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

Proceeding	92062096
Party	Defendant ODL, Incorporated
Correspondence Address	ODL INCORPORATED 215 EAST ROOSEVELT AVENUE ZEELAND, MI 49464 UNITED STATES
Submission	Answer
Filer's Name	Joan L. Long
Filer's e-mail	joan.long@btlaw.com,maburto@btlaw.com,trademarks-ch@btlaw.com
Signature	/Joan L. Long/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Trademark Registration No. 4,668,337  
For the Trademark IN HOUZ  
Registered on the Principal Register January 6, 2015

HOUZZ INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92062096
	)	
ODL, INCORPORATED,	)	
	)	
	)	
Registrant	)	

**ANSWER TO PETITION FOR CANCELLATION**

ODL Inc. ("Registrant") answers the Petition for Cancellation of Houzz, Inc. (Petitioner"), as follows:

Registrant denies that Petitioner will be damaged by continued registration of the above-referenced mark as claimed in the preamble of the Petition for Cancellation.

1. Houzz is an online platform and application offering a wide variety of information about home design and remodeling to a broad community of users across the United States and internationally.

**ANSWER:** Registrant admits that Petitioner operates an online platform and application, as described in their trademark registrations, but is without knowledge or information sufficient to form a belief as to the accuracy or relevance of the remaining claims of paragraph 1 of the Petition for Cancellation and therefore denies the same.

2. Houzz began as a local, small project in the Bay Area founded by a husband and wife who had experienced difficulty in identifying the resources and information they desired in connection with remodeling their home.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief

as to the accuracy or relevance of paragraph 2 of the Petition for Cancellation and therefore denies the same.

3. Over the years, Houzz has transformed the home remodeling and design industry by bringing together a community of homeowners, designers, architects and others in the industry to share, exchange and discuss remodeling and design and has become the leading – and largest – platform for home remodeling and design.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of Petitioner’s claims of paragraph 3 of the Petition for Cancellation, including without limitation the claim to have “transformed the home remodeling and design industry”, and therefore denies the same.

4. With more than 35 million unique monthly users and 800,000 active home professionals, Houzz offers the largest home community online.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 4 of the Petition for Cancellation, including without limitation the claim to have “the largest home community online” and therefore denies the same.

5. Houzz’ website, which is located at [www.houzz.com](http://www.houzz.com) the “HOZZ website”), and Houzz’ mobile application now feature over 7 million professional photos of home interiors and exteriors.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 5 of the Petition for Cancellation and therefore denies the same.

6. Since 2008, Houzz has continuously used the inherently distinctive trademark HOUZZ in interstate commerce for a website featuring information in the fields of home renovation, home interior design, interior decorating and remodeling.

**ANSWER:** Registrant denies Petitioner’s trademark, HOUZZ, which is a stylized spelling and phonic equivalent to the term HOUSE, and has not yet reached incontestable status, is inherently distinctive and therefore denies the allegations contained in paragraph 6 of the

Petition for Cancellation.

7. The HOUZZ Website and Houzz' mobile application provide a platform for users to create electronic scrapbooks and share photos of home design and decorating ideas, including DIY ("do it yourself") home projects.

**ANSWER:** Registrant admits Petitioner provides a platform for electronic home design scrapbooks and photo sharing, but is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 7 of the Petition for Cancellation and therefore denies the same

8. The HOUZZ Website and Houzz' mobile application provide a platform for home design and remodeling professionals to share and promote their services by featuring their portfolios of past work and facilitating connections with consumers for those services.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 8 of the Petition for Cancellation, specifically whether the described services are covered by Petitioner's registrations or claimed first use dates, and therefore denies the same

9. The HOUZZ Website and Houzz' mobile application provide a platform to enable homeowners to readily locate and connect with providers of products including building materials, furnishing and decorative items featured in images displayed on the HOUZZ Website and on the Houzz mobile application.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy or relevance of paragraph 9 of the Petition for Cancellation, specifically whether the described services are covered by Petitioner's registrations or claimed first use dates, and therefore denies the same.

