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Filing date: **10/14/2009**

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

Proceeding	92051288
Party	Defendant T.C. Connection Corporation
Correspondence Address	Elizabeth A. Linford Ladas & Parry LLP 5670 Wilshire Boulevard Suite 2100 Los Angeles, CA 90036 UNITED STATES elinford@la.ladas.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Elizabeth A. Linford
Filer's e-mail	elinford@la.ladas.com
Signature	/elizabeth a linford/
Date	10/14/2009
Attachments	Motion to Dismiss.PDF ( 10 pages )(336027 bytes )

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

**HTC CORPORATION**

Petitioner,

v.

**T.C. CONNECTION CORPORATION,**

Registrant.

**Cancellation No. 92051288**

**U.S. Registration No. 3450977**

Mark: DIAMOND MULTIMEDIA

**U.S. Registration No. 3442507**

Mark: DIAMOND TECHNOLOGIES

**MOTION TO DISMISS FOR FAILURE TO SERVE**

Registrant, T.C. Connection Corporation (“TCC”) hereby requests the Board to dismiss the Petition for Cancellation filed by HTC Corporation (“Petitioner”) for cancellation of Registrant TCC’s U.S. Registration No. 3,450,977 and U.S. Registration No. 3442507 for failure to serve TCC in a manner as required by Amended Trademark Rules 2.111(a), *et seq.* This motion is based on the following grounds:

1. On July 30, 2009, Petitioner filed, via the Board’s Electronic System for Trademark Trial and Appeals (ESTTA), a Petition for Cancellation of U.S. Registration No. 3,450,977 owned by TCC for the mark DIAMOND MULTIMEDIA and U.S. Registration No. 3,442,507 owned by TCC for the mark DIAMOND TECHNOLOGIES (“Petition”). Attorney for the Petitioner checked the applicable box on the ESTTA form to indicate that service was effected on TCC by First Class Mail. The Petition also contains a proof of service allegedly confirming that a copy of the Petition was served by first class mail to the following address which does not indicate any mailing zip code (see “Exhibit 1”): “TC Connection, Wickham's

Cay I, P.O. Box 362, 3rd Floor, Omar Hodge Building, Road Town, Tortola, British Virgin Islands.”

2. As set forth in the U.S. Patent and Trademark Office (“USPTO”) files and records, on or about May 2, 2009, **more than two months before** Petitioner filed its Petition, TCC filed a change of owner’s address listing its local representative as Weilin (Grace) Chang located at 43575 Mission Blvd., #329, Fremont, California 94539. See “Exhibit 2”, Change of Owner’s Address, PTO Form 2197 filed for mark DIAMOND MULTIMEDIA; see also “Exhibit 3”, Change of Owner’s Address, PTO Form 2197 filed for mark DIAMOND TECHNOLOGIES. As evidenced by Petitioner’s own Certificate of Service, Petitioner failed to serve TCC’s local representative by first class mail or any other means as required by the Amended Trademark Rules. See Amended Trademark Rule §2.111 *et seq.* and §2.119; 72 Fed. Reg. 42242; Springfield, Inc. v. XD, 86 USPQ2d 1063 (TTAB 2008).

3. TCC became aware of the Petition only upon conducting an independent on-line search of all marks owned by TCC in connection with an unrelated matter. See Declaration of Jonathan Chang attached hereto.

4. But for Petitioner’s failure to comply with the service requirements, TCC would have received timely and proper notice and presented its meritorious defense and arguments in response to the Petition. Petitioner will not be substantially prejudiced by the short delay between the TCC’s initial response date and TCC learning and filing of this response. Any prejudice allegedly suffered by Petitioner is the result of its failure to properly serve TCC at its designated address.

5. In light of Petitioner's failure to comply with the service requirements as required by the Amended Trademark Rules, the Board should dismiss the Petition.

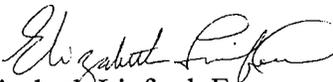
6. The policy of the Board is to decide cases on the merits. All doubts should be resolved in favor of TCC. See TMEP §312.03.

Accordingly, T.C. Connection Corporation respectfully requests the Board to dismiss the Petition.

October 14, 2009

Respectfully submitted,

T.C. Connection Corporation

By: 

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**LADAS & PARRY LLP**  
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Email: [elinford@la.ladas.com](mailto:elinford@la.ladas.com)

Attorneys for Registrant,  
T.C. Connection Corporation

## DECLARATION OF JONATHAN CHANG

1. I am an Officer of T.C. Connection Corporation ("TCC"). I make this declaration in support of TCC's motion to dismiss. The following facts are based on my personal knowledge and if called as a witness, I could and would competently testify to the statements made in this declaration.

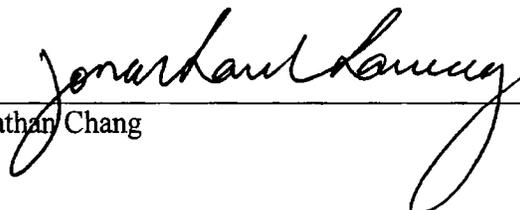
2. To the best of my knowledge, TCC has not received a copy of Petitioner's Petition for Cancellation at TCC's offices in the British Virgin Islands.

3. To the best of my knowledge, TCC did not receive a copy of Petitioner's Petition for Cancellation at its address in Fremont, California. I was at TCC's Fremont, California office on September 8, 2009. On such date, I reviewed mail received at TCC's Fremont, California address and did not see and TCC did not receive a copy of Petitioner's Petition for Cancellation in Fremont, California.

4. On or about September 2, 2009, TCC searched the USPTO website ([www.uspto.gov](http://www.uspto.gov)) for marks owned by TCC in connection with an unrelated matter. As a result of that search, it discovered the Petition for Cancellation filed by Petitioner.

