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

Proceeding	92057344
Party	Defendant Racemi, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cloudpath Networks, Inc.,	§	
	§	
Petitioner,	§	
	§	Cancellation No. 92057344
vs.	§	(Registration No. 4,174,640
	§	
Racemi, Inc.,	§	
	§	
Registrant.	§	

REGISTRANT'S TRIAL BRIEF (NON-CONFIDENTIAL VERSION)

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REGISTRANT'S TRIAL BRIEF (NON-CONFIDENTIAL VERSION)

Registrant Racemi, Inc. submits this trial brief in opposition to the petition of Petitioner Cloudpath Networks, Inc. to cancel U.S. Service Mark No. 4,174,640. Petitioner fails to support adequately its claim under Section 2(d) of the Lanham Act, and Petitioner improperly asserts in its trial brief a new claim (under Section 1(a)) which was neither pled by Petitioner nor tried by the consent of Registrant, such that the Board should give it no consideration.

I. THE RECORD

To a large extent, Racemi concurs with CNI's description of the record in this case. More particularly, Racemi agrees that the following materials may be considered by the Board:

1. The trial testimony of CNI's CEO, Kevin Koster, and the exhibits thereto (TTABVUE 29-30);
2. The discovery period deposition of Racemi's VP of Marketing, James Strayer (TTABVUE 23), and certain exhibits thereto, Strayer Exhibits 1, 5-8, 8-1, 9, 9-1 and 10-30;

- (Strayer Exhibits 2-4 were not referenced in the testimony);

3. The discovery period deposition of Racemi's CTO, Charles Watt (TTABVUE 23);
4. Racemi's responses to interrogatories and requests for admission (TTABVUE 21);
5. Documents produced by Racemi (bearing control numbers with prefix "RAC");
6. Some documents produced by CNI, namely documents bearing Control Nos. CLD004-6, 15, 34-37, 39, 41-134, 142-351 and 361; and
7. CNI's CLOUDPATH registration (Reg. No. 4,045,900) (admissible via the testimony of Mr. Koster).

To the extent (if any) that CNI asserts that any other materials submitted under its notices of reliance are admissible, Racemi objects on the grounds stated with respect to those materials in *Registrant's Motion to Strike Petitioner's Notice of Reliance* (TTABVUE 25).

II. THE PARTIES' SERVICES

Registrant Racemi, Inc. ("Racemi") has used since August 2011 and has registered the designation CLOUD PATH (Reg. No. 4,174,640) as a service mark for the following services: "Software as a service (SAAS) services featuring a hosted computer software application for **migrating** computer operating systems, applications, and data between customer data centers and public cloud providers." That registration issued July 17, 2012 from an application (No. 85/460,848) filed October 31, 2011.

Petitioner Cloudpath Networks, Inc. ("CNI") allegedly has used the designation CLOUDPATH since October 2008, and CNI has registered CLOUDPATH (Reg. No.

4,045,900) as a service mark for the following services: "Providing access to online software for use in automated trouble shooting of computer software problems with **access restricted to authorized users**." CNI's CLOUDPATH registration issued October 25, 2011 from an application (No. 77/803,433) filed August 12, 2009.

CNI's petition is based upon its alleged use of, and rights in, the CLOUDPATH mark in conjunction with the services covered by its senior registration. While the parties' respective designations are similar, that is only one of several factors to be considered in determining whether the parties' concurrent use of those designations in conjunction with their respective services is likely to cause confusion of the relevant members of the public. When the jargon of the parties' registrations is distilled to more comprehendible terms, and when those actual services and the respective marketplaces for those services are analyzed, it is seen not only that Racemi's **server migration services** and CNI's **secured network connectivity services** are quite different from one another, but also that the users, purchase decision-makers, and other marketplace factors pertaining to the parties' respective services are also so disparate that confusion is unlikely. Thus, it is no surprise that, notwithstanding four years of concurrent use of the parties' marks in their respective marketplace environs, there is no probative evidence of any actual relevant confusion nor any survey evidence which supports CNI's petition. Thus, when *all* of the relevant factors are considered, CNI's petition must be denied.