10. Houzz has devoted substantial time, effort, and resources to the development and extensive promotion of the HOUZZ mark and the products and services offered thereunder. As a result of Houzz' efforts and the quality of the products and services offered under the HOUZZ mark, the public has come to recognize and rely upon the HOUZZ trademark as an indication of

quality and the HOUZZ mark enjoys substantial goodwill in the marketplace and is a valuable asset of Houzz.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 10 of the Petition for Cancellation and therefore denies the same

11. Over the years, the HOUZZ mark has enjoyed widespread media coverage, including coverage by *The Today Show*, *CNBC*, *Bloomberg Businessweek*, *Fox Business*, *Fast Company*, *Les Echos*, *Pando Daily*, *Time*, *Forbes*, *Mashable*, *Bloomberg TV*, *Internet Trends 2014*, *TechCrunch*, *Vanity Fair*, *CNN*, *The Huffington Post*, *The Wall Street Journal*, *The Washington Post*, *Digital Journal*, *The San Francisco Chronicle*, *The New York Times*, *Fortune.com*, *The Dallas Morning News*, *The Cleveland Plain Dealer*, *Landscape Management Magazine*, *The Valley Girl Show*, *AllThingsD*, *PCMag.com*, *Barron's*, *MacObserver*, *TheStreet*, *Remodeling Magazine*, *The Sacramento Bee*, *Architectural Digest*, *The National Post*, *Macworld*, *Search Engine Watch*, *The Los Angeles Times*, *Forbes*, *Las Vegas Review-Journal*, *Chicago Tribune*, *InStyle*, *AppStorm*, *Parenting*, *The Kim Komando Show*, *The Mercury News*, *La Stampa*, *AppCraver*, *The Associated Press*, and *The Oregonian*.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 11 of the Petition for Cancellation and therefore denies the same

12. As a result of Houzz' widespread use of the HOUZZ mark in the United States, extensive advertising and promotion of the products and services sold in connection with the HOUZZ mark, widespread media coverage of Houzz' products and services, the high degree of customer recognition of the HOUZZ mark, the strong and loyal base of customers that Houzz enjoys for its services, the distinctiveness of the HOUZZ mark, among other factors, the HOUZZ mark is famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

**ANSWER:** Registrant denies paragraph 12 of the Petition for Cancellation.

13. On April 10, 2012, the United States Patent & Trademark Office ("PTO") issued U.S. Trademark Registration No. 4,124,845 for the mark HOUZZ in connection with "[p]romoting home design and decorating products of others by providing hypertext links to the web sites of others; promoting home design, decorating, and remodeling services of others by providing contact information and hypertext links to service provider's websites," "[p]roving a website that features information in the field of home renovation and remodeling," and "[p]roviding a website featuring information in the field of interior design and architecture for use by interior designers and architects; [p]roviding a website featuring information in the field of home interior design and interior decorating; [p]roving an website that features temporary use of non-downloadable software allowing website users to upload, post, share and display online photos of interior design and decorating ideas and which also allows users to post questions and

comments in the field of interior design, decorating and remodeling; providing a website featuring temporary use of non-downloadable software for use in creating online, electronic scrapbooks of design and decorating ideas.”

**ANSWER:** Registrant admits paragraph 13 repeats the services listed in the three (3) classes enumerated in U.S. Trademark Registration No. 4,124,845.

14. The application filing date and priority date for U.S. Trademark Registration No. 4,124,845 is July 8, 2011.

**ANSWER:** Registrant admits paragraph 14 states the application filing date found on U.S. Trademark Registration No. 4,124,845.

15. The date that the HOUZZ mark was first used for each class of services in U.S. Trademark Registration No. 4,124,845 was least as early as August 2008.

**ANSWER:** Registrant admits paragraph 15 describes the claimed first use date submitted by Petitioner and displayed on U.S. Trademark Registration No. 4,124,845, but Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 15 of the Petition for Cancellation and therefore denies the same.

