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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 4, 2010

Cancellation No. 92052038
Registration No. 2950620

76/564,513

TELVENT DTN, INC.
9110 W. DODGE ROAD
OMAHA, NE 68114

SPEEDNET, LLC

v.

TELVENT DTN, INC.

Melanie T. Frazier, Esq.
450 W. Fourth Street
Royal Oak, MI 48067

Tyrone Craven, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system:
<http://ttabvue.uspto.gov/ttabvue/>.

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to registrant. However, the proof of service indicates that petitioner sent that service copy to an attorney for registrant, rather than to registrant. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the registrant's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for registrant, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than registrant.



03-22-2010

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b) (6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Time to Answer	3/16/2010
Deadline for Discovery Conference	4/15/2010
Discovery Opens	4/15/2010
Initial Disclosures Due	5/15/2010
Expert Disclosures Due	9/12/2010
Discovery Closes	10/12/2010
Plaintiff's Pretrial Disclosures	11/26/2010
Plaintiff's 30-day Trial Period Ends	1/10/2011
Defendant's Pretrial Disclosures	1/25/2011
Defendant's 30-day Trial Period Ends	3/11/2011
Plaintiff's Rebuttal Disclosures	3/26/2011
Plaintiff's 15-day Rebuttal Period Ends	4/25/2011

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the

absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing

through the **Electronic System for Trademark Trials and Appeals (ESTTA)**. Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: March 11, 2010

Cancellation No. 92052038

Speednet, LLC

v.

Speednet Services, Inc.
(substituted for Telvent DTN,
Inc. as party defendant)

Andrew P. Baxley, Interlocutory Attorney:

Petitioner, on February 4, 2010, filed a petition to cancel Registration No. 2950620, wherein it identified Telvent DTN, Inc. ("Telvent DTN") as the party defendant/respondent. USPTO Assignment Branch records indicate that Telvent DTN is the most recent assignee of that registration. The above-captioned cancellation proceeding was instituted on February 4, 2010 with Telvent DTN identified in the institution notice as the party defendant/respondent.

The involved registration was issued on May 10, 2005 on the Supplemental Register to DTN Speednet Services, LLC ("DTN Speednet"). A review of USPTO Assignment Branch records indicates that documents reflecting: (1) DTN Speednet's change of name to Speednet Services, Inc. ("respondent") and (2) the assignment of the involved

Cancellation No. 92052038

registration from DTN, Inc. to Telvent DTN were recorded prior to the commencement of this proceeding at (1) Reel 3061, Frame 0749 and (2) Reel 4083, Frame 0807, respectively.

Because Assignment Branch records indicate clear chain of title only as far as respondent, respondent is the proper party defendant herein and should have been identified as such in the institution notice. See Trademark Rule 2.113(c); Patent and Trademark Office Rule 3.73(b)(1)(i); TBMP Section 310.01 (2d ed. rev. 2004); TMEP Section 502.01 (6th ed. 2009). Accordingly, respondent is hereby substituted as party defendant herein.¹ See TBMP Section 512.01. A copy of the petition to cancel and the institution notice is enclosed with respondent's copy of this order.²

The Board notes the amended petition to cancel that petitioner filed on March 9, 2010. Although petitioner named Telvent DTN as the party defendant in both the original petition to cancel and the amended petition to cancel, petitioner served the amended petition upon

¹ The Board file for this proceeding is available online at <http://ttabvueint.uspto.gov/ttabvue/>.

² Because petitioner served the original petition to cancel upon respondent's attorney, the Board remains of the opinion that petitioner's proof of service of the original petition is a reasonable, if improper, attempt to effect service. See institution notice at 1.

Cancellation No. 92052038

respondent's "[a]ttorney of [r]ecord" and not directly upon respondent or Telvent DTN, notwithstanding that no attorney had entered an appearance on respondent's or Telvent DTN's behalf in this proceeding when the amended petition was filed. Although the attorney at issue represented DTN Speednet/respondent during *ex parte* prosecution of the application for the subject registration and is listed in Assignment Branch records as respondent's correspondent, the entry of appearance by that attorney extended only up to issuance and receipt by DTN Speednet/respondent of that registration. See TBMP Section 310.01.

In the notice instituting this proceeding that the Board issued on February 4, 2010, the Board advised petitioner that, unless and until an attorney enters an appearance on the defendant's behalf herein, any future filings herein must be served directly on the defendant. See institution notice at 1. Inasmuch as petitioner's service of the amended petition to cancel was in contravention of Trademark Rules 2.18 and 2.119 and the institution notice, the amended petition will receive no consideration at this time.

Petitioner is allowed until twenty days from the mailing date set forth in this order to: (1) properly serve the amended petition to cancel upon respondent; and (2) file with the Board proof of such service. If petitioner does

Cancellation No. 92052038

not comply with the foregoing, the amended petition to cancel will receive no consideration and this proceeding will go forward based on the original petition to cancel.

Proceedings herein are otherwise suspended.

A copy of this order has been sent to the following persons.

