRAK, which application matured to Registration No. 3,064,820, was assigned Application Serial No. 76/608,800.

15. Registrant admits that Application Serial No. 76/608,800 for NETTRAK identified the following goods: computer software for web based sales lead management for automobile dealerships.

16. Registrant admits that Registration No. 3,064,820 for NETTRAK identifies the following goods: computer software for use by automobile dealership [sic] management in tracking web based sales.

17. Registrant admits that the domain name <nettraklm.com> is registered to Chris Garver with an address of 19202 Foxtree Lane, Houston, TX 77094. Registrant denies the remaining allegations contained in Paragraph 17 of the Petition to Cancel.

18. Registrant admits that the “Whois” information for the domain name <nettraklm.com> shows a “Creation Date” of March 29, 2005. Registrant denies the remaining allegations contained in Paragraph 18 of the Petition to Cancel.

19. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 19 of the Petition to Cancel, and therefore denies each and every allegation.

20. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 20 of the Petition to Cancel, and therefore denies each and every allegation.

21. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 21 of the Petition to Cancel, and therefore denies each and every allegation.

22. Registrant admits that it uses the mark NETTRAK in the following form, among others: NetTrak. Registrant denies the remaining allegations in Paragraph 22 of the Petition to Cancel.

23. Registrant admits that the records of the United States Patent and Trademark Office on-line database lists Registrant's address as 19202 Foxtree Lane, Houston, TX 77094.

24. Registrant denies the allegations contained in Paragraph 24 of the Petition to Cancel.

25. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 25 of the Petition to Cancel, and therefore denies each and every allegation.

26. Registrant admits that the website located at the domain name <nettraklm.com> promotes Registrant's NETTRAK products, that it provides information on Registrant's NETTRAK products, and that it provides a mechanism for customers and potential customers to contact Registrant for further information about NETTRAK products, including ordering such products.

27. Registrant lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 27 of the Petition to Cancel, and therefore denies each and every allegation.

28. Registrant denies the allegations contained in Paragraph 28 of the Petition to Cancel.

29. Registrant denies the allegations contained in Paragraph 29 of the Petition to Cancel.

30. Registrant denies the allegations contained in Paragraph 30 of the Petition to Cancel.

31. Registrant denies the allegations contained in Paragraph 31 of the Petition to Cancel.

32. Registrant denies the allegations contained in Paragraph 32 of the Petition to Cancel.

First Affirmative Defense – Fails to State Claim

33. Petitioner has failed to allege grounds sufficient to sustain the Petition to Cancel.

Second Affirmative Defense – Laches

34. Petitioner is barred by the doctrine of laches from seeking to cancel Registrant's NETTRAK mark, Registration No. 3,064,820, in that Petitioner has known about Registrant's use of its NETTRAK mark, Petitioner inexcusably delayed in taking any action against Registrant's NETTRAK mark, Registration No. 3,064,820, Registrant has relied to its detriment on Petitioner's actions or failure to act with respect to Registrant's NETTRAK mark and has expended money and goodwill in developing its NETTRAK mark, and Registrant will be prejudiced by the cancellation of Registration No. 3,064,280 for NETTRAK.

Third Affirmative Defense – Acquiescence and Estoppel

35. Petitioner, by virtue of its actions, is estopped from seeking to cancel Registrant's NETTRAK mark, Registration No. 3,064,820, in that Petitioner has known about Registrant's use of its NETTRAK mark, Registrant has relied to its detriment on Petitioner's actions or failure to act with respect to Registrant's NETTRAK mark and has

expended money and goodwill in developing its NETTRAK mark, and Registrant will be prejudiced by the cancellation of Registration No. 3,064,280 for NETTRAK.

Fourth Affirmative Defense – No Likelihood of Confusion

36. Petitioner’s mark, NETRACK, as shown by Registration No. 2,139,229, is registered in Class 38 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.”

37. Registrant’s mark, NETTRAK, as shown by Registration No. 3,064,280, is registered in Class 9 for “computer software for use by automobile dealership [sic] management in tacking web based sales.”

38. Given the difference in the marks and the difference in the goods and services covered by the marks, there is no likelihood of confusion between the marks, and Petitioner’s request for relief should be denied.

Fifth Affirmative Defense – Petitioner Has Not Been Damaged

39. Petitioner has not suffered harm from registration of Registrant’s mark NETTRAK, Registration No. 2,139,229, and its request for relief should be denied.

WHEREFORE, Registrant respectfully requests that the Petition to Cancel be dismissed with prejudice.

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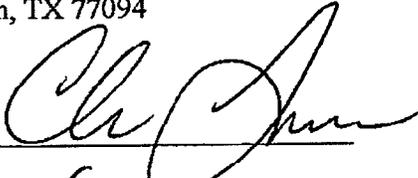
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Respectfully submitted,

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

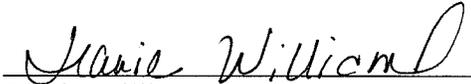
Dated: March 13, 2007

By: 
Chris GARVER
President

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **REGISTRANT'S ANSWER TO PETITION TO CANCEL** has been properly served, via first class mail, postage prepaid, on the following attorneys for Plaintiff this 13th day of March, 2007.

Carl Oppedahl
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Jeanie Williams