16. On February 18, 2014, the PTO issued U.S. Trademark Registration No. 4,485,255 for the mark HOUZZ and Design (in stylized form) in connection with “[p]roviding online directories and listings featuring vendor contact information in the field of interior decorating, furnishings, and remodeling; providing hypertext links to websites of others featuring the sale of furnishing,” “[p]roviding a website that features information in the field of home renovation and remodeling; providing hypertext links to websites of others featuring home remodeling information,” and “[p]roviding a website featuring information in the field of interior decorating and architecture; [p]roviding a website that features temporary use of non-downloadable software allowing website users to upload, post, share and display online photos of interior decorating ideas and that also allows users to post questions and comments in the field of interior decorating and remodeling; providing a website featuring temporary use of non-downloadable software for use in creating online, electronic scrapbooks of decorating ideas; providing hypertext links to websites of others featuring interior decorating information.”

**ANSWER:** Registrant admits paragraph 16 repeats the services listed in the three (3) classes enumerated in U.S. Trademark Registration No.. 4,485,255.

17. The application filing date and priority date for U.S. Trademark Registration No. 4,485,255 is July 23, 2013.

**ANSWER:** Registrant admits paragraph 17 states the application filing recorded in the USPTO for U.S. Trademark Registration No. 4,485,255.

18. The date that the HOUZZ and Design mark was first used for each class of services in U.S. Trademark Registration No. 4,485,255 was at least as early as December 2009.

**ANSWER:** Registrant admits paragraph 18 describes the claimed first use date submitted by Petitioner and displayed on U.S. Trademark Registration No. 4,485,255, but Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 18 of the Petition for Cancellation and therefore denies the same.

19. U.S. Trademark Registration Nos. 4,124,845 and 4,485,255 are referred to collectively herein as the "HOUZZ Registrations." True and correct copies of the registration certificates for the HOUZZ Registrations, along with the PTO report on the current status of the HOUZZ Registrations, are attached as Exhibit A, and incorporated by reference as though fully set forth herein Houzz is also the owner of several other pending U.S. Trademark applications for the mark HOUZZ, as well as foreign trademark application and registrations.

**ANSWER:** Registrant admits copies of the certificates of registration and a TSDR print-out, dated August 17, 2015 for the Houzz Registrations are attached to the Petition for Cancellation as Exhibit A, but Registrant denies the pending applications (still in examination) and foreign filings have any relevance to this proceeding and therefore deny the remaining allegations of paragraph 19 of the Petition for Cancellation.

20. The HOUZZ Registrations are in full force and effect on the PTO's Principal Register.

**ANSWER:** Registrant admits the HOUZZ Registrations appear to be currently in force.

21. On August 7, 2013, ODL applied to register the mark IN HOUZ with the United States Patent and Trademark Office, and the registration issued as U.S. Trademark Registration

No. 4,668,337 (“ODL’s Registration”) on January 6, 2015, covering “[p]roviding a website to promote the sale and purchase of decorative [sic] door glass, retractable screens, doorglass blinds, door glass, indoor storage and communication system, and tubular solar lighting,” and “[p]roviding information on installation services available by region in the fields of decorative door glass, retractable screens, door glass blinds, door glass, indoor storage and communication systems, and tubular solar lighting.” ODL’s Registration contains a claimed date of first use of March 31, 2014 for the IN HOUZ mark for the services identified in the registration. A true and correct copy of ODL’s Registration is attached hereto as Exhibit B.

**ANSWER:** Registrant admits that a copy of the certificate of registration and a TSDR print-out, dated August 17, 2015 for the ODL’s Registration, U.S. Trademark Registration No. 4,668,337 is attached to the Petition for Cancellation as Exhibit B.

22. ODL’s Registration has not become incontestable.

**ANSWER:** Registrant admits that both the HOUZZ Registrations and the ODL Registration have yet to achieve incontestable status.

23. Houzz incorporates by reference paragraphs 1-22, inclusive, as if fully set forth herein.

**ANSWER:** Registrant incorporates by reference its answers to paragraphs 1-22, inclusive, as if fully set forth herein.

24. The priority dates for the HOUZZ Registrations are prior to ODL’s first use of the IN HOUZ mark and application to register the IN HOUZ mark in the United States.

