

ESTTA Tracking number: **ESTTA336249**

Filing date: **03/09/2010**

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

Proceeding	92052038
Party	Plaintiff SPEEDNET, LLC
Correspondence Address	Melanie T. Frazier, Esq. 450 W. Fourth Street Royal Oak, MI 48067 UNITED STATES ipdocket@h2law.com, nas@h2law.com, mtf@h2law.com
Submission	Other Motions/Papers
Filer's Name	Melanie T. Frazier, Esq.
Filer's e-mail	ipdocket@h2law.com, nas@h2law.com, mtf@h2law.com
Signature	/Melanie T. Frazier/
Date	03/09/2010
Attachments	FirstAmendedPetitiontoCancel.pdf (4 pages)(25507 bytes)

**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,

Petitioner,

v.

TELVENT DTN, INC.,

Respondent.

Cancellation No. 92052038

Registration No. 2950620

**FIRST AMENDED
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, by submitting a First Amended Petition to Cancel pursuant to 37 C.F.R. § 2.115.

As grounds for cancellation, it is alleged that:

1. Respondent’s predecessors-in-interest 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, under Supplemental Registration No. 2,950,620 (the “Registration”).

2. On October 23, 2009, Respondent claimed ownership of the Registration by filing an assignment with the United States Patent and Trademark Office.

3. 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.

4. The Registration states that Respondent and/or its predecessors-in-interest first used the trademark SPEEDNET in January 2003 and first used the mark in commerce in January 2003.

5. Petitioner’s and Respondent’s trademarks are virtually identical.

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

7. 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.

8. Respondent does not use the mark SPEEDNET.

9. The mark SPEEDNET has been abandoned by Respondent as the mark does not serve as a source indicator for Respondent’s goods or services and has not served as a source indicator for Respondent’s good and services for an extended length of time, since at least October 23, 2009.

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

11. Upon information and belief, Respondent's predecessors-in-interest and its counsel knew, or reasonably should have known, at the time of the application when the Declaration was signed in support of the Affidavit that it did not have priority of use related to the trademark.

12. Upon information and belief, Respondent and its counsel knew, or reasonably should have known on October 23, 2009, that it did not have any use of the mark SPEEDNET and could not claim any rights in the Registration.

13. These knowingly false representations are 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 and, further, Respondent would have no rights in the Registration.

14. Individually and collectively, Respondent's and its predecessors-in-interest's knowingly false representations in connection with its application and assignment constitute 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: March 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 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

#155538-v1