A. <u>An Overview of Racemi's CLOUD PATH Server Migration Services</u>

In this case, it is particularly appropriate to precede the legal analysis with an understanding of the actual meaning of the jargon incorporated in the parties' respective registrations. Racemi's CLOUD PATH registration incorporates a disclaimer of the

exclusive right to use the "CLOUD" component apart from the composite word mark CLOUD PATH. That disclaimer is appropriate because of the cloud-related nature of Racemi's services.

The term "cloud" is a generic term used commonly to refer to the situation which exists when computer operating systems, applications and/or data reside on servers which are physically located in a facility remote from the user and are accessible by the user via the internet. That circumstance (often referred to as "cloud computing") contrasts with situations in which the relevant servers are physically located within the IT infrastructure firewall of the user's enterprise. Typically, the provider of the cloud utilizes numerous servers located on its "server farm" to concurrently host multiple user-customers' operating systems, applications and data. Thus, it becomes the cloud provider's responsibility – not the user-customer's responsibility – to maintain the physical equipment, *i.e.*, the remotely located servers.

Consequently, commercial enterprises, particularly relatively large enterprises, often find it advantageous to transition from an in-house system of servers to a provider of cloud services. However, when the decision is made to undertake such a transition, these enterprises typically already have resident on their existing in-house servers, substantial valuable data, applications and operating systems which they do not want to re-create, or relocate themselves, in order to run them on the new computers, *i.e.*, the cloud provider's servers. Thus, the problem becomes how to efficiently transfer all of those existing and often massive databases, applications and operating systems literally "from here to there." That is where Racemi provides the necessary "moving company" services for such transitions. Of course, the industry does not refer to such transition

processing as "moving company" services; instead, the term used in the industry is "server migration" services.

What Racemi does, in essence, is capture a snapshot of the software running on the original servers and migrate (*i.e.*, transfer and install) that software to a different server platform. (Strayer Depos. pp. 10-11, 23-28; Watt Depos. pp. 11-12 (TTABVUE 23)) As such, the server migration process may result in the software being migrated to a cloud-based server platform as described above, or it may result in the software being migrated elsewhere. For example, upon a corporate merger or acquisition, the user enterprise may wish to continue having all of the relevant servers located in-house, but it may find it more efficient or otherwise desirable to consolidate the merged constituents' servers into a single group of servers. In such a case, Racemi, using essentially the same process, can provide the software necessary to capture and migrate one or both constituents' databases, applications and/or operating systems to the composite enterprise's server stack. (Strayer Depos. pp. 13-14 (TTABVUE 23))

Moreover, there are other similar applications for Racemi's CLOUD PATH server migration services. For example, a user may upgrade some or all of its servers, such that it needs to migrate all applications and data from existing servers to the new hardware (*i.e.*, the new servers). (Strayer Depos. pp. 11-12 (TTABVUE 23)) Again, Racemi's "moving company" software efficiently performs the capture-and-migrate process. In each of these situations, Racemi, as recited in the listing of services in its CLOUD PATH registration, is providing "software as a service (SAAS) services" via a "hosted computer software application" for the particular purpose of "migrating computer operating systems, applications, and data" between "customer data centers," on the one

hand, and, on the other hand, either "public cloud providers" (*i.e.*, the third-party cloud computing service companies) or other server stacks.

B. An Overview of CNI's CLOUDPATH Secured Network Connectivity Software Services

On the other hand, CNI's CLOUDPATH services permit users' selective connectivity of their laptops and PDAs to BYOD ("Bring Your Own Device") wireless networks and meetings, primarily within college campuses and other educational and corporate environs. (Koster Depos. pp. 106-111 (TTABVUE 30)) Thus, CNI's CLOUDPATH service is useful to a university, a meeting organizer, or other enterprise which has a secure wireless network, but nevertheless wants to temporarily allow students, meeting attendees, employees or other persons to attend and participate in a class or meeting using their personal laptops and PDAs. As such, students and attendees can walk into a session and, through a process commonly referred to as "onboarding," connect temporarily to the customer's secure network without opening the network in a manner which would expose that network to unauthorized users.[1]

III. ARGUMENT

A. The Factors To Be Considered In Determining Whether the Registration Should Be Maintained

CNI has the burden of establishing that a likelihood of consumer confusion exists as a result of Racemi's use of its registered CLOUD PATH mark. *Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.*, 6 USPQ2d 1001, 1007 (Fed. Cir. 1988) (holding that "[i]t is