**ANSWER:** Registrant admits that, according to Trademark Office records, the applications for U.S. Trademark Registration No. 4,124,845 (HOUZZ) appear to have been filed on July 8, 2011, and the application for U.S. Trademark Registration No. 4,485,255 (HOUZ and Design) was filed July 23, 2013. Registrant filed its application for U.S. Trademark Registration No. 4,668,337 on August 7, 2013, thus receiving priority date only 15 days after the priority date of HOUZZ and Design. Registrant admits it’s claimed first use date is March 31, 2014.

25. Houzz began using the HOUZZ mark in commerce in the United States prior to

ODL's adoption and use of the IN HOUZ mark in commerce in the United States.

**ANSWER:** Registrant is without knowledge or information sufficient to form a belief as to the accuracy of paragraph 25 of the Petition for Cancellation and therefore denies the same.

26. The term IN HOUZ incorporates a distinctive part of the HOUZZ mark, i.e., "HOUZ."

**ANSWER:** Registrant denies HOUZ is distinctive, as it is a stylized spelling and the phonetic equivalent to the term HOUSE, and denies Registrants use of its registered mark, when viewed in its entirety, is similar to the Houzz Registrations.

27. The IN HOUZ mark is highly similar in sight, sound, and appearance to the HOUZZ mark.

**ANSWER:** Registrant denies the allegations in paragraph 27 of the Petition for Cancellation.

28. ODL's use of IN HOUZ, by itself or through its subsidiaries or licensees, for "[p]roviding a website to promote the sale and purchase of decorative door glass, retractable screens, doorglass blinds, door glass, indoor storage and communication system, and tubular solar lighting," and "[p]roviding information on installation services available by region in the fields of decorative door glass, retractable screens, door glass blinds, door glass, indoor storage and communication systems, and tubular solar lighting" directly overlaps with the services contained in the HOUZZ Registrations offered by Houzz in commerce under the HOUZZ brand.

**ANSWER:** Registrant denies the allegations in paragraph 28 of the Petition for Cancellation.

29. Through accounts on the HOUZZ Website, ODL, or its subsidiaries or licensees, have offered for sale products under the IN HOUZ mark. Attached hereto as Exhibit C is a true and correct copy of a cached version of a page on the HOUZZ Website as of July 19, 2015 reflecting the listing of a product under the IN HOUZ mark.

**ANSWER:** Registrant denies the permitted posting shown in Exhibit C are evidence of any fact relevant to this proceeding and therefore deny the allegations in paragraph 29 of the Petition for Cancellation.

30. ODL’s products and services offered under the IN HOUZ brand are offered through the same marketing and trade channels and to the same target customers as Houzz’, including through e-commerce websites and, until Houzz suspended ODL’s accounts, in some cases through the HOZZ Website itself.

**ANSWER:** Registrant denies the allegations in paragraph 30 of the Petition for Cancellation.

31. ODL has used the IN HOUZ mark in connection with dozens of blog articles that are deliberate and willful imitations of the style used by Houzz covering the same subjects as Houzz. For example:

<b>HOZZ ARTICLES AVAILABLE AT HOZZ.COM</b>	<b>IN HOUZ ARTICLES AVAILABLE AT IN HOUZ.COM</b>
17 Ways to Increase Your Home’s Curb Appeal (first published March 20, 2013)	12 Ways to Add Curb Appeal to Your Home (first published August 6, 2015)
How to Spruce Up Your Patio for Summertime Fun (first published May 23, 2015)	Sprucing Up Your Outdoor Entertaining Space for Spring (first published August 3, 2015)
12 Cheap and Chic Fall Centerpieces (first published September 25, 2012)	12 Creative Centerpieces for Any Occasion (first published August 13, 2015)
Keys to a Stylish Entry (first published April 2, 2011)	Transformation Tuesday: A Stylish Entryway (first published April 28, 2015)
8 Amazing Home Exterior Transformations (first published May 29, 2013)	5 Ways to Transform an “Ugly” Home Exterior (first published March 9, 2015)
Find the Right Glass Door for Your Patio (first published August 1, 2013)	Finding Your Front Door Glass Design Style (first published July 9, 2015)
Your Door: Shades of Privacy and Light (first published January 17, 2012)	Transformation Tuesday: Natural Light and Privacy (first published April 21, 2015)
The Joy of Spring: Bring the Outside Inside (March 20, 2011)	5 Tips on How to Bring the Outdoors Inside (first published January 22, 2015)
13 Upgrades to Mark Over Your Outdoor Grill Area (first published June 25, 2015)	8 Patio Upgrades for Under \$200 Each (first published August 5, 2015)
10 Fun Decorating Projects for Spring (first	10 Ways to Spruce Up Your Home Décor for

