

ESTTA Tracking number: **ESTTA346026**

Filing date: **05/06/2010**

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

Proceeding	91193132
Party	Defendant Network for Good, Inc.
Correspondence Address	WILLIAM G. PECAU STEPTOE & JOHNSON LLP 1330 CONNECTICUT AVE NW WASHINGTON, DC 20036-1704 UNITED STATES rhofstatter@step toe.com,wpecau@step toe.com,dcummings@step toe.com,ipdo cketing@step toe.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Rachel M. Hofstatter
Filer's e-mail	rhofstatter@step toe.com,wpecau@step toe.com,dcummings@step toe.com,ipdo cketing@step toe.com
Signature	/Rachel M. Hofstatter/
Date	05/06/2010
Attachments	Motion on Consent to Amend _ Amended Answer _ 91193132.pdf ( 12 pages ) (102320 bytes )

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

In the Matter of Application Serial No. 77/714,046  
Published in the Official Gazette on August 25, 2009

Blackbaud, Inc.,  <p style="text-align:center">Opposer,</p>  v.  Network For Good,  <p style="text-align:center">Applicant.</p>	Opposition No. 91193132
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**APPLICANT NETWORK FOR GOOD’S MOTION ON CONSENT  
TO FILE AND SERVE AN AMENDED ANSWER**

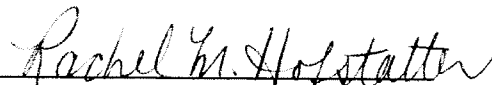
Applicant, Network For Good (“Applicant”), by and through its undersigned counsel, respectfully moves with the consent of Opposer, Blackbaud, Inc. (“Opposer”), for leave to amend its Answer to the Notice of Opposition in the above-captioned proceeding. A copy of the Amended Answer is attached hereto as Exhibit A.

Pursuant to Federal Rule of Civil Procedure 15 and 37 C.F.R. § 2.107, a party may amend its pleading with the opposing party’s written consent, and the Board should freely give leave when justice so requires. Here, Opposer has provided written consent to the Amended Answer. *See* Exhibit B. Furthermore, Opposer will not be prejudiced by the filing and service of an amended answer because discovery opened just one (1) month ago and the proceeding is in the initial, pre-trial phase. *Olympic Committee v. O-M Bread, Inc.* 26 USPQ 2d 1221 (TTAB 1993) (“Respondent would not be prejudiced because the proceeding is still in the pre-trial phase”).

Accordingly, Applicant respectfully requests that the Board grant its motion on consent to file and serve the Amended Answer.

Respectfully submitted,

**STEPTOE & JOHNSON LLP**

By:   
William G. Pecau  
Rachel M. Hofstatter  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 429-6244 (telephone)  
(202) 429-3902 (facsimile)

*Attorneys for Network For Good*

Dated: May 6, 2010

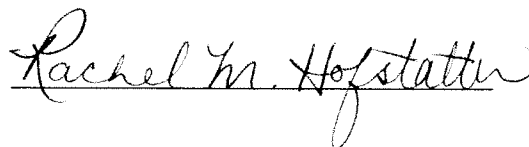
**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused this MOTION ON CONSENT TO FILE AND SERVE AN AMENDED ANSWER to be served by postage prepaid, first class mail, on counsel for Opposer Blackbaud, Inc., as follows:

Joseph H. Nanney, Jr.  
Wyrick Robbins Yates & Ponton, LLP  
4101 Lake Boone Trail  
Suite 300  
Raleigh, NC 27607

Attorney for Opposer Blackbaud, Inc.

Dated: May 6, 2010

Handwritten signature of Rachel M. Hofstatter in cursive script.

# EXHIBIT A

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

In the Matter of Application Serial No. 77/714,046  
Published in the Official Gazette on August 25, 2009

Blackbaud, Inc.,

Opposer,

v.

Network For Good,

Applicant.

Opposition No. 91193132

Commissioner for Trademarks  
U.S. Patent and Trademark Office  
Madison East, Concourse Level Room C 55  
600 Dulany Street  
Alexandria, VA 22314

**AMENDED ANSWER TO NOTICE OF OPPOSITION**

Applicant, Network For Good, hereby answers the Notice of Opposition of Opposer, Blackbaud, Inc., to Applicant's trademark application Serial No. 77/714,046, as follows:

1. Applicant is without 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 the same.

2. Applicant admits the allegations of paragraph 2 of the Notice of Opposition.

3. Applicant admits that it did not disclaim the term "DONATE" or the term "NOW" in its Application Serial No. 77/714,036, that the Examining Attorney assigned

to examine this application did not issue an Office Action citing descriptiveness as a bar to registration, and that the Examining Attorney did not require Applicant to amend the application to disclaim the term “DONATE” or the term “NOW”; and, except as so admitted, denies the allegations of paragraph 3 of the Notice of Opposition.

