

I.

Likelihood of Confusion

1. The Application was filed on January 8, 2001, under § 1(b) of the Lanham Act, alleging an intent to use the mark REALSTREAM as a trademark for “computer software that enables realistic viewing and fast downloading of 3D animation and sound from the Internet.”

2. Opposer is a leader in the field of computer software products and services, including but not limited to the encoding, decoding, transmission and broadcast of audio, video, animation and multimedia of all kinds via the Internet, private intranet and other media delivery platforms, including personal computers and computer networks, set-top boxes, satellite delivery networks, cellular telephones, wireless radios, hand-held portable devices, and other digital and electronic platforms.

3. Since at least as early as April 10, 1995, Opposer has been using the mark REALAUDIO in connection with its computer software and services. Opposer obtained Registration No. 2,009,457 issued October 22, 1996 for REALAUDIO in International Classes 9 and 42.

4. Opposer has built a family of marks around the word “REAL.” In addition to the REALAUDIO registration described above, Opposer owns other registrations, including, but not limited to, Registration No. 2,358,356 for REAL and Design issued June 13, 2000 (Class 9); Registration No. 2,370,688 for REALJUKEBOX issued July 25, 2000 (Class 9); Registration No. 2,194,178 for REALPLAYER issued October 6, 1998 (Class 9); Registration

No. 2,381,759 for REALPRESENTER issued August 29, 2000 (Class 9); Registration No. 2,332,138 for REALPRODUCER issued March 21, 2000 (Class 9); Registration No. 2,375,696 for REALPUBLISHER issued August 8, 2000 (Class 9); Registration No. 2,398,131 for REALSLIDESHOW issued October 24, 2000 (Class 9); Registration No. 2,259,264 for REALSYSTEM issued July 6, 1999 (Class 9); Registration No. 2,237,558 for REALTEXT issued April 6, 1999 (Class 9); and Registration No. 2,084,718 for REALVIDEO issued July 29, 1997 (Class 9). Opposer also owns applications for a variety of other "REAL" marks, including but not limited to Application Serial No. 78/019,641 for REALARCADE, filed August 3, 2000 (Classes 9 and 41); Application Serial No. 78/211,196 for REALDOWNLOAD, filed August 14, 2000 (Class 9); and Application Serial No. 75/664,813 for REALPROXY, filed March 19, 1999 (Class 9). Opposer also owns common law trademarks for numerous other marks used with computer software and services that contain the preface "REAL." The foregoing marks are collectively referred to as the "REAL Marks."

5. Opposer has clearly established priority with respect to the REAL Marks. For example, Opposer has continually used REALAUDIO in connection with its business since at least as early as April 10, 1995, and has extensively used numerous other REAL Marks prior to the filing date of the intent to use Application herein opposed. Opposer also uses several domain names for its Internet web sites that contain the term "REAL," including www.real.com and www.realnworks.com.

6. Opposer has provided its goods and services under the REAL Marks throughout the United States and the world. As a result of the care and skill exercised by Opposer in the conduct of its business, the uniform standards of high quality of goods and

services sold under Opposer's REAL Marks, and the advertising, promotion, sale and distribution thereof, the goods and services sold under Opposer's REAL Marks have acquired an outstanding reputation, and Opposer has developed exceedingly valuable good will with respect to the REAL Marks. RealNetworks' software products and services are widely used throughout the world. As of August 2001, there were more than 220 million unique registered users of RealNetworks' RealPlayer software product, and more than 60 million unique registered users of RealNetworks' RealJukebox product. In addition, Opposer's goods and services sold under the REAL Marks have received substantial publicity from national publications and newspapers, and the REAL Marks have acquired an outstanding fame and celebrity which symbolizes and embodies good will of inestimable value which Opposer has created.

7. Opposer's RealPlayer software product, and its REALAUDIO and REALVIDEO marks, are primarily used to download audio and video over the Internet via a process commonly known as "streaming." Opposer's products constitute the leading streaming application available on the Internet. It is believed that as of August 2001, more than 85% of all web pages on the Internet that enable streaming use Opposer's RealAudio or RealVideo products.

8. The trademark proposed for registration by Applicant, REALSTREAM, is substantially the same as Opposer's REAL Marks, is to be applied to goods/services which are substantially similar to those offered by Opposer, and so nearly resembles Opposer's REAL Marks as to be likely to be confused with the Opposer's REAL Marks. Applicant's mark is deceptively similar to the Opposer's REAL Marks so as to cause confusion and lead to misunderstanding as to the origin of Applicant's goods bearing Applicant's mark.

9. If Applicant is granted the registration herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's REAL Marks. Consumers familiar with Opposer's REAL Marks would be likely to purchase Applicant's products or services mistakenly believing them to be products or services sold by Opposer. Furthermore, any faults or objections found with Applicant's products or services would reflect poorly upon and injure the reputation which Opposer has established for its products or services under the marks.

II.

Dilution

10. As alleged above, Opposer has used the REAL Marks in commerce since at least as early as April 10, 1995, in connection with a wide variety of goods and services. The REAL Marks have since become famous trademarks with strong and distinctive character qualifying for protection under Section 13 (15 U.S.C. § 1063 as amended) and Section 43(c) (15 U.S.C. § 1125(c)) of the Lanham Act.

11. Applicant's intent to use Application was filed on January 8, 2001, and therefore is subject to the provisions of Section 13 as amended and Section 43(c) of the Lanham Act.

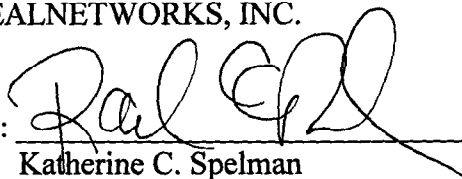
12. Applicant's proposed use and registration of the mark that is the subject of the Application will lessen the capacity of Opposer's famous and distinctive REAL marks to distinguish Opposer's goods and services from those of others, all to the damage of Opposer.

Wherefore, Opposer prays that the application Serial No. 76/190,780 be refused registration and that this opposition be sustained.

Respectfully submitted,
Attorneys for Opposer
REALNETWORKS, INC.

Date: September 24, 2001

By:



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CERTIFICATE OF EXPRESS MAILING

I, Nancy K. Burnett, do hereby certify that the enclosed Opposer RealNetworks, Inc.'s Notice of Opposition is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this date of September 26, 2001.

By: Nancy K. Burnett

(Name): Nancy K. Burnett

Express Mail No. EL629751210US

Date of Deposit September 26, 2001



09-26-2001

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September 26, 2001

VIA EXPRESS MAIL LABEL NO. EL629751210US

Assistant Commissioner for Trademarks
BOX TTAB - FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: RealNetworks, Inc. v. QEDSOFT. Inc.
Serial No. 76/190,780
Our File No. 73925-266

Dear Sir or Madam:

Enclosed for filing is Opposer Real Networks, Inc.'s Notice of Opposition in the above-entitled matter.

Your are authorized to charge the \$300 filing fee to the Steinhart & Falconer Deposit Account No. 19-4215 (Our File No.: 73925-266).

Please date stamp and return the enclosed postcard indicating receipt of this transmittal.

Respectfully,

Rachel E. Boehm

REB/nb

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