<b>HOZZ ARTICLES AVAILABLE AT HOZZ.COM</b>	<b>IN HOZZ ARTICLES AVAILABLE AT IN HOZZ.COM</b>
published March 19, 2014)	Spring (first published May 6, 2015)

True and correct copies of excerpts from each of the respective houzz.com and inhouz.com articles listed above are attached hereto as Exhibit D.

**ANSWER:** Registrant denies the relevance of the similarity of common article blogs to the instant proceeding or to Petitioner's vague claim of ownership in the blog topics and therefore denies the allegations of paragraph 31 of the Petition for Cancellation.

32. On social media, ODL has also shared links to Houzz's content in a manner that puts the IN HOZZ mark and HOZZ mark in close proximity.

**ANSWER:** Registrant denies the use of a domain name link, as intended and anticipated by the platform, constitutes trademark use and further denies there is any use of the trademarks in close proximity.

33. For example, ODL posted a link to a Houzz article on Twitter, under the InHouz username, with multiple references to Houzz, as shown in the following screenshot:



**ANSWER:** Registrant denies that use a domain name link on Twitter, as intended and

anticipated by the platform, is trademark use and therefore denies the allegations of paragraph 33 of the Petition for Cancellation.

34. ODL posted the same article on Facebook as well, under the InHouz username, as shown in the following screenshot:



**ANSWER:** Registrant denies that use of a domain name link on Facebook, as intended and anticipated by the platform, is trademark use and therefore denies the allegations of paragraph 34 of the Petition for Cancellation

35. ODL's use of the term IN HOUZ described herein is likely to cause confusion in the marketplace with the HOUZZ mark.

**ANSWER:** Registrant denies the allegations in paragraph 35 of the Petition for Cancellation.

36. ODL's use of the term IN HOUZ described herein creates a false suggestion of an affiliation or connection between ODL and Houzz.

**ANSWER:** Registrant denies the allegations in paragraph 36 of the Petition for Cancellation.

37. Houzz is not affiliated with ODL. Houzz has not consented to, sponsored, endorsed, or approved of ODL's use of the term IN HOUZ in connection with the production, marketing, or sale of any products or services.

**ANSWER:** Registrant admits that Petitioner is not affiliated with Registrant. Registrant denies it needs Petitioner's consent, sponsorship, endorsement or approval to use its

ODL Registration in connection with these registered services, and denies that any such confusion as to application is likely to result.

38. Upon information and belief, ODL's actions are willful and reflect intent to confuse consumers and profit from the goodwill and consumer recognition associated with Houzz and its HOUZZ trademark.

**ANSWER:** Registrant denies the allegations in paragraph 38 of the Petition for Cancellation.

39. Houzz has no control over the nature and quality of goods and services offered under ODL's IN HOUZ mark, and the value of Houzz's HOUZZ mark is jeopardized by the registration of ODL's IN HOUZ mark. Because of the likelihood of confusion between the parties' marks, any defects, improprieties, or faults found with ODL's goods and services marketed under its IN HOUZ mark would negatively reflect upon and injure the reputation that Houzz has established for the goods and services it offers in connection with the HOUZZ mark.

**ANSWER:** Registrant admits the Petitioner has no control over the services offered by Registrant under its registered mark. Registrant denies the remaining allegations of paragraph 39 of the Petition for Cancellation.

40. Continued registration of IN HOUZ would give ODL *prima facie* evidence of the validity and ownership of the mark to the detriment of Houzz.

**ANSWER:** Registrant answers that the ODL Registration already provides Registrant with *prima facie* evidence of Registrant's validity, ownership and exclusive right to use its registered mark in connection with the services, and denies the remaining allegations of paragraph 40 of the Petition for Cancellation.

41. Continued registration of the mark herein challenged will damage Houzz because ODL's IN HOUZ mark is likely, when used on or in connection with the goods described in the challenged registration, to cause confusion, or to cause mistake or to deceive.

**ANSWER:** Registrant denies the allegations in paragraph 36 of the Petition for Cancellation.

42. Thus, ODL's IN HOUZ mark should be cancelled under 15 U.S.C. §§1052, 1053, and 1064.

**ANSWER:** Registrant denies the allegations in paragraph 42 of the Petition for Cancellation.

43. Houzz incorporates by reference Paragraphs 1 through 42 inclusive, as if fully set forth herein.

**ANSWER:** Registrant incorporates by reference its answers to paragraphs 1-42, inclusive, as if fully set forth herein

44. As a result of the considerable publicity afforded the HOUZZ mark, and the strong and loyal base of customers that Houzz enjoys for its services, the HOUZZ mark has a high degree of consumer recognition, it is widely recognized by the general consuming public of the United States as a designation of Houzz's services, and it is famous.

**ANSWER:** Registrant denies the allegations in paragraph 44 of the Petition for Cancellation.

45. The HOUZZ mark became famous before ODL adopted or applied to register the IN HOUZ mark.

**ANSWER:** Registrant denies the allegations in paragraph 45 of the Petition for Cancellation.

46. ODL's IN HOUZ mark incorporates a distinctive part of the HOUZZ mark, i.e., "HOUZ," and thus its use is likely to cause an association between IN HOUZ and HOUZZ that impairs the distinctiveness of the HOUZZ mark and weakens the connection in consumers' minds between the HOUZZ mark and Houzz's services.

**ANSWER:** Registrant denies the allegations in paragraph 46 of the Petition for Cancellation.

47. ODL's use of the IN HOUZ mark is likely to cause dilution by blurring based on a number of relevant considerations, including:

- (a) The high degree of similarity between the IN HOUZ mark and the famous HOUZZ mark;
- (b) The inherently distinctive nature of the HOUZZ mark;

- (c) Houzz' substantially exclusive use of the HOUZZ mark;
- (d) The wide recognition of the HOUZZ mark by the general consuming public; and
- (e) On information and belief, ODL intended to create an association with the HOUZZ marks.

**ANSWER:** Registrant denies the allegations in paragraph 47, including subparts a-e, of the Petition for Cancellation.

48. Thus, ODL's IN HOUZ mark should be cancelled under 15 U.S.C. §§1052, 1053, 1064, and 1125.

**ANSWER:** Registrant denies the allegations in paragraph 48 of the Petition for Cancellation.

#### **AFFIRMATIVE DEFENSES**

- A. Petitioner's claims of willful infringement and dilution are barred by doctrine of unclean hands.
- B. Petitioner's claims of likelihood of confusion are barred by the doctrine of laches.
- C. Petitioner's claims of likelihood of confusion are barred by the doctrine of estoppel.
- D. Petitioner's claims of likelihood of confusion are barred by the doctrine of acquiescence.
- E. Petitioner's claims of likelihood of confusion fail to consider the difference of the services offered under the respective registrations.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed and that this registration continue to be in force and effect.

Please address all future correspondence for this proceeding to:

Joan L. Long, Esq.  
BARNES & THORNBURG  
P.O. Box 2786  
Chicago, IL 60690-2786  
Phone: (312) 357-1313  
Fax: (312) 759-5646

Respectfully submitted,

ODL, INC.

By: \_\_\_\_\_



Joan L. Long  
P.O. Box 2786  
Chicago, IL 60690-2786  
(312) 357-1313  
(312) 759-5646 (fax)  
Attorney for Registrant

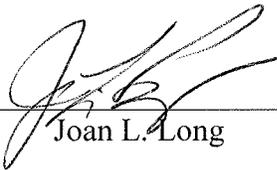
Dated: September 15, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER TO PETITION FOR CANCELLATION has been served on HOUZZ INC. by mailing a copy via First Class Mail, postage prepaid, to Petitioner's counsel of record:

JOHN PAUL OLEKSIUK  
COOLEY LLP  
1299 PENNSYLVANIA AVENUE NW, SUITE 700  
WASHINGTON, DC 20004

September 15, 2015



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Joan L. Long