[1] Knowing that Racemi's CLOUD PATH services pertain only to server "migration," CNI, throughout its brief, liberally salts the descriptions of its secured network connectivity services with "migrate," "migrates" and "migration" in a transparent effort to influence the Board to perceive that the parties' services are more similar than is actually the case. Just as you cannot call a dog a "bird" and expect it to sprout wings and fly, CNI's strained effort to transform its onboarding service into server migration does not fly either.

beyond question" that a challenger alleging likelihood of confusion bears the burden of proof and persuasion). CNI fails to meet this burden. Accordingly, CNI's petition should be dismissed, allowing Racemi to retain its registration.

The ultimate question of likelihood of confusion is one of law. *Sweats Fashions Inc. v. Pannill Knitting Co.*, 4 USPQ2d 1793, 1797 (Fed. Cir. 1987). In making its determination, the Board must consider not only the marks and recitations of services as they appear in the parties' registrations, but must also consider how the marks are used in the marketplace because that is where confusion of prospective customers would arise. *E.g., Burger Chef Sys. Inc. v. Sandwich Chef, Inc.*, 203 USPQ 733, 734 (C.C.P.A. 1979).

The factual considerations to be examined in determining a likelihood of confusion have been set out in *In re E.I. duPont de Nemours & Co.*, 177 USPQ 563, 567 (C.C.P.A. 1973) as follows:

(1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;

(2) the similarity or dissimilarity and the nature of the goods or services as described in an application or registration, or in connection with which a prior mark is in use;

(3) the similarity or dissimilarity of established, likely-to-continue trade channels;

(4) the conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing;

(5) the fame of the prior mark (sales, advertising, length of use);

(6) the number and nature of similar marks in use on similar goods or in conjunction with similar services;

(7) the nature and extent of any actual confusion;

(8) the length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(9) the variety of goods or services on or in conjunction with which a mark is or is not used (house mark, "family" mark, product mark);

(10) the market interface between the applicant or registrant and the owner of a prior mark;

(11) the extent to which the applicant or registrant has a right to exclude others from use of its mark upon goods or in conjunction with services;

(12) the extent of potential confusion, i.e., whether de minimis or substantial; and

(13) any other established fact probative of the effect of use.

B. The *duPont* Factors Do Not Support a Finding of a Likelihood of Confusion

Under the *duPont* factors, a likelihood of confusion does not exist in this case, for the following reasons:

1. CNI's CLOUDPATH Designation Is Both Inherently and Commercially Relatively Weak as a Service Mark

One of the more significant factors in a likelihood of confusion analysis is the relative strength of the challenger's mark. That consideration is at the core of several of the factors appearing within the list of *duPont* factors, other precedents of this Board, and in the body of trademark jurisprudence. Moreover, there are two, often separately considered, types of strength associated with trademarks, their *inherent strength* and their

commercial strength. In this case, the challenger's mark, CLOUDPATH, has neither significant inherent strength nor significant commercial strength in the context in which it is registered and used.

The *inherent strength* of a mark reflects its distinctiveness in the context of the goods or services in conjunction with which it is used. While an arbitrary or fanciful mark may possess substantial inherent strength, a suggestive or descriptive mark possesses little, if any, inherent strength, and a generic mark possesses no inherent strength. Likewise, a generic term within a composite mark contributes no inherent strength to that composite mark.

In this case, the challenger's secured network connectivity service mark, CLOUDPATH, is a composite term comprised of "Cloud" and "Path." As this Board has observed previously, the term "Cloud" is a generic term when used in the field of computer networks. *See, e.g., In re Active Video Networks, Inc.*, 111 USPQ2d 1581 (TTAB 2014). Consequently, there are numerous composite marks which incorporate the term "Cloud" and which are federally registered for use in conjunction with computer networks. *Id.* at 1590-93 (listing examples of such registered marks). As such, the first term of CNI's CLOUDPATH mark, "Cloud," injects absolutely no inherent strength into that mark.

