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

Proceeding	91172665
Party	Plaintiff Fonix Corporation
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND TRIAL APPEAL BOARD**

In the matter of Application Ser. No. 78580532
Filed: March 4, 2005
For the Mark: FOR TRUE FREEDOM OF SPEECH
Published in the *Official Gazette* (Trademarks) on July 04, 2006

Fonix Corporation,

Opposer,

v.

mVox Electronics, Inc.

Applicant.

FIRST AMENDED NOTICE OF OPPOSITION

Fonix Corporation (“Fonix” or “Opposer”), a Delaware corporation having its principal place of business at Suite 700, 9350 South 150 East, Sandy, Utah, United States, 84070, believes that it will be damaged by registration of the mark shown in intent-to-use Application Serial No. 78580532 (“Application”) in International Class 09, and hereby opposes the same.

The grounds for the opposition are as follows:

1. The Applicant, mVox Electronics, Inc., seeks to register FOR TRUE FREEDOM OF SPEECH as a trademark for “Cellular telephones and accessories, namely wireless earpieces, wireless smart headsets, wireless and USB (universal serial bus) multimode speakerphones, hand free devices for use with mobile telephones, microphones, and wireless voice interface devices; wireless communication equipment, devices and apparatuses, namely, wireless voice input and

output devices; USB (universal serial bus) speakerphones with DSP (digital signal processing); USB (universal serial bus) headsets” in International Class 9. Application Serial No. 78580532 was filed on March 10, 2005, and was published for opposition in the *Official Gazette* on July 4, 2006. On August 3, 2006, Opposer filed a Request for Extension of Time to File an Opposition to the Application. On August 3, 2006, the Trademark Trial and Appeal Board granted Opposer’s extension request, which permits Opposer until September 2, 2006, to file a Notice of Opposition to the Application.

2. Fonix Corporation provides integrated communication services and technologies to its customers throughout the world. Specifically, Fonix offers value-added speech technologies. These services include next-generation communication technologies such as voice technology, speech recognition, text-to-speech solutions for mobile/wireless devices; interactive videogames, toys and appliances; computer telephony systems; the assistive market and vehicle telematics (“Opposer’s Products”). In marketing and selling Opposer’s Products, Opposer uses the mark FREEDOM OF SPEECH.

3. Opposer is the owner of a federal trademark and service mark registration for a mark which contains the distinctive phrase FREEDOM OF SPEECH. Opposer’s registration occurred on June 8, 1999, under the U.S. Registration No. 2,251,577. Opposer registered its mark in International Class 9 for use in “computers, computer peripherals, and computer programs for use in natural language voice recognition” (“Registered Uses”). Opposer has continually used FREEDOM OF SPEECH for the Registered Uses since April 30, 1998.

4. In addition to its federally registered mark, Opposer possesses valuable common law rights in the mark FREEDOM OF SPEECH for goods and services not included in the

Registered Uses. Opposer filed two Trademark/Service Mark applications on August 10, 2006, for the mark FREEDOM OF SPEECH covering Opposer's uses of the mark outside of the Registered Uses. Opposer first used the mark FREEDOM OF SPEECH in commerce for the additional goods and services listed in these new applications (jointly, "Non-Registered Uses") prior to the filing date of the Application.

5. Opposer's first of its two new applications, assigned serial number 78949043, seeks to register the mark FREEDOM OF SPEECH in International Class 9 for "Computer hardware and software in the field of voice recognition and text-to-speech, for use in speech engine software and voice-enabled software applications, namely, speech-based telephone services, voice servers, embedded processors, desktop computer applications, console video games, wireless mobile devices, handheld and in-vehicle navigation systems featuring global positioning systems (GPS) functionality, and personal digital assistants (PDAs)." Opposer has used the mark FREEDOM OF SPEECH in commerce for these purposes since August 17, 2004, through its worldwide marketing system. Products and services for the uses listed in application serial number 78949043 bearing the FREEDOM OF SPEECH mark have been sold worldwide by Fonix since August 17, 2004.

6. Opposer's second application, assigned serial number 78949045, seeks to register the mark FREEDOM OF SPEECH in International Class 38. The applicable uses Opposer seeks to register under that application are "voice processing services, namely, teleconferencing, voicemail, and telephone voice messaging services; . . . call routing services; [and] voice communications services, namely, providing telephone users with access to information and data using interactive response, speech recognition, voice command, and text-to-speech services."

Opposer has used the mark FREEDOM OF SPEECH in commerce for these purposes since August 17, 2004, through its worldwide marketing system. Products and services for the above listed products contained in application serial number 78949045 bearing the FREEDOM OF SPEECH mark have been sold worldwide by Fonix since August 17, 2004.

7. Opposer has expended considerable time, effort and expense in promoting, advertising and popularizing its FREEDOM OF SPEECH mark (“Opposer’s Mark”) for both the Registered Uses and Non-Registered Uses, with the result that the purchasing public has come to know, rely upon, and recognize Opposer’s Mark as an indicator of the goods and services so marked. Opposer has established valuable goodwill in Opposer’s Mark.

8. Opposer’s Mark for both the Registered Uses and Non-Registered Uses has been continuously used in commerce since before the date of the application to register the FOR TRUE FREEDOM OF SPEECH mark. Opposer’s Mark has priority over the FOR TRUE FREEDOM OF SPEECH mark shown in the Application based on Opposer’s prior use.

9. According to the identification of goods in the Application, Applicant allegedly intends to offer products and/or services that are identical to and directly competitive with those goods and services offered by Opposer in its Registered Uses, including computer peripherals, namely, “USB (Universal Serial Bus) multimode speakerphones,” “speakerphones” and “headsets.” Moreover, according to the identification of goods in the Application, Applicant allegedly intends to offer products and/or services that are identical to and directly competitive with those goods and services Opposer offers under its Non-Registered Uses, including computer hardware and voice recognition software. Applicant’s products and/or services could be marketed in the same channels of trade in which Opposer markets and sells Opposer’s Products

under the Opposer's Mark. Upon information and belief, Applicant's cellular telephone and accessories have been and will continue to be purchased by the same people who purchase and/or use Opposer's Products. Those accustomed to buying Opposer's Products sold under Opposer's Mark, could naturally but mistakenly assume that the cellular telephones and accessories Applicant offers under the FOR TRUE FREEDOM OF SPEECH mark come from Opposer or are somehow affiliated with, sponsored by, or connected with the Opposer.

10. The FOR TRUE FREEDOM OF SPEECH mark Applicant seeks to register so resembles Opposer's Freedom of Speech mark as to be likely, when used on or in connection with the goods listed in the Application, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products of Applicant offered under the FOR TRUE FREEDOM OF SPEECH mark are produced, sponsored, endorsed or approved by Opposer, or are in some way affiliated, connected or associated with Opposer, all to the detriment of Opposer. Registration of Applicant's mark should, therefore, be refused under 15 U.S.C. §§ 1052(d), 1063 and 1125(a).

11. Registration of the FOR TRUE FREEDOM OF SPEECH would be a further source of damage to Opposer, as it would confer upon Applicant various statutory presumptions to which it is not entitled to in view of Opposer's prior use of its FREEDOM OF SPEECH mark.

WHEREFORE, Opposer Fonix Corporation prays that Application Serial No. 78580532 in International Class 9 be rejected, and that registration of the marks therein for the goods therein specified be refused.

A fee payment in the amount of \$300 as required by 37 C.F.R. §§2.6(a)(17) and 2.104(a) was submitted with the original opposition.

Respectfully submitted,

Dated: November 30, 2006

DURHAM JONES & PINEGAR

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