5. Upon learning of Petitioner's Petition for Cancellation, I promptly contacted TCC's outside counsel for assistance.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on October 14, 2009, in Cupertino, California

  
Jonathan Chang

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

HTC CORPORATION,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	Cancellation No. _____
	:	
TC CONNECTION CORP.,	:	U.S. Registration No. 3,450,977;
	:	U.S. Registration No. 3,442,507.
Registrant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2009, a copy of the foregoing Petition has been served by first class mail, postage prepaid, on:

TC Connection  
Wickham's Cay I  
P.O. Box 362, 3rd Floor  
Omar Hodge Building  
Road Town, Tortola  
British Virgin Islands

  
\_\_\_\_\_  
Anne Smart

**Change Of Owner's Address**

The table below presents the data as entered.

<b>Input Field</b>	<b>Entered</b>
<b>SERIAL NUMBER</b>	78734921
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 116
<b>MARK SECTION</b>	
<b>MARK</b>	DIAMOND MULTIMEDIA
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	TC Connection Corporation
<b>STREET</b>	Wickhams Cay I, PO Box 362 3rd Floor, Omar Hodge Building
<b>CITY</b>	Road Town
<b>COUNTRY</b>	British Virgin Islands
<b>PHONE</b>	510-687-4648
<b>FAX</b>	510-687-4655
<b>CORRESPONDENCE SECTION (current)</b>	
<b>ORIGINAL ADDRESS</b>	Weilin Chang T.C. Connection Corporation 43575 Mission Blvd. #329 Fremont California 94539 United States 510-687-4655 510-687-4648
<b>NEW OWNER ADDRESS</b>	
<b>INTERNAL ADDRESS</b>	3rd Floor, Omar Hodge Bldg.
<b>STREET</b>	PO. Box 362, Wickhams Cay I
<b>CITY</b>	Road Town, Tortola
<b>ZIP/POSTAL CODE</b>	VG 1110
<b>COUNTRY</b>	British Virgin Islands

PHONE	510-687-4648
FAX	510-687-4655
<b>CURRENT CORRESPONDENCE ADDRESS</b>	
NAME	Weilin (Grace) Chang
FIRM NAME	T.C. Connection Corporation
STREET	c/o 43575 Mission Blvd. #329
CITY	Fremont
STATE	California
COUNTRY	United States
POSTAL/ZIP CODE	94539
PHONE	510-687-4648
FAX	510-687-4655
<b>SIGNATURE SECTION</b>	
SIGNATURE	/Weilin Grace Chang/
SIGNATORY NAME	Weilin (Grace) Chang
SIGNATORY DATE	05/02/2008
SIGNATORY POSITION	Director
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Fri May 02 18:38:09 EDT 2008
TEAS STAMP	USPTO/COA-12.47.63.236-20 080502183809022296-787170 63-40079264c53975a72a179b cf01b80ae8e-N/A-N/A-20080 502183108111154

**Change Of Owner's Address**

The table below presents the data as entered.

<b>Input Field</b>	<b>Entered</b>
<b>SERIAL NUMBER</b>	78752146
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 116
<b>MARK SECTION</b>	
<b>MARK</b>	DIAMOND TECHNOLOGIES
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	T.C. Connection Corporation
<b>STREET</b>	Wickhams Cay I, PO Box 362 3rd Floor, Omar Hodge Building
<b>CITY</b>	Road Town
<b>COUNTRY</b>	British Virgin Islands
<b>PHONE</b>	510-687-4648
<b>FAX</b>	510-687-4655
<b>CORRESPONDENCE SECTION (current)</b>	
<b>ORIGINAL ADDRESS</b>	Weilin Chang T.C. Connection Corporation 43575 Mission Blvd. #329 Fremont California 94539 United States 510-687-4655 510-687-4648
<b>NEW OWNER ADDRESS</b>	
<b>INTERNAL ADDRESS</b>	3rd Floor, Omar Hodge Bldg.
<b>STREET</b>	PO. Box 362, Wickhams Cay I
<b>CITY</b>	Road Town, Tortola
<b>ZIP/POSTAL CODE</b>	VG 1110
<b>COUNTRY</b>	British Virgin Islands

PHONE	510-687-4648
FAX	510-687-4655
<b>CURRENT CORRESPONDENCE ADDRESS</b>	
NAME	Weilin (Grace) Chang
FIRM NAME	T.C. Connection Corporation
STREET	c/o 43575 Mission Blvd. #329
CITY	Fremont
STATE	California
COUNTRY	United States
POSTAL/ZIP CODE	94539
PHONE	510-687-4648
FAX	510-687-4655
<b>SIGNATURE SECTION</b>	
SIGNATURE	/Weilin Grace Chang/
SIGNATORY NAME	Weilin (Grace) Chang
SIGNATORY DATE	05/02/2008
SIGNATORY POSITION	Director
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Fri May 02 18:38:09 EDT 2008
TEAS STAMP	USPTO/COA-12.47.63.236-20 080502183809022296-787170 63-40079264c53975a72a179b cf01b80ae8e-N/A-N/A-20080 502183108111154

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing MOTION TO DISMISS FOR FAILURE TO SERVE and DECLARATION OF JONATHAN CHANG upon Petitioner by depositing one copy thereof via First Class Mail, in the United States mail, postage prepaid, on October 14, 2009 addressed as follows:

Karol A. Kepchar, Esq.  
Akin Gump Strauss Hauer & Feld  
1333 New Hampshire Ave. NW  
Washington, DC 20036-1564

By:



Elizabeth A. Linford  
LADAS & PARRY LLP  
5670 Wilshire Boulevard, Suite 2100  
Los Angeles, California 92373  
Attorneys for Registrant,  
T.C. Connection Corporation