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

Proceeding	92050734
Party	Defendant IV-Media, LLC
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Submission	Answer
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Date	05/05/2009
Attachments	Answer.pdf (8 pages)(87125 bytes)

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

REAL ESTATE CHANNEL
CORPORATION,

Petitioner,

Cancellation No. 92050734

v.

Registration No. 3270964

IV-MEDIA, LLC,

Mark: THEREALESTATECHANNEL

Registrant.

ANSWER

Registrant, IV-Media, LLC, by counsel, for its Answer to the Petition for Cancellation, states as follows:

1. Registrant lacks sufficient information to admit or deny the allegations set forth in Paragraph 1 of the Petition for Cancellation and therefore denies them.
2. Any application filed by the Petitioner, along with any actions taken by the United Patent and Trademark Office (“USPTO”) in connection with such application, including Exhibit B, speak for themselves, and any allegations to the contrary are denied.
3. The application filed by Registrant speaks for itself, and any allegations to the contrary are denied.
4. The actions taken by the USPTO in response to the application filed by Registrant, along with any prior registration of Petitioner, speak for themselves, and any allegations to the contrary are denied.
5. Any actions taken by the USPTO in connection with examination of the application filed by Registrant speak for themselves, and any allegations to the contrary are

denied. As the Notice of Pseudo Mark filed by the USPTO indicates, the assignment of a pseudo mark has “no legal significance and will not appear on the Registration Certificate.” The allegations set forth in the last sentence of Paragraph 5 of the Petition for Cancellation amount to legal conclusions to which a response is not required; to the extent a response is required, Registrant denies the allegations. Registrant denies any remaining allegations set forth in Paragraph 5 of the Petition for Cancellation.

6. Registrant admits that the USPTO allowed registration of Registrant’s mark THEREALESTATECHANNEL. The records of the USPTO at that time of registration speak for themselves, and any allegations to the contrary are denied.

7. The records maintained by the USPTO regarding Petitioner’s mark speak for themselves, and any allegations to the contrary are denied. The application and the registration for Petitioner’s mark also speak for themselves, and any allegations to the contrary are denied.

8. The allegations set forth by Petitioner in Paragraph 8 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations. Registrant denies any remaining allegations set forth in Paragraph 8 of the Petition for Cancellation and demands strict proof thereof.

9. Petitioner’s mark was cancelled based upon Petitioner’s failure to comply with the applicable rules. Registrant lacks sufficient information to admit or deny whether the “lapse” was “unintentional”, and Registrant contests the relevancy of such a claim by Petitioner to this cancellation proceeding. Registrant denies any remaining allegations set forth in Paragraph 9 of the Petition for Cancellation.

10. Registrant admits that the mark issued on July 31, 2007. From the records available from the USPTO, it appears that Petitioner's mark was cancelled on February 28, 2009.

11. Petitioner's mark was cancelled based upon Petitioner's failure to comply with the applicable rules. Registrant lacks sufficient information to admit or deny whether the abandonment was "unintentionally" done, and Registrant contests the relevancy of such a claim by Petitioner to this cancellation proceeding. Registrant denies any remaining allegations set forth in Paragraph 11 of the Petition for Cancellation.

12. Registrant denies the allegations set forth in Paragraph 12 of the Petition for Cancellation.

13. The trademark application filed by Registrant speaks for itself, and any allegations to the contrary are denied.

14. The trademark application filed by Registrant speaks for itself, and any allegations to the contrary are denied.

15. Registrant denies that Petitioner has been damaged by Registrant's registration. The remaining allegations set forth in Paragraph 15 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

16. The application filed by Petitioner (which Registrant plans to oppose when it publishes for opposition) should be denied based upon Registrant's registration and based upon Registrant's first use date of December 26, 1997. The remaining allegations set forth in Paragraph 16 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

COUNT I - FRAUD

17. Registrant incorporates by reference its responses to Paragraphs 1 through 16 of the Petition for Cancellation as though fully set forth herein.

18. Registrant admits the allegations set forth in the first sentence of Paragraph 18 of the Petition for Cancellation. The allegations set forth in the second sentence of Paragraph 18 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

19. Registrant denies the allegations set forth in the first sentence of Paragraph 19 of the Petition for Cancellation and demands strict proof thereof. The statements made by Registrant speak for themselves, and any allegations to the contrary are denied.

20. The records of the USPTO regarding the trademark registration speak for themselves, and any allegations to the contrary are denied. The remaining allegations set forth in Paragraph 20 of the Complaint amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the remaining allegations set forth in Paragraph 20 of the Petition for Cancellation.

21. Registrant denies the allegations set forth in Paragraph 21 of the Petition for Cancellation.

22. Registrant denies the allegations set forth in Paragraph 22 of the Petition for Cancellation.

23. Registrant denies the allegations set forth in Paragraph 23 of the Petition for Cancellation. Specifically, Registrant denies that Petitioner is the “senior and continuous user” as alleged in Paragraph 23 of the Petition for Cancellation. Registrant’s first use date is December 26, 1997.

Registrant denies the allegations in the Wherefore clause of Count I.

COUNT II – MERE DESCRIPTIVENESS

24. Registrant incorporates by reference its responses to Paragraphs 1 through 16 of the Petition for Cancellation as though fully set forth herein.

25. The records of the USPTO speak for themselves, and any allegations to the contrary are denied.

26. The records of the USPTO speak for themselves, and any allegations to the contrary are denied.

27. The records of the USPTO speak for themselves, and any allegations to the contrary are denied. Registrant denies the remaining allegations set forth in Paragraph 27 of the Petition for Cancellation.

28. The allegations set forth in Paragraph 28 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

29. The allegations set forth in Paragraph 29 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

30. The allegations set forth in Paragraph 30 of the Petition for Cancellation amount to legal conclusions to which a response is not required. To the extent a response is required, Registrant denies the allegations.

31. Registrant denies the allegations set forth in Paragraph 31 of the Petition for Cancellation.

32. Registrant denies the allegations set forth in Paragraph 32 of the Petition for Cancellation.

Registrant denies the allegations in the Wherefore clause of Count II.

COUNT III – WRONG OWNERSHIP

33. Registrant incorporates by reference its responses to Paragraphs 1 through 16 of the Petition for Cancellation as though fully set forth herein.

34. Registrant admits that it has set forth a first use date of December 26, 1997.

35. Registrant denies the allegations set forth in Paragraph 35 of the Petition for Cancellation and demands strict proof thereof.

36. Registrant denies the allegations set forth in Paragraph 36 of the Petition for Cancellation.

37. Registrant denies the applicability of the defense set forth in Paragraph 37 of the Petition for Cancellation to this cancellation proceeding.

38. Registrant denies the allegations set forth in Paragraph 38 of the Petition for Cancellation.

Registrant denies the allegations in the Wherefore clause of Count III.

ALL ALLEGATIONS NOT EXPRESSLY ADMITTED ARE HEREBY DENIED.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel and/or laches.

2. Petitioner's claims are barred, in whole or in part, by the equitable doctrine of acquiescence.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served on Alain Villeneuve, Esq. by mailing said copy on May 5, 2009, via First Class Mail, postage prepaid to:

Alain Villeneuve, Esq.
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/Kristan B. Burch/

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