As for the second term of CNI's mark, "Path," while that term is not necessarily generic for secured network connectivity services, it is, at best, a highly suggestive term. In the context of CNI's usage of CLOUDPATH, the "Path" component suggests that the service provides, or describes its nature as the provider of, a "path" or "way" into the secure network. Thus, in the context of CNI's network connectivity service, the

composite term also is, at best, highly suggestive. Hence, CNI's CLOUDPATH mark is a relatively weak mark, having very little inherent strength or scope, even within CNI's niche field of use, *i.e.*, the provision of access to otherwise secured computer networks.

Further, a consideration of the *commercial strength* (vis-a-vis the *inherent strength*) of CNI's CLOUDPATH mark informs the conclusion that the challenger's mark is a weak one. In the year in which Racemi began using and applied to register the challenged CLOUD PATH server migration service mark, *i.e.*, 2011, the gross revenue generated by challenger CNI was $[redacted]. (Exh. 105 (TTABVUE 30)) Moreover, although CNI had been in business since 2006, its gross revenue had not even reached the $[redacted] mark until 2010. (Exh. 105 (TTABVUE 30)) Further, as discussed in greater detail hereinafter, the target market and actual customer base for CNI's network connectivity services was then, and still remains, primarily universities, schools and other educational organizations. (Koster Depos. pp. 104-111; Exh. 106 (TTABVUE 30)) Thus, at the relevant times, CNI's CLOUDPATH mark was known almost exclusively to a relatively small customer base within a narrow niche field.

Hence, whether considering the *inherent strength* or the *commercial strength* of CNI's CLOUDPATH mark – or both – the evidence supports only one conclusion: CNI's CLOUDPATH secured network connectivity mark is a relatively weak mark. Accordingly, this particularly important factor supports the conclusion that there is no significant likelihood of confusion.

2. <u>The Parties' Services Are Provided to Sophisticated Purchasers</u>

Another important set of *duPont* factors relates to the identities and relative sophistication of the purchasers and purchase decision-makers of the parties' respective

services. In this case, those purchasers and purchase decision-makers are relatively sophisticated.

As noted briefly hereinabove, CNI's customers use the CLOUDPATH network connectivity service for "onboarding." (Koster Depos. p. 27 (TTABVUE 30)) Those customers are primarily universities, schools and other educational organizations who have encrypted secure networks and want to allow students or conference participants to attend a class or meeting and bring and use temporarily in those sessions their personal laptops and PDAs without jeopardizing the security of the networks. (Koster Depos. pp. 10, 15, 27 and 104-111 (TTABVUE 30)) Thus, the students and meeting attendees are neither the purchasers of, nor the purchase decision-makers for, CNI's CLOUDPATH network connectivity services. Instead, the persons relevant to this analysis are those IT professionals within school systems, universities or other enterprises who are charged with the careful selection and purchase of software critical for the security of the purchasers' networks.

On the other hand, most of the business for Racemi's CLOUD PATH server migration services comes from its "partners" (*e.g.*, IBM) who market and *sell* Racemi's product to those partners' customers, or those partners' service teams who *use* Racemi's product for the benefit of the partners' customers. (Strayer Depos. pp. 19-20 (TTABVUE 23)) Thus, Racemi's primary target market includes the partners who are providing server migration services to the partners' customers as part of the partners' broader array of services.[2] (Strayer Depos. p. 32 (TTABVUE 23)) Such server migration services

[2] In support of its contention that Racemi's purchasers are not highly sophisticated, CNI asserts inaccurately that Racemi's customers use Racemi's CLOUD PATH software "for free," and thus "[h]ardly any care at all may be needed to make a purchasing decision when the perceived price to the customer is

frequently involve the migration of hundreds or even thousands of servers, such that Racemi's in-house services personnel (integrators or consultants) may be involved in those projects, but it is Racemi's partners who generate that business. (Strayer Depos. pp. 38, 64-65 (TTABVUE 23)) Thus, Racemi's revenue often comes directly from those partners, typically based on the number of servers migrated by the partners. (Strayer Depos. p. 32 (TTABVUE 23))

