ESTTA Tracking number: **ESTTA810277**

Filing date: **03/29/2017**

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

Proceeding	86743092
Applicant	TekSavvy Solutions Inc.
Applied for Mark	TEKSAVVY
Correspondence Address	BEN D TOBOR GREENBERG TRAURIG LLP 1000 LOUISIANA ST , STE 1700 HOUSTON, TX 77002-5001 UNITED STATES toborb@gtlaw.com, gtipmail@gtlaw.com
Submission	Applicant's Request to Extend
Attachments	TEKSAVVY-010200-Motion for Extension.pdf(45073 bytes) Teksystems Inc v Teksavvy Solutions Inc.pdf(1608350 bytes)
Filer's Name	BEN D. TOBOR
Filer's e-mail	toborb@gtlaw.com, gtipmail@gtlaw.com
Signature	/bendtobor/
Date	03/29/2017

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

IN RE: TekSavvy Solutions Inc.		§
		§
SERIAL NO.:	86/743,092	§
		§
FILED:	08/31/2015	§
		§
MARK:	TEKSAVVY	§
		§
ATTORNEY DOCKET NO. 160598.010200		§

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION FOR EXTENSION OF TIME FOR FILING APPEAL BRIEF

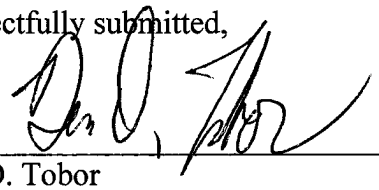
Applicant, TekSavvy Solutions Inc., respectfully requests the granting of an extension of time for filing its Appeal Brief in the above-captioned appeal, pursuant to TBMP § 1203.02(d) (2014).

Applicant submits that good cause exists for the granting of this extension of time, in that Applicant has concurrently filed herewith a Motion to Suspend Appeal based upon a civil action filed in the United States District Court, for the District of Maryland, Baltimore Division, a copy of which is attached hereto, that may be dispositive of the issues involved in the present appeal.

Assuming that Applicant's Motion to Suspend Appeal is granted, Applicant requests that its Appeal Brief be held in abeyance until a reasonable period of time after the final determination of the civil action referred to in Applicant's Motion to Suspend Appeal.

Alternatively, should Applicant's Motion to Suspend Appeal not be granted, Applicant respectfully requests that it be granted an extension of time for filing its appeal brief for a period of time of 30 days from the decision on Applicant's Motion to Suspend Appeal.

Respectfully submitted,



Ben D. Tobor
Greenberg Traurig LLP
1000 Louisiana, Suite 1800
Houston, Texas 77002
Phone: 713-374-3568
Fax: 713-754-7568
ATTORNEYS FOR APPLICANT

Document Selection Menu

Select the document you wish to view.

Document Number: 1		6 pages	242 kb

Attachment	**Description**		
1	Exhibit A	3 pages	75 kb
2	Exhibit b	3 pages	111 kb
3	Civil Cover Sheet	1 page	128 kb
4	Summons	2 pages	28 kb

View All or Download All 15 pages 0.6 mb

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore

TEKSYSTEMS, INC. *

Plaintiff, *

v. * Civil Action No. _____

TEKSAVVY SOLUTIONS, INC. *

Serve on: *
Benjamin D. Tobor
Greenberg Traurig, LLP *
1000 Louisiana Street, Suite 1700
Houston, Texas 77002 *

Defendant. *

* * * * * * * * * * * * *

COMPLAINT

Plaintiff TEKsystems, Inc., by its undersigned counsel, files this Complaint against TekSavvy Solutions, Inc., and states as follows:

1. Plaintiff TEKsystems, Inc. ("TEKsystems") is a Maryland corporation with corporate headquarters located at 7437 Race Road, Hanover, Maryland 21076. TEKsystems has provided IT staffing solutions, IT services, and IT management expertise since 1997. TEKsystems' 80,000 IT professionals are deployed at 6,000 client sites annually across North America, Europe, and Asia. TEKsystems also maintains a blog for IT industry professionals and employers entitled "TEKsavvy."

2. Defendant TekSavvy Solutions, Inc. ("TSS") is a Canadian company with corporate headquarters located at 800 Richmond St., Chatham, ON, N7M 5J5. Upon information

and belief, TSS offers telecommunications and website development services to consumers residing in Canada.

