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

<b>Proceeding</b>	91166223
<b>Party</b>	Defendant Infinity Broadcasting Corporation Infinity Broadcasting Corporation 1515 Broadway New York, NY 100365794
<b>Correspondence Address</b>	REBECCA BORDEN VIACOM INTERNATIONAL INC. 1515 BROADWAY NEW YORK, NY 10036-8901
<b>Submission</b>	Answer
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<b>Date</b>	10/21/2005
<b>Attachments</b>	Answer.pdf ( 6 pages )

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

DAVE Networks, Inc.,	)	
	)	<b>Opposition No. 91166223</b>
Opposer,	)	
	)	
v.	)	
	)	
Infinity Broadcasting Corp.,	)	
	)	
Applicant.	)	

**ANSWER**

Infinity Broadcasting Corp. (“Applicant”) hereby responds to the Notice of Opposition filed by DAVE Networks, Inc. (“Opposer”) and states as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition, and therefore denies them.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition, and therefore denies them.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice of Opposition, and therefore denies them.

4. Applicant admits that the respective service for which the mark DAVETV has been applied on an intent-to-use basis is described as “Digital content hardware and software devices and appliances for use in transmitting and receiving digital content via

digital networks” in International Class 009, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4, and therefore denies them.

5. Applicant admits that the respective service for which the mark DAVETV has been applied on an intent-to-use basis is described as “Global computer network webcasting and broadcasting services; online information services, namely providing databases and informational website links to others in the field of digital content; transmitting digital content over a global computer network” in International Class 042, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore denies them.

6. Applicant admits that the respective service for which the mark DAVE NETWORKS has been applied for or an intent-to-use basis is described as “Global computer network webcasting and broadcasting services; online information services, namely providing databases and informational website links to others in the field of digital content; transmitting digital content over a global computer network” in International Class 042, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6, and therefore denies them.

7. Applicant admits that the respective service for which the mark DAVE MEDIA CENTER has been applied for on an intent-to-use basis is described as “Global computer network webcasting and broadcasting services; online information services, namely providing databases and informational website links to others in the field of digital content; transmitting digital content over a global computer network;

computerized online retail services featuring the sale of digital content” in International Class 042, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7, and therefore denies them.

8. Applicant admits the allegations of Paragraph 8 of the Notice of Opposition. Applicant further states that on November 17, 2004, Applicant filed an Amendment to Allege Use of Trademark Application No. 78/424843, alleging first use anywhere and first use in commerce of the mark DAVE FM on July 21, 2004.

9. Applicant admits the allegations of Paragraph 9 of the Notice of Opposition.

10. Applicant admits that Applicant filed a trademark application for registration of the mark DAVE FM, Serial No. 78/424843, on May 24, 2004. Applicant further admits that on July 21, 2004 is the first date of use asserted by Applicant in connection with that application. Applicant denies the remainder of the allegations of Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations of paragraph 11 of the Notice of Opposition.

#### **APPLICANT’S FIRST AFFIRMATIVE DEFENSE**

12. The Notice of Opposition fails to state a claim upon which relief may be granted.

#### **APPLICANT’S SECOND AFFIRMATIVE DEFENSE**

13. There is no likelihood of confusion between Applicant’s mark used in connection with Applicant’s services and Opposer’s pleaded marks as used in connection with Opposer’s services.

**APPLICANT'S THIRD AFFIRMATIVE DEFENSE**

14. To the extent there is any likelihood of confusion, Applicant has senior rights.

**APPLICANT'S FOURTH AFFIRMATIVE DEFENSE**

15. Opposer lacks standing to oppose Applicant's trademark application Serial No. 78/424843, because Opposer will not be damaged by registration of Applicant's mark DAVE FM.

**APPLICANT'S FIFTH AFFIRMATIVE DEFENSE**

16. Opposer lacks standing to oppose Applicant's trademark application Serial No. 78/424843, because Opposer has not alleged facts sufficient to support rights in and to any trademark which is confusingly similar to Applicant's mark DAVE FM.

**APPLICANT'S SIXTH AFFIRMATIVE DEFENSE**

17. The parties' services are offered through different channels of distribution to different consumers.

**APPLICANT'S SEVENTH AFFIRMATIVE DEFENSE**

18. Due to the differences in the parties' marks, the services for which they are used or intended to be used, the channels of distribution for the services, and the recipients of the services, the marks are distinctly different.

**APPLICANT'S EIGHTH AFFIRMATIVE DEFENSE**

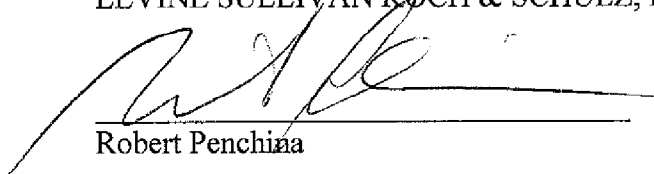
19. Applicant reserves the right to bring such other affirmative defenses as may become known during discovery in this proceeding.

WHEREFORE, Applicant respectfully requests that this Notice of Opposition be dismissed with prejudice, that the trademark shown in trademark application Serial No. 78/424843 be registered, and that the Trademark Trial and Appeal Board grant any and all further relief to Applicant that the Board finds to be necessary and just under the circumstances.

Dated: October 21, 2005

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP



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*Attorney for Applicant*  
*INFINITY BROADCASTING CORP.*

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer is filed electronically with the Trademark Trial and Appeal Board electronic filing system and has been served on Laurence P. Colton by mailing said copy on October 21, 2005 via First Class Mail, postage prepaid to:

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Cheryl Cronan