4. Applicant admits the allegations of paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations of paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations of paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations of paragraph 8 of the Notice of Opposition.

9. Applicant admits that it has a webpage located at [www1.networkforgood.org/for-nonprofits/fundraising/donatenow](http://www1.networkforgood.org/for-nonprofits/fundraising/donatenow) and refers to that webpage for its content and, except as so admitted and referenced, denies the allegations of paragraph 9 of the Notice of Opposition.

10. Applicant admits that it has a webpage located at [www1.networkforgood.org/non-profits/fundraising/how-donatenow-works](http://www1.networkforgood.org/non-profits/fundraising/how-donatenow-works) and refers to that webpage for its content and, except as so admitted and referenced, denies the allegations of paragraph 10 of the Notice of Opposition.

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

**AFFIRMATIVE DEFENSE**

12. Applicant through its predecessor-in interest adopted and began using at least as early as 1999 its DONATENOW mark for online non-downloadable software for use by charitable, nonprofit and fundraising organizations in creating and managing online fundraising and marketing campaigns, including soliciting contributions and processing donations.

13. Applicant's said DONATENOW mark is now and ever since its first use has been used in connection with its aforesaid software services for charitable, nonprofit and fundraising organizations and such software services so marked have been widely provided and sold in interstate commerce throughout the United States. By virtue of the long, continued and widespread sale of services identified by the DONATENOW mark and the advertising and promotion thereof, the DONATENOW mark is presently and, since long before the Applicant's filing date, has been relied upon to identify the service of Applicant, and to distinguish it from those of others.

14. Applicant's DONATENOW mark that is the subject of Application No. 77/714,046 has acquired, prior to the filing date of such application, distinctiveness for the service identified in such application under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).



WHEREFORE, Applicant requests that the opposition be dismissed with prejudice and further requests that Application No. 77/714,046 be allowed to proceed to registration.

**STEP TOE & JOHNSON LLP**

By: Rachel M. Hofstatter  
William G. Pecau  
Rachel M. Hofstatter  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 429-6244 (telephone)  
(202) 429-3902 (facsimile)

*Attorneys for Network For Good*

Dated: May 6, 2010

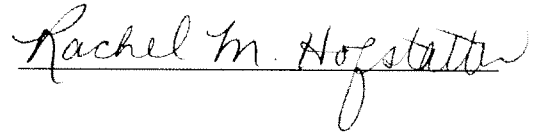
**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused this AMENDED ANSWER TO NOTICE OF OPPOSITION to be served by postage prepaid, first class mail, on counsel for Opposer Blackbaud, Inc., as follows:

Joseph H. Nanney, Jr.  
Wyrick Robbins Yates & Ponton, LLP  
4101 Lake Boone Trail  
Suite 300  
Raleigh, NC 27607

Attorney for Opposer Blackbaud, Inc.

Dated: May 6, 2010

Handwritten signature of Rachel M. Hofstatter in cursive script, underlined.

# EXHIBIT B

**Hofstatter, Rachel**

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**From:** Joe Nanney, Jr. [JNanney@wyrick.com]  
**Sent:** Thursday, May 06, 2010 9:48 AM  
**To:** Hofstatter, Rachel  
**Cc:** Pecau, William; Christopher L. Sorey  
**Subject:** RE: Blackbaud v. Network For Good: DONATENOW and EMAILNOW Oppositions


Rachel,

We consent to the amendment.

Regards,

Joe

Joe Nanney  
Attorney  
Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail  
Suite 300  
Raleigh, NC 27607  
Phone: 919-781-4000  
Fax: 919-781-4865  
[jnanney@wyrick.com](mailto:jnanney@wyrick.com)

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**From:** Hofstatter, Rachel [mailto:rhofstatter@steptoe.com]  
**Sent:** Friday, April 30, 2010 2:57 PM  
**To:** Joe Nanney, Jr.  
**Cc:** Pecau, William  
**Subject:** Blackbaud v. Network For Good: DONATENOW and EMAILNOW Oppositions

Dear Joe,

Network For Good intends to amend its Answers in the proceedings concerning its applications to register the marks DONATENOW and EMAILNOW by adding in each the affirmative defense of acquired distinctiveness. Copies of the Amended Answers are attached along with redlined versions showing the changes to the original Answers.

We would appreciate your consent to these Amended Answers. As you know, such amendments are routinely granted in the early stages of *inter partes* proceedings. If we do not have your consent, we, of course, will file a motion for leave to

5/6/2010

amend with the Board.

Please call me if you have any questions.

Regards,  
Rachel

Rachel M. Hofstatter  
Steptoe & Johnson LLP  
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Washington, DC 20036  
Phone: 202.429.3903  
Fax: 202.429.3902  
rhofstatter@steptoe.com

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