

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

In the matter of Trademark Application Serial No. 76/190,780
Filed on January 8, 2001
For the mark REALSTREAM
Published in the *Official Gazette* on August 28, 2001

RealNetworks, Inc.

Opposer,

v.

QEDSoft, Inc.

Applicant.

Opposition No. 91150187

CERTIFICATE OF MAILING
BY "EXPRESS MAIL" UNDER 37 CFR § 1.10

"Express Mail" Mailing Label Number
EL828015789US

Date Mailed: January 15, 2002

I hereby certify that the attached correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10 on the date indicated above and is addressed to the Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia, 22202-3513.

Name of Person Mailing: Roxanne T. Dove



Signature of Person Mailing

Trademark Trial and Appeal Board
Box TTAB - No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER TO NOTICE OF OPPOSITION

Applicant QEDSoft Inc., a California corporation located at 1555 N. Mathilda Avenue, Suite 7, Sunnyvale, CA 94086 ("Applicant"), submits its Answer to the Notice of Opposition filed by Opposer RealNetworks, Inc., a Washington corporation with its principal place of business at 2601 Elliott Ave., Seattle, WA 98121 ("Opposer"). In addition to the specific allegations set forth below, Applicant generally denies that Opposer will be damaged by the registration of the mark shown in Application Serial No. 76/190,780.

1. In answer to Paragraph 1 of the Notice of Opposition, Applicant admits that it filed an application alleging an intent to use the mark REALSTREAM for “computer software that enables realistic viewing and fast downloading of 3D animation and sound from the Internet.”

2. In answer to Paragraph 2 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

3. In answer to Paragraph 3 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

4. In answer to Paragraph 4 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

5. In answer to Paragraph 5 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

6. In answer to Paragraph 6 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

7. In answer to Paragraph 7 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained therein, and on that basis denies the same leaving Opposer to its proof.

8. In answer to Paragraph 8 of the Notice of Opposition, Applicant denies all material allegations contained therein.

9. In answer to Paragraph 9 of the Notice of Opposition, Applicant denies all material allegations contained therein.

10. In answer to Paragraph 10, Applicant is without knowledge or information sufficient to form a belief as to the date of first use of Opposer's alleged marks, and on that basis denies the same leaving Opposer to its proof. Applicant denies the remaining material allegations.

11. In answer to Paragraph 11, Applicant admits that its intent to use application was filed on January 8, 2001 and is subject to the provisions of the Lanham Act.

12. In answer to Paragraph 12 of the Notice of Opposition, Applicant denies all material allegations contained therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Failure to State a Claim

13. Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

Second Affirmative Defense - No Likelihood of Confusion

14. Likely confusion is avoided by *inter alia*, the differences in appearance and sound of the Applicant's and Opposer's respective marks. Applicant's REALSTREAM mark is both visually and audibly different from Opposer's pleaded marks.

15. On information and belief, Applicant alleges that the goods and services upon which Applicant uses its mark differ from the goods and services upon which Opposer

purports to use its mark. Consequently, relevant consumers will recognize the respective sources of the goods and services and are not likely to believe that there is some association between Applicant and Opposer or between their goods and services.

16. On information and belief, Applicant's and Opposer's goods and services do not move through the same channels of trade.

17. Opposer has not alleged that the trademark registrations listed in paragraphs 3 and 4 of the Notice of Opposition, upon which it relies, are valid and subsisting, uncanceled and unrevoked.

18. Numerous third-party registrations exist for marks that include the word "real" covering computer-related goods and services.

19. Examples of such third-party registrations are listed below:

TRADEMARK	REGISTRATION No.
REAL SECURE	2524595
REAL MAGNET	2506387
REALABS	2438662
REALTIME	2526795
REALNAMES	2517940
REAL FEEL	2520954
REALGAME	2516093
REAL \$ENSE	2191097
REAL-TIME	2505840
REAL SPORTS	2375080
REAL ENGLISH	2362139
REALTICK	2405718
REALCONNECT	2399574
REALRESULTS	2338357
REALQUEST	2378975
REALINK	2488300
REAL-TIME STUDIO	2507504
REALBANNERS	2303047
REALMODEL	2252216
REAL RESULTS	2299739
REALSCAN	2308641