JURISDICTION AND VENUE

3. This is an action for trademark infringement under 15 U.S.C. §§ 1114 *et seq*, and declaratory judgment under 28 U.S.C. § 2201 pursuant to an actual controversy within this Court's jurisdiction.

4. This Court has personal jurisdiction over TSS pursuant to Md. Code Ann., Cts & Jud. Proceedings § 6-103 because, inter alia, TSS alleges that it engages in a persistent course of conduct making computer information available to internet users in the state of Maryland.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because the matter in controversy involves a question of federal trademark law.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c)(3).

FACTS

7. Beginning at least as early as November 21, 2012, TEKsystems has used the trademark TEKSAVVY on a continuous basis in interstate commerce in connection with maintaining a blog (the "Blog"). TEKsystems makes the Blog available to the general public in connection with providing its services.

8. The Blog provides career advice, commentary on industry trends, and tips for using hardware and software to IT job seekers, professionals, and employers. The Blog also advertises job openings with TEKsystems.

9. The Blog is regularly updated, is open to the public for comments, and readers comment on the articles. Readers may interact with the Blog's moderator in the comments

section, who may provide more information about the services TEKsystems offers, or direct particular readers to TEKsystems' current job openings.

10. TEKsystems owns a registration in the United States Patent and Trademark Office ("USPTO") for the trademark TEKSAVVY, U.S. Reg. No. 4,389,639, issued on August 20, 2013 ("TEKSAVVY" or "Registration").

11. TEKsystems has invested significant time and resources into building and maintaining the Blog, and it is entitled to benefit from the recognition and goodwill associated with the exclusive use of TEKSAVVY in connection with these services.

12. On December 7, 2016, TEKsystems received an email, attached hereto and made a part hereof as **Exhibit A**, from TSS's counsel, Benjamin Tobor. Mr. Tobor stated that TSS attempted to register the term "TEKSAVVY" under two separate applications, for trademark classes 38 and 42, including long distance telephone services, ISP services, and website development services. Mr. Tobor alleged that TSS began posting a blog under the TekSavvy name (the "TSS Blog") prior to TEKsystems' use of TEKSAVVY. The USPTO refused registration based on likelihood of confusion with TEKsystems' existing Registration.

13. TSS has not posted an article on the TSS Blog since May 4, 2015.

14. None of the articles visible on the TSS Blog are open for comments or any other form of user feedback.

15. The TSS Blog entries do not feature advertisements from third-parties or links to goods or services offered by TSS.

16. TSS's web site allows access to the web site only if the visitor selects a location from a list of Canadian provinces.

17. In response to TEKsystems' request that TSS clarify the nature of its services provided in the United States, TekSavvy confirmed that TSS is "a Canadian corporation that provides certain services to customers in Canada, such as its telecommunications and website development services, among others." TSS also "renders a website featuring blogs, and on-line journals, namely, blogs . . . in both the United States and Canada." TekSavvy's correspondence is attached hereto and made a part hereof as **Exhibit B**.

18. Mr. Tobor stated in both emails that TekSavvy would file a Petition to Cancel TEKsystems' TEKSAVVY Registration in the Trademark Trial and Appeal Board unless TEKsystems consents to TekSavvy's registration of TEKSAVVY in the USPTO.

COUNT I

(Declaratory Judgment of Validity of TEKsystems' Trademark Rights)

19. TEKsystems restates and incorporates by reference as if fully set forth the allegations of paragraphs 1 through 18, inclusive.

20. TSS's use of the term TEKSAVVY in connection with posting a blog in Canada is not a "use in commerce" in the United States that entitles it to trademark registration in the USPTO.

21. TEKsystems is entitled to the exclusive use of its TEKSAVVY mark by virtue of its registration and continuous use of TEKSAVVY in interstate commerce for more than four (4) years in connection with maintaining a blog providing career advice, commentary on industry trends, and tips for using hardware and software to IT job seekers, professionals, and employers.

22. TSS's correspondence threatening litigation creates an actual controversy within the Court's jurisdiction.

COUNT II

(Trademark Infringement)

23. TEKsystems restates and incorporates by reference as if fully set forth the allegations of paragraphs 1 through 22, inclusive.

