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

In the matter of Application Serial No. 75/687078
Published in the Official Gazette on July 10, 2001

CNF Transportation Inc.,

Opposer,

v.

Impower, Inc.

Applicant.

Opposition No.:

Attorney Docket No. 009523-0068-999

Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSTION

CNF TRANSPORTATION INC. ("CNF"), a Delaware Corporation, with its principal place of business at 3240 Hillview Avenue, Palo Alto, California 94304, believes that it would be damaged by the registration of the trademark IMPOWER in Application Serial No. 75/687078 for "COMPUTER SERVICES, NAMELY AN ON-LINE SYSTEM THAT ALLOWS BUSINESSES TO PROVIDE THEIR CONSUMERS WITH THE ABILITY TO REMAIN ANONYMOUS WHEN PURCHASING GOODS AND SERVICES VIA THE WORLDWIDE WEB" in International Class 35, and hereby opposes registration. The application was published for opposition on July 10, 2001,

The PTO did not receive the following listed item(s) NO TTAB Fee enclosed

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and the Trademark Trial and Appeal Board has granted Opposer's request for extensions of time to oppose through and including October 10, 2001.

The grounds for the opposition are:

1. Opposer, CNF, has priority rights in the mark IMPOWER by virtue of its earlier filing and use dates. CNF filed its application for IMPOWER on November 21, 1997 in connection with "COMPUTER PROGRAMS FOR USE IN THE SHIPPING INDUSTRY, NAMELY, A CUSTOMS REGULATION AND IMPORT INFORMATION DATABASE FOR CARGO, ENTRY, AND BILLING DATA" in International Class 9 and "COMPUTER SERVICES, NAMELY, PROVIDING A DATABASE CONTAINING SHIPPING AND FREIGHT INFORMATION" in International Class 42. CNF commenced use of the IMPOWER mark at least as early as January 1, 1999. Applicant, IMPOWER, INC. ("IMPOWER"), however, did not file its application for the mark IMPOWER in connection with "COMPUTER SERVICES, NAMELY AN ON-LINE SYSTEM THAT ALLOWS BUSINESSES TO PROVIDE THEIR CONSUMERS WITH THE ABILITY TO REMAIN ANONYMOUS WHEN PURCHASING GOODS AND SERVICES VIA THE WORLDWIDE WEB" until April 20, 1999, and alleges that it did not commence use of the mark until November 7, 2000.

2. Opposer CNF has continuously used IMPOWER through the creation, advertisement, offering for sale, and sale of its computer database programs since at least as early as January 1, 1998. As a result, CNF's customers have come to associate the IMPOWER mark with CNF's

computer services and programs. Allowing Applicant to register the identical mark will confuse customers and the general public, causing mistakes in consumer purchasing.

3. Applicant's mark IMPOWER is identical to Opposer's mark IMPOWER. There is no difference whatsoever in sight, sound, or meaning. Because the marks are identical, the commercial impression left upon consumers is also identical. This will undoubtedly cause confusion.

4. The nature of Applicant's services are similar to Opposer's services. Both provide computer services. The fact that both Applicant and Opposer's services occupy the same general arena, computer products and services, may cause Opposer's customers and the general public to believe that Applicant's services emanate from Opposer or are affiliated with Opposer's services.

5. Applicant and Opposer's services are sold through the same trade channel, the Internet. A customer searching for IMPOWER on an Internet search engine will be directed to Applicant's website as well as Opposer's website. Furthermore, the results list Applicant's site before Opposer's site, thereby allowing Opposer's customers to potentially be misled into visiting Applicant's website instead of Opposer's website. This creates a high likelihood of confusion.

6. The registration sought by Applicant will damage Opposer CNF because it will give the color of exclusive statutory rights in the Applicant in violation and derogation of the prior and superior rights of Opposer, and will dilute Opposer's distinctive IMPOWER mark.

Wherefore, this Opposer, CNF TRANSPORTATION INC., believes and alleges that it will be damaged by registration of the IMPOWER mark in Application Serial No. 75/687078, and prays that:

A. judgement in the present opposition be entered in favor of Opposer;

B. the present opposition be sustained; and

C. registration of Application Aerial No. 75/687078 be rejected and refused.

Respectfully submitted,

Dated: October 9, 2001 By:

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