REALBASIC	2309856
REALPAY	2473926
REAL E-MAIL	2251235
REAL TIME	2414941
REALPRO	2262542
REALCAP	2437368
REALTALK	2176933
REALIMAGE	2246784
REALSTAT	2141087
REALBID	2201095
REAL	2235643
REAL	2174595
REALIMAGE	2153225
REALTECH	2226611
REAL TRADE	2336437
REAL/TIME	2294859
REALDIRECT	2075779
REALTONE	2244878
REALWEBSITE	2110544
REAL TIME DISPATCHER	2427733
REALSOFT	2108305
REALFORMS	2030207
REALPAGE	2157993
REALPORT	2118245
REAL	2118230
REAL	2116599
REAL MOTION	1968090
REAL GENIUS	1965223
REALMAGIC	1954459
REALBIZ	2224459
REALKWIK	1890942
REALSTATION	1993766
REAL/NET	1924471
REALMAP	1959179
REAL EDGE	1762499
REAL/STAR	1745093
REALFA\$T	1615569
REAL WORLD	2092357
REAL-TERM	1564261
REAL SMART	1474036
REAL SHAPE	1479423
REAL TIME	1644837
REALNET	1477962
REALCARE	1420588
REALDATA	1418214

20. No likelihood of confusion exists between Opposer's alleged marks listed in paragraphs 3 and 4 of the Notice of Opposition and the marks listed in paragraph 19 above.

21. For all the foregoing reasons, there is no likelihood of confusion between Applicant's mark and Opposer's alleged marks.

Third Affirmative Defense – Absence of Dilution

22. In light of the large number of third-party registrations listed in paragraph 19 above, Opposer's alleged marks cannot be said to possess the requisite degree of distinctiveness to sustain a dilution claim.

23. Opposer's alleged marks and Applicant's mark are too dissimilar to sustain a dilution claim.

Fourth Affirmative Defense – Trademark Misuse

24. To the extent that Opposer may have rights to the marks listed in paragraphs 3 and 4 of the Notice of Opposition, said rights are confined and limited to the particular trademarks and logos that are used by Opposer and trademarks and logos confusingly similar thereto, and these rights do not extend to precluding Applicant's application.

25. Opposer knew or should have known that its rights, if any, extend only to the trademarks and logos it uses or to confusingly similar marks.

26. Opposer knew or should have known that its rights do not extend to precluding Applicant's registration of its mark.

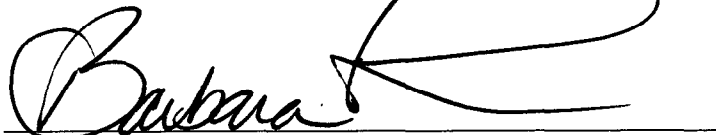
27. Upon information and belief, Opposer's conduct constitutes trademark misuse.

WHEREFORE, Applicant prays that the above-identified Opposition be dismissed in its entirety, and that Applicant's mark REALSTREAM be registered on the Principal Register.

Dated: January 15, 2002

Respectfully submitted,

McCUTCHEM, DOYLE, BROWN & ENERSEN, LLP



Barbara L. Friedman, Esq.
McCUTCHEM, DOYLE, BROWN & ENERSEN, LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111
Telephone: 415-393-2000
Attorneys for Applicant
QEDSoft, Inc.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing document

ANSWER TO NOTICE OF OPPOSITION

was sent by first-class mail, this 15th day of January, 2002, postage prepaid, to counsel for Opposer, RealNetworks, Inc., at the following address:

Rachel E. Boehm, Esq.
Steinhart & Falconer, LLP
333 Market Street, Suite 3200
San Francisco, CA 94105-2150

Dated: January 15, 2002



Roxanne T. Dove

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Arlington, VA 22202-3513

**MOTION OF APPLICANT TO ACCEPT LATE-FILED
ANSWER TO NOTICE OF OPPOSITION**

Applicant, QEDSoft, Inc., a California corporation located at 1555 N. Mathilda Avenue, Suite 7, Sunnyvale, CA 94086 ("Applicant"), respectfully requests that the Trademark Trial and Appeal Board accept the enclosed late-filed Answer to the Notice of Opposition filed by RealNetworks, Inc. The Answer is set forth in a separate pleading.