Speednet Services, Inc.
12809 W. Dodge Road, Suite 310
Omaha, NE 68154

Patrick C. Stephenson, Legal Dept.
Telvent DTN, Inc.
9110 W. Dodge Road
Omaha, NE 68114

Melanie T. Frazier, Esq.
Howard & Howard Attorneys PLLC
450 W. Fourth Street
Royal Oak, MI 48067

Kim M. Argo
Abrahams Kaslow & Cassman Llp
8712 W. Dodge Road, Suite 300
Omaha, NE 68114

Jason Lazar, Legal Dept.
KeyOn Communications, Inc.
11742 Stonegate Circle
Omaha, NE 68164

ESTTA Tracking number: **ESTTA330445**

Filing date: **02/04/2010**

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	SPEEDNET, LLC		
Entity	Limited Liability Company	Citizenship	Michigan
Address	3049 Bay Plaza Drive Saginaw, MI 48604 UNITED STATES		
Attorney information	Melanie T. Frazier, Esq. 450 W. Fourth Street Royal Oak, MI 48067 UNITED STATES ipdocket@h2law.com, nas@h2law.com, mtf@h2law.com Phone:(248) 723-0319		

Registration Subject to Cancellation

Registration No	2950620	Registration date	05/10/2005
Registrant	TELVENT DTN, INC. 9110 W. DODGE ROAD OMAHA, NE 68114 UNITED STATES		

Goods/Services Subject to Cancellation

Class 038. First Use: 2003/01/00 First Use In Commerce: 2003/01/00 All goods and services in the class are cancelled, namely: Communication services, namely, providing high-speed internet access, local dial-up internet access, and national toll free number dial-up internet access

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.		Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services			

Attachments	SpeednetPetitiontoCancel.pdf (3 pages)(22890 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Melanie T. Frazier/
Name	Melanie T. Frazier, Esq.
Date	02/04/2010

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

In the Matter of Supplemental Registration Number 2,950,620
For the Mark: SPEEDNET
Date of Registration: May 5, 2005

SPEEDNET, LLC,

Cancellation No. _____

Petitioner,

v.

TELVENT DTN, INC.,

Respondent.

PETITION TO CANCEL

Speednet, LLC, a Michigan limited liability company, having a principal place of business at 3049 Bay Plaza Drive, Saginaw, MI 48604 (hereinafter "Petitioner"), believes that it is being damaged and will continued to be damaged by Supplemental Registration No. 2,950,620 for the mark SPEEDNET (the "Registration") for "communication services, namely, providing high speed internet access, local dial-up internet access and national toll free number dial-up internet access" in International Class 38, owned by Telvent DTN, Inc., of 9110 W. Dodge Road, Omaha, NE 68114 (the "Respondent"), and hereby petitions to cancel the same pursuant to 15 U.S.C. § 1092.

As grounds for cancellation, it is alleged that:

1. Respondent received Federal Registration on the Supplemental Register for its mark SPEEDNET for "communication services, namely, providing high speed internet access, local dial-up internet access and national toll free number dial-up internet access" on May 10,

2005, with alleged first use of the mark in January 2003 and alleged first use of the mark in commerce commencing in January 2003.

2. Since at least as early as May 29, 2001, Petitioner and or its predecessors-in-interest have continuously used the SPEEDNET trademark in commerce on and in association with communication services, namely, providing high speed internet access.

3. The Registration states that Respondent first used the trademark SPEEDNET in January 2003 and first used the mark in commerce in January 2003.

4. Petitioner's and Respondent's trademarks are virtually identical.

5. The services associated with these trademarks are also virtually identical.

6. Petitioner is being damaged and will continue to be damaged by this Registration. Specifically, Petitioner wishes to secure its rights to obtain a Federal Registration based on its own prior use of the mark in commerce in connection with communication services, namely, providing high speed internet access. Petitioner will be damaged because consumers are likely to be confused, mistaken or deceived by the Registration.

7. For at least the foregoing reasons, the Registration is subject to cancellation.

8. Upon information and belief, Respondent and its counsel knew, or reasonably should have known, at the time the Declaration was signed in support of the Affidavit that it did not have priority of use related to the trademark.

9. This knowingly false representation is material in that the Examining Attorney would not have permitted the application to turn into a Registration on the Supplemental Register had the truth regarding these facts been disclosed.

10. Individually and collectively, Registrant's knowingly false representations in connection with its application constitutes fraud on the Trademark Office and Petitioner's Petition to Cancel the Registration should be granted based on these acts of fraud.

WHEREFORE, by its undersigned attorney, Petitioner respectfully requests that this Petition for Cancellation be granted and that Supplemental Registration No. 2,950,620 be cancelled.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

/Melanie T. Frazier/

Melanie T. Frazier
Attorneys for Petitioner
450 w. Fourth Street
Royal Oak, MI 48067-2557
(248) 723-0319
(248) 645-1568 – facsimile

Dated: February 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2010, the foregoing Petition for Cancellation has been mailed to the Attorney of Record for Supplemental Registration No. 2,950,620, Kim M. Argo, at 8712 W. Dodge Road, Suite 300, Omaha, Nebraska 68114.

/Melanie T. Frazier/

Melanie T. Frazier

#1535396-v1

United States Patent and Trademark Office

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA. 22313-1451

If Undeliverable Return in Ten Days

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER

Speednet Services, Inc.
12809 W. Dodge Road, Suite 310
Omaha, NE 68154

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 22313145151 *0217-02734-12-36

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