24. TSS alleges that it is using the term TEKSAVVVY in connection with providing a blog on IT news and information to the general public in Maryland.

25. TSS does not have TEKsystems' consent to use the TEKSAVVY mark.

26. TSS's use of "TekSavvy" in connection with the TSS Blog is likely to cause confusion, cause mistake, or to deceive consumers as to the affiliation, connection, or association of TSS with TEKsystems, and/or as to the origin, sponsorship, or approval of TSS's services or commercial activities, causing damage to TEKsystems, in violation of the Lanham Act, 15 U.S.C. § 1114.

29. On information and belief, TSS's infringing conduct has caused irreparable injury to TEKsystems' reputation and goodwill for which TEKsystems has no adequate remedy at law.

30 On information and belief, TSS's infringing conduct has caused actual harm to TEKsystems in loss of customers and market share.

WHEREFORE, TEKsystems, Inc. respectfully requests the following relief:

A. A declaration that TEKsystems, Inc.'s use and registration of the TEKSAVVY mark remains valid, was not obtained fraudulently or contrary to the provisions of 15 U.S.C. §§ 1052(a)-(c) or 1054, has not been abandoned, has not become the generic name for the goods or services in connection with which the mark is used, and is not being used by or with permission of the registrant to misrepresent the source of the goods or services on or in connection with

which the mark is used, and that TekSavvy Solutions, Inc. is not entitled to registration of the mark;

B. A permanent injunction enjoining TekSavvy Solutions, Inc., its officers, members, agents, servants, employees, attorneys, affiliates, and those in active concert or participation with them, from using, reproducing, advertising, or promoting in connection with any IT-focused blog or related IT services the TEKSAVVY name or mark or any confusingly similar name or mark in the United States;

C. An award of damages, plus prejudgment and post judgment interest, to TEKsystems, Inc. in an amount to be determined at trial;

D. An award to TEKsystems, Inc. of its reasonable attorneys' fees and costs for this action; and

E. Such other and further relief as this Court deems equitable and just.

Dated: December 29, 2016

Respectfully submitted,

Sherry H. Flax – Federal Bar No. 03517
Jordan D. Rosenfeld – Federal Bar No. 13694
Saul Ewing LLP
500 East Pratt Street, 9th Floor
Baltimore, Maryland 21202
(410) 332-8784 (Telephone)
(410) 332-8785 (Facsimile)
sflax@saul.com

Attorneys for Plaintiff
TEKsystems, Inc.

EXHIBIT A

From: ToborB@gtlaw.com [mailto:ToborB@gtlaw.com]
Sent: Wednesday, December 07, 2016 6:06 PM
To: Flax, Sherry H.
Subject: TEKsavvy Service Mark Reg. 4,389,639; Our file 160598.010200/US

Re: U.S. Service Mark Registration No. 4,389,639, for TEKsavvy of TEKsystems, Inc.

Dear Ms. Flax:

We represent TekSavvy Solutions, Inc., a corporation of Canada in connection with its U.S. trademark matters. Our client has two pending applications to register TEKSAVVY in Classes 38 and 42, application Serial Nos. 86/743,092 and 86/743,101 for local and long distance telephone services, ISP services and website development services, among others. Registration has been refused based upon your client's registration of TEKsavvy in Class 41 for on-line journals, namely, blogs and providing a website featuring blogs.

We are seeking a Consent To Registration from your client for our client's applications.

Our client had a TekSavvy Blog in the United States since at least as early as November 16, 2011. Copies of our client's TekSavvy Blog of November 16, 2011 and December 3, 3011 from the WayBackMachine Internet Archive are attached. Additionally, copies of portions of the first page of each of those blogs as they appear are also attached, wherein the right-hand column indicates archived blogs from September 2011 through December 2011.

Our client's website is www.teksavvy.com, and its blogs are located at http://blogs.teksavvy.com.

We note that your client's registration indicates a date of first use of its mark of at least as early as November 21, 2012. Our research on the WayBackMachine Internet Archive does not indicate any use of your client's mark for blogs on its website at www.teksystems.com any earlier than the end of 2012.