Applicant submit that its Answer should be accepted and that default should not be entered on the basis of good cause for the following reasons:

Applicant was not represented by counsel in this opposition until after the deadline to answer the opposition had already passed. The Notice of Opposition was sent to Applicant's prior law firm and was not forwarded to Applicant until December 11, 2001, five days after its Answer was due. This was the first time any notice was received that a Notice of Opposition was filed.

Undersigned counsel hereby certifies that Applicant did not receive a copy of the Notice of Opposition until after the deadline to file an Answer had passed. Undersigned counsel further certifies that it never received a copy of the Board's letter dated October 26, 2001 and was unaware of its existence until it was read to her over the telephone by Applicant's president on December 12, 2001.

Applicant never had proper notice of this opposition proceeding and therefore for the reasons stated above and for good cause shown, requests that the Board accept Applicant's late-filed Answer and accord Applicant's Answer the same consideration as if it had been timely filed.

In accordance with the Substitute Power of Attorney filed by Applicant on January 8, 2002, and enclosed herein, Applicant has appointed Barbara Friedman of the firm of McCutchen, Doyle, Brown & Enersen to defend this opposition, with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection herewith.

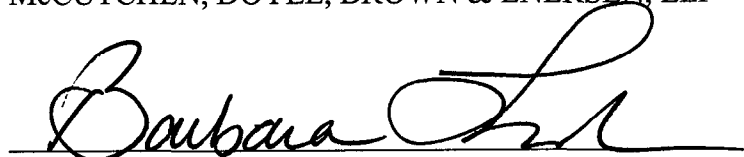
Please address all correspondence to Barbara Friedman at the address listed

below.

Dated: January 15, 2002

Respectfully submitted,

McCUTCHEM, DOYLE, BROWN & ENERSEN, LLP



Barbara L. Friedman, Esq.
McCUTCHEM, DOYLE, BROWN & ENERSEN, LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111
Telephone: 415-393-2000
Attorneys for Applicant
QEDSoft, Inc.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing document

**MOTION OF APPLICANT TO ACCEPT LATE-FILED ANSWER TO NOTICE OF
OPPOSITION**

was sent by first-class mail, this 15th day of January, 2002, postage prepaid, to counsel for
Opposer, RealNetworks, Inc., at the following address:

Rachel E. Boehm, Esq.
Steinhart & Falconer, LLP
333 Market Street, Suite 3200
San Francisco, CA 94105-2150

Dated: January 5 2002



Roxanne Dove

In The United States Patent and Trademark Office

ELC



RealNetworks, Inc.

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01-15-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

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Type or Print Name of Person Mailing: Roxanne T. Dove

Signature of Person Mailing

TRANSMITTAL LETTER FOR REVOCATION OF POWER OF ATTORNEY AND APPOINTMENT FO NEW POWER OF ATTORNEY

Trademark Trial and Appeal Board
BOX TTAB – NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Enclosed for filing in connection with the above-identified trademark application are the following:

- MOTION OF APPLICANT TO ACCEPT LATE-FILED ANSWER TO NOTICE OF OPPOSITION.
- ANSWER TO NOTICE OF OPPOSITION.

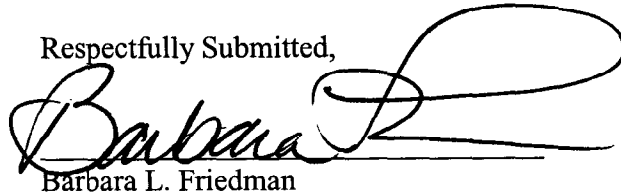
X REVOCATION OF POWER OF ATTORNEY AND APPOINTMENT OF NEW
POWER OF ATTORNEY. (Copy, filed January 8, 2002)

X The Commissioner is authorized to charge underpayment of any additional fees or
credit any overpayment associated with this communication to Deposit Account
No. 50-0664. A duplicate copy of this authorization is enclosed.

Please direct all correspondence concerning the above-identified application to the
following address:

Barbara L. Friedman
McCutchen, Doyle, Brown, & Enersen, LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111

Respectfully Submitted,



Barbara L. Friedman

Date: January 15, 2002

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