Hence, such partners comprise a significant portion of Racemi's target market. In fact, only a very small percentage of Racemi's business comes from sources other than its partners, such that Racemi presently does not even have an in-house sales staff. (Strayer Depos. pp. 42-43; 54-55 (TTABVUE 23)) That group of partners also includes cloud providers, managed hosting providers, and other entities who provide an infrastructure service as part of a cloud computing offering (*e.g.*, SoftLayer, GoGrid, Rackspace and Amazon Web Services). Other targets for Racemi's CLOUD PATH services include system integrators and consultants (*e.g.*, Accenture and Capgemini) who actually perform migrations on behalf of the customers of those consultants and system integrators. (Strayer Depos. pp. 31-36 and 42; Strayer Exh. 10 (TTABVUE 23)) Even in those relatively rare occasions when Racemi's CLOUD PATH server migration service is being provided to a direct customer, that direct customer is likely to be an IT administrator or a system administrator who specializes in server management. (Strayer Depos. pp. 18-19 (TTABVUE 23))

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nothing." (CNI Brief p. 40) That argument is flawed for several reasons, including: (i) the fact that Racemi's partner builds Racemi's server migration fee into the partner's fee to its customer does not mean that Racemi's service is provided "for free"; and (ii) it is Racemi's partner (not the partner's customer) who is the relevant purchase decision-maker.

Thus, each party's services are provided primarily, if not exclusively, to relatively sophisticated purchasers and purchase decision-makers. As such, consideration of this important factor also informs the conclusion that there is no significant likelihood of confusion between CNI's CLOUDPATH network connectivity service and Racemi's CLOUD PATH server migration service.[3]

3. <u>The Parties' Services Are Neither Competitive Nor Related</u>

While both parties' services relate to the world of computers, that certainly does not make those services "related" in trademark parlance. In fact, the parties' services are neither "related" nor competitive. Instead, the respective fields occupied by the parties are quite disparate and narrow.

Racemi operates in a niche field in providing CLOUD PATH services. Consistent with the listing of services in the challenged registration, that field is the provision of server migration services. As such, Racemi's competitors are other entities who provide server migration services, *e.g.*, Cloud Velocity, River Meadow, Clicker, Ravello and Double-Take. (Strayer Depos. pp. 40-41 (TTABVUE 23)) It is those competitive entities to whom systems integrators, consultants and other partners may go if they, or their customers, need an alternative provider of Racemi's server "moving company" services.[4]

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[3] In support of its argument that confusion is likely, CNI relies, in part, on the fact that both parties "market their products through the internet, and more specifically, through their respective websites." (CNI Brief p. 35) But, "*Who doesn't?*" Today, that commonality has no legal significance whatsoever.

[4] In its brief, CNI posits that an IT consultant could work for a customer end-user who, at various times, may want to do both server migrations and onboarding, and that although the parties may be considered "totally different types of IT service companies," the fact "they are both in the IT industry" informs the conclusion that confusion is likely. (CNI Brief pp. 37-38) That argument stretches too far the concept of relatedness in today's technologically advanced world.

On the other hand, CNI operates in another, entirely different niche field in providing its CLOUDPATH network connectivity services. Thus, when CNI "first started buying Adwords, the company bought ads related to searches for [relevant] generic concepts, such as onboarding, security and Wi-Fi." (CNI Brief p. 12) As such, Racemi is not one of CNI's competitors (Koster Depos. pp. 105-106 (TTABVUE 30)), and CNI's President admitted that the listing of services in CNI's registration does not encompass server migration services. (Koster Depos. p. 114 (TTABVUE 30))[5] Moreover, there has never been a known instance in which Racemi interacted in any way with CNI or its services (Strayer Depos. p. 67 (TTABVUE 23)), and CNI admits that the parties have never participated in any of the same trade shows. (CNI Brief p. 35) Thus, consideration of this factor indicates that the challenged registration should be maintained.[6]

4. <u>There Is No Probative Evidence of Actual Relevant Confusion</u>

Even if the evidentiary record of alleged confusion is viewed in the light most favorable to CNI, nothing is proven other than that (i) some Internet visitors have left CNI's website after accessing it, and (ii) some unidentified individual was given an instruction to locate on the internet an image relating to CNI and, instead, found an image relating to Racemi's CLOUD PATH services.

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[5] Notwithstanding that admission, CNI argues unconvincingly in its brief that the listing of server migration services in Racemi's CLOUD PATH registration is a narrower subset of the services listed in CNI's CLOUDPATH registration. (CNI Brief pp. 32-34)

[6] CNI also argues that, because it had some software on the system of one of its customers and provided some sort of "support" to that singular customer (Meijer retail stores) when that customer's servers were being migrated, that instance demonstrates that the parties' services are "related" in a relevant manner. (CNI Brief p. 11) However, under that logic, *any* type of software used by a customer requiring server migration service would also be "related" to server migration services.

CNI erroneously states in its brief that Mr. Finneran (in inadmissible hearsay) told Mr. Koster that he (*i.e.*, Mr. Finneran) mistakenly selected the Racemi CLOUD PATH logo for inclusion in his slide presentation. (CNI Brief pp. 27, 42) Not only would that have been inadmissible hearsay *if* Mr. Finneran had said it, that is not what Mr. Koster testified. (Koster Depos. pp. 97-98 (29 TTABVUE 99-100)) In that portion of his testimony, Mr. Koster merely surmised that Mr. Finneran made the mistaken selection, and on cross-examination Mr. Koster admitted that: he does not know whether he actually talked to Mr. Finneran about the slide; he does not know who made the slide; and the slide could have been made by a clerk or some other administrative person. (Koster Depos. pp. 103-104 (29 TTABVUE 105-106))

If Mr. Finneran himself had been the individual who mistakenly selected Racemi's logo for inclusion in a slide presentation, or if there had been any actual relevant confusion of a purchaser or purchase decision-maker for CNI's services or Racemi's services, one would expect CNI to have had Mr. Finneran testify and/or would have identified any such purchaser or purchase decision-maker and availed itself of that person's testimony. In the absence of any such testimony, the Board must conclude that there is no probative evidence of actual confusion by any relevant individual or enterprise.

Moreover, CNI's own President testified that he knows of no instances of inquiry or confusion occurring in the entire period of CNI's existence. (Koster Depos. p. 115 (TTABVUE 30)) Thus, there is no probative evidence of any actual relevant confusion notwithstanding the parties' several years of concurrent use of their CLOUDPATH and

CLOUD PATH marks in their respective niche fields. Hence, contrary to CNI's argument, this factor does not support CNI's challenge to Racemi's registration.

C. Petitioner May Not Rely Now On An Unpled Claim Of Non-Use

Quite surprisingly, CNI attempts to assert in its trial brief, and for the first time in this proceeding, a new ground for cancellation of Racemi's CLOUD PATH registration. More particularly, CNI now "asserts that Racemi's CLOUD PATH mark [sic, registration] is void *ab initio* because Racemi did not provide goods or services under the mark by the [Section 1(a)] application filing date [October 3, 2011] and did not actually provide any goods or services under the mark until well after the registration date [July 17, 2012]." (CNI Brief p. 5) That conclusion is premised on an allegation that "[t]he first documented sale or provision of Racemi's [CLOUD PATH] services was on March 25, 2013." (CNI Brief p. 22, citing 23 TTABVUE Strayer Exhibit 29 (a Racemi income statement)).

However, because there was no claim for cancellation pled by CNI in its petition for cancellation other than a likelihood of confusion claim under Section 2(d) of the Lanham Act, there is no pled claim related to Racemi's actual date of first use. As such, it was not incumbent on Racemi to submit evidence in this proceeding to support either its claimed date of first use or any actual date of first use.

The assertion of a claim for the first time in a plaintiff's trial brief is manifestly untimely. *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1103 n.3 (TTAB 2007). Moreover, such issue certainly was not tried by consent in this case. Accordingly, CNI may not rely on its new Section 1(a) claim in this proceeding, and the

Board should give it no further consideration. *See, e.g.,* TBMP § 314 and the cases cited therein.

IV. CONCLUSION

Registrant Racemi respectfully submits that the evidence of record does not adequately support CNI's petition for cancellation under Section 2(d), and CNI's newly asserted claim under Section 1(a) is untimely and unfairly asserted initially in CNI's trial brief. For these reasons, the Board should deny CNI's petition to cancel U.S. Service Mark Registration No. 4,174,640.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Registrant's Trial Brief (Non-Confidential Version)" was duly served on Petitioner via email as shown below on August 13, 2015, pursuant to an agreement between the parties to serve all such documents electronically:

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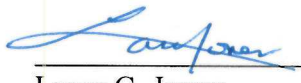

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