Our client desires to obtain registrations of its TEKSAVVY marks for the services set forth in its two pending applications. One option would be to

obtain from your client a Consent To Registration, with standard and typical terms and conditions. Its other option would be to seek to cancel your client's registration based upon our client's prior use of its mark TEKSAVVY for blogs in the United States. Our client would of course prefer to amicably resolve this situation without filing a cancellation proceeding, and trust that would also be your desire.

After you have had an opportunity to review this information, please give me a call so we can further discuss our client's request. Your cooperation in this matter is appreciated.

We trust that the foregoing information is sufficient for your purposes; however, if you have any questions or require any further information, please do not hesitate to contact us.

Very truly yours,

Ben D. Tobor

Ben D. Tobor
Shareholder
Greenberg Traurig, LLP | 1000 Louisiana Street | Suite 1700 | Houston, TX 77002
Tel 713.374.3568 | Fax 713.754.7568 | Cell 713.446.8939
ToborB@gtlaw.com | www.gtlaw.com

GT GreenbergTraurig

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information.

EXHIBIT B

From: <ToborB@gtlaw.com>
Date: December 20, 2016 at 1:27:02 PM EST
To: <SFlax@saul.com>
Subject: RE: TEKsavvy Service Mark Reg. 4,389,639; Your file 160598.010200/US

Dear Ms. Flax:

You are correct that our client is a Canadian corporation that provides certain services to customers in Canada, such as its telecommunications and website development services, among others. Additionally, our client also renders a "website featuring blogs", and "on-line journals, namely, blogs", just like your client, in both the United States and Canada. Its Class 41 services relating to its blog have been provided, or rendered, in the United States since at least as early as November 16, 2011, as set forth in our email below. Our client's blogging services have been rendered in commerce that may be regulated by the U.S. Congress -- commerce between the United States and a foreign country. T.M.E.P. § 901.03. "Offering services via the Internet has been held to constitute use in commerce, since the services are available to a national and international audience who must use interstate telephone lines to access a website." (T.M.E.P. § 901.03). See *Planned Parenthood Fed'n of Am., Inc. v. Bucci,* 42 USPQ2d 1430 (S.D.N.Y. 1997), *aff'd*, 152 F.3d 920 (2d Cir. 1998).

We submit that our client has superior rights to the mark TEKSAVVY for its Class 41 blogging services in the United States, as well as Canada, based upon its prior use in the United States of its mark in connection with its blog, and this use would provide a basis to seek cancellation of your client's mark in the U.S. Our client simply wants to obtain registrations for its TEKSAVVY marks for the services set forth in its two pending applications, without the necessity of filing a cancellation proceeding against your client's registration. This is the basis of our request for a Consent To Registration as set forth in my email below, and as we recently discussed on the telephone. Provided we can obtain a Consent to Registration, we believe that we will be readily able to agree to your client keeping its registration and continuing to use its mark in the United States, and that this would be part of a side agreement to the Consent To Registration.

We trust that the foregoing information is sufficient for your purposes; however, if you have any questions or require any further information, please do not hesitate to contact us.

Best regards, and you and yours have a Joyous Holiday season and a Healthy and a Happy 2017.

Ben Tobor

Ben D. Tobor
Shareholder
Greenberg Traurig, LLP | 1000 Louisiana Street | Suite 1700 | Houston, TX 77002
Tel 713.374.3568 | Fax 713.754.7568 | Cell 713.446.8939
ToborB@gtlaw.com | www.gtlaw.com

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
TEKSYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff Anne Arundel County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS
TEKSAVVY SOLUTIONS, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
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- ☐ 530 General
- ☐ 535 Death Penalty

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- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

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- ☐ 423 Withdrawal 28 USC 157

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- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. section 1114, et seq and 28 U.S.C. section 2201

Brief description of cause:
Trademark Infringement and Declaratory Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE
12/29/2016

SIGNATURE OF ATTORNEY OF RECORD
Josh Rosenfeld

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

TEKSYSTEMS, INC.

Plaintiff(s)

v.

TEKSAVVY SOLUTIONS, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TEKSAVVY SOLUTIONS, INC.
Serve On: Benjamin D. Tobor, Esq.
Greenberg Traurig
1000 Louisiana Street, Suite 1700
Houston, TX 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sherry H. Flax, Esq.
Saul Ewing LLP
500 E. Pratt St., Suite 900
Baltimore, MD 21202
(410) 332-8784 (Telephone)
sflax@saul.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc: