

ESTTA Tracking number: **ESTTA556734**

Filing date: **08/28/2013**

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	Heartland Payment Systems, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	90 Nassau Street Princeton, NJ 08542 UNITED STATES		

Attorney information	Beth M. Goldman and Betsy Wang Lee Orrick, Herrington & Sutcliffe LLP 405 Howard Street San Francisco, CA 94105 UNITED STATES ipprosecutionsf@orrick.com, blee@orrick.com Phone:415-773-5700		
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Registration Subject to Cancellation

Registration No	3436861	Registration date	05/27/2008
Registrant	THE BANCORP BANK 601 CARLSON PARKWAY SUITE 1050 MINNETONKA, MN 55305 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2006/11/14 First Use In Commerce: 2006/11/14 All goods and services in the class are cancelled, namely: Issuing stored value cards; issuing stored value cards for use in connection with insurance payments, workers compensation payments, and/or catastrophe relief payments
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	Petitioner has simultaneously filed a petition for cancellation against Registration No. 3,436,864 for PROSPER in Class 9 in the name of The Bancorp Bank (tracking number: ESTTA556732).
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Attachments	Cancellation 3436861.pdf(57775 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	/Betsy Wang Lee/
Name	Betsy Wang Lee
Date	08/28/2013

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

In the Matter of Registration No. 3,436,861
Trademark: **PROSPER**

<p>Heartland Payment Systems, Inc.,</p> <p style="text-align:center">Petitioner,</p> <p style="text-align:center">v.</p> <p>The Bancorp Bank,</p> <p style="text-align:center">Respondent.</p>	
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PETITION FOR CANCELLATION

Heartland Payment Systems, Inc. (“Petitioner”), a Delaware corporation having a principal place of business at 90 Nassau Street, Princeton, New Jersey 08542, believes that it is and will continue to be damaged by Registration No. 3,436,861 for the mark PROSPER in International Class 36 and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges:

1. Petitioner has filed with the United States Patent and Trademark Office an application for the mark PROSPER in International Class 36 at Application Serial No. 85/642,064. Petitioner’s application has received a refusal under Section 2(d) of the Lanham Act on the grounds that Petitioner’s mark so resembles the mark shown at Registration No. 3,436,861 as to be likely to cause confusion, mistake, or to deceive.

2. The Bancorp Bank (“Respondent”) appears as the last listed owner of Registration No. 3,436,861 for the mark PROSPER for “issuing stored value cards; issuing stored value cards

for use in connection with insurance payments, workers compensation payments, and/or catastrophe relief payments” in International Class 36.

3. Respondent is listed in the registration as a Delaware corporation with a place of business at 601 Carlson Parkway, Suite 1050, Minnetonka, Minnesota 55305.

4. Upon information and belief, Respondent is currently located at 409 Silverside Road, Suite 105, Wilmington, Delaware 19809.

5. Upon information and belief, Respondent has not used PROSPER as a trademark in the United States for over three consecutive years in connection with the services claimed in its registration and therefore Respondent is presumed to have abandoned the PROSPER mark pursuant to 15 U.S.C. § 1127.

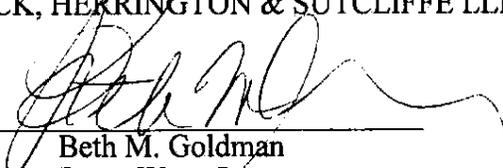
6. If Respondent is permitted to maintain the registration that is the subject of this cancellation, it will continue to hold at least a *prima facie* exclusive right to use of PROSPER. Such a registration would continue to be a source of damage and injury to Petitioner.

WHEREFORE, Petitioner prays that the cancellation be sustained and that Registration No. 3,436,861 be cancelled.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: August 28, 2013

By: 
Beth M. Goldman
Betsy Wang Lee

Attorneys for Petitioner
405 Howard Street
San Francisco, CA 94105
415-773-5700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing PETITION FOR CANCELLATION was served by First Class Mail, on August 28, 2013, on Respondent at the following addresses:

The Bancorp Bank
601 Carlson Parkway, Suite 1050
Minnetonka, Minnesota 55305

The Bancorp Bank
409 Silverside Road, Suite 105
Wilmington, Delaware 19809

Dated: August 28, 2013

By: Betsy Wang Lee
Betsy Wang Lee

Attorneys for Petitioner
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, California 94105