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Filing date: **05/14/2013**

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	NexPay, Inc.		
Entity	Corporation	Citizenship	South Dakota
Address	15455 N. Dallas Parkway Suite 525 Addison, TX 75001 UNITED STATES		

Attorney information	Dyan M. House Carter Stafford Arnett Hamada and Mockler, PLLC 8150 N. Central Expressway Suite 1950 Dallas, TX 75206 UNITED STATES trademarks@carterstafford.com Phone:214-550-8188		
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**Registrations Subject to Cancellation**

Registration No	3432014	Registration date	05/20/2008
Registrant	StoneEagle Services, Inc. Suite 100 111 W. Spring Valley Road Richardson, TX 75081 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 036. First Use: 2008/01/09 First Use In Commerce: 2008/01/09 All goods and services in the class are cancelled, namely: Electronic process of insurance claims and payment data
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)		
The mark is merely descriptive	Trademark Act section 2(e)(1)		
Registration No	3839238	Registration date	08/24/2010
Registrant	StoneEagle Services, Inc. Suite 100 111 W. Spring Valley Road Richardson, TX 75081 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 036. First Use: 2010/06/01 First Use In Commerce: 2010/06/01 All goods and services in the class are cancelled, namely: Electronic processing of insurance claims and payment data
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)		
The mark is merely descriptive	Trademark Act section 2(e)(1)		
Registration No	3839239	Registration date	08/24/2010
Registrant	StoneEagle Services, Inc. Suite 100 111 W. Spring Valley Road Richardson, TX 75081 UNITED STATES		

## Goods/Services Subject to Cancellation

Class 036. First Use: 2010/06/01 First Use In Commerce: 2010/06/01 All goods and services in the class are cancelled, namely: Electronic processing of insurance claims and payment data
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## Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Related Proceedings	StoneEagle Services, Inc. v. David Gillman et al, Civil Action No. 3:11-CV-2408-P-BD
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## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VPAY		
Goods/Services	Financial payment services		

Attachments	NEXP03_00004_Petition_for_Cancellation_051413.pdf(101763 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	/Dyan M. House/
Name	Dyan M. House
Date	05/14/2013

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

*In re:*

Mark: VPAY  
Registration No.: 3,432,014  
Date of Registration: May 20, 2008

Mark: VPAYMENT  
Registration No.: 3,839,238  
Date of Registration: August 24, 2010

Mark: VCARD  
Registration No.: 3,839,239  
Date of Registration: August 24, 2010

NexPay, Inc.	§	
	§	
Petitioner,	§	Cancellation No. _____
	§	
v.	§	
	§	
StoneEagle Services, Inc.	§	
	§	
Registrant.	§	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**PETITION FOR CANCELLATION**

Petitioner NexPay, Inc., a corporation duly organized under the laws of South Dakota, with a business address of 15455 N. Dallas Parkway, Suite 525, Addison, Texas 75001, believes that it has been, and will continue to be, damaged by Registration Nos. 3,432,014, 3,829,238, and 3,839,239 hereby timely petitions to cancel same, pursuant to 37 CFR §2.111(b).

As grounds therefor, Petitioner alleges as follows:

PETITIONER

1. Petitioner provides virtual payment solutions to third party administrators in the medical field.
2. Petitioner's president, David Gillman, ("Gillman") has worked in the healthcare industry for over 30 years.
3. Gillman was a director of Talon Transaction Technologies, Inc., a Texas corporation ("T3-TX") and Talon Transaction Technologies, Inc., an Oklahoma corporation ("T3-OK").

REGISTRANT

4. Registrant provides virtual payment solutions to third party administrators in the medical field.
5. Registrant was a vendor to T3-TX and T3-OK in connection with providing virtual payment solutions to third party administrators in the medical field.
6. Registrant applied to register the mark VPAY on November 29, 2006, Application Serial No. 77/053,186, for "electronic process of insurance claims and payment data" in International Class 036 (the "VPAY Mark"). The registration for the VPAY Mark issued May 20, 2008, under Registration No. 3,432,014 (the "VPAY Registration").
7. Registrant applied to register the mark VPAYMENT on October 13, 2009, Application Serial No. 77/847,275, for "electronic processing of insurance claims and payment data" in International Class 036 (the "VPAYMENT Mark"). The registration for the VPAYMENT Mark issued August 24, 2010, under Registration No. 3,839,238 (the "VPAYMENT Registration").

8. Registrant applied to register the mark VCARD on October 13, 2009, Application Serial No. 77/847,279, for “electronic processing of insurance claims and payment data” in International Class 036 (the “VCARD Mark”). The registration for the VCARD Mark issued August 24, 2010, under Registration No. 3,839,239 (the “VCARD Registration”).

9. For purposes of this Petition for Cancellation, the VPAY Mark, VPAYMENT Mark and VCARD Mark are collectively referred to as the “Marks.”

10. For purposes of this Petition for Cancellation, the VPAY Registration, VPAYMENT Registration and VCARD Registration are collectively referred to as the “Registrations.”

THE MARKS ARE MERELY DESCRIPTIVE OF THE SERVICES – 15 U.S.C. §1052(E)

11. Petitioner realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 10 of this Petition for Cancellation.

12. The Marks are merely descriptive of the services for which they are registered.

13. The prefix “V” is commonly used with “pay,” “payment” and “card” to indicate “virtual” as in “virtual pay,” “virtual payment” and “virtual card.” *See* Exhibit 1.

14. Registrant’s competitors and others in the financial services industry use the Marks to describe their own products and services. *See* Exhibit 2.

REGISTRANT IS NOT RIGHTFUL OWNER OF THE REGISTERED MARKS

15. Petitioner realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 14 of this Petition for Cancellation.

16. Registrant is not the rightful owner of the Marks.

17. At the time the applications were filed, Registrant was not the rightful owner of the Marks.

18. At the time the applications were filed, Talon Transaction Technologies, Inc., a Texas corporation, (“T3-TX”) was the owner of the Marks.

19. On January 31, 2008, the date the Statement of Use was filed for the VPAY Mark, T3-TX was the owner of the VPAY Mark. The specimen submitted with the Statement of Use clearly indicates that Talon Transaction Technologies, Inc. is the owner of the VPAY Mark. *See* Exhibit 3.

20. On July 15, 2010, T3-TX, T3-OK, Gillman and the Registrant entered into an agreement, which is now in dispute, in which T3-TX, T3-OK and Gillman purported to release “any and all claims to any right, title or interest in the Mark.”

21. On July 27, 2010, T3-TX and Registrant entered into a Service Mark Agreement, which is now in dispute, in which Registrant purported to license the use of the Marks to T3-TX.

STANDING: LIKELIHOOD OF DAMAGE TO PETITIONER – 15 U.S.C. §1064

22. Petitioner realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 21 of this Petition for Cancellation.

23. Petitioner believes it has been damaged – and will continue to be damaged – by the Registrations.

24. Registrant has accused Petitioner of trademark infringement with respect to the VPAY and VCARD Marks. Registrant has sued Petitioner for, among other things, trademark infringement, counterfeiting under the Lanham Act, and unfair competition, in the United States

District Court for the Northern District of Texas in a case styled *StoneEagle Services, Inc. v. David Gillman et al*, Civil Action No. 3:11-CV-2408-P-BD.

25. By reason of the foregoing, Petitioner has been harmed by the Registrations.

26. This Petition for Cancellation is timely, as it is being submitted within five years of the Registrations' registration dates.

**REQUEST FOR RELIEF**

WHEREFORE, Petitioner believes that it has been and is likely to be damaged by U.S. Registration Nos. 3,432,014, 3,839,238 and 3,839,239, and Petitioner respectfully requests that this Petition for Cancellation be granted and the Registrations be cancelled.

Dated: May 14, 2013

Respectfully submitted,

By:     /s/ John S. Torkelson    

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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Petition for Cancellation (Registration Nos. 3,432,014, 3,839,238 and 3,839,239) has been served on Registrant, StoneEagle Services, Inc., 111 W. Spring Valley Road, Suite 220, Richardson, Texas 75081, pursuant to 37 C.F.R. §2.119, via first class mail on this 14<sup>th</sup> day of May, 2013.

/s/ John S. Torkelson

John S. Torkelson