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Filing date: **09/26/2006**

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

Proceeding	92045147
Party	Plaintiff Metro Q Metro Q  ,
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Date	09/26/2006
Attachments	Metro Q-Pet. Mot for Leave to Amend-Amended Petition .pdf ( 6 pages )(849068 bytes )

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

METRO Q	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92045147
	§	Registration No. 2,119,139
GAY & LESBIAN YELLOW PAGES, INC.,	§	
	§	
Respondent/Registrant.	§	

**PETITIONER'S MOTION FOR LEAVE  
TO FILE FIRST AMENDED PETITION FOR CANCELLATION**

Petitioner MetroQ ("Petitioner") respectfully files this motion for leave to file the accompanying First Amended Petition for Cancellation of Registration No. 2,119,139. In support of this motion, Petitioner represents as follows:

1. Since the filing of the original petition for cancellation, Petitioner's counsel has learned of new facts which support an additional ground of cancellation. Specifically, Petitioner has recently learned of numerous new companies using the same and/or deceptively similar trade names and terms as the mark ("Respondent's Mark") made the subject of Registration No. 2,119,139. Upon information and belief, Respondent has not taken any action to prevent such widespread use.

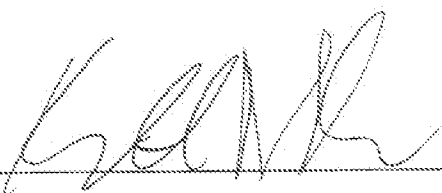
2. Accordingly, Petitioner contends that Respondent's Mark made the subject of Registration No. 2,119,139 has become the generic name for the designated goods and services and has otherwise lost its significance as a mark. As such, for this reason alone, the mark of Registration No. 2,119,139 has become abandoned, and Petitioner has added this as a new ground for cancellation in the proposed amended petition.

3. Petitioner has relabeled the grounds in its original petition as First, Second and Third grounds, and the new ground sought to be added by the amended petition is labeled as a Fourth ground.

Accordingly, Petitioner respectfully requests the Board to grant this motion for leave.

Respectfully submitted,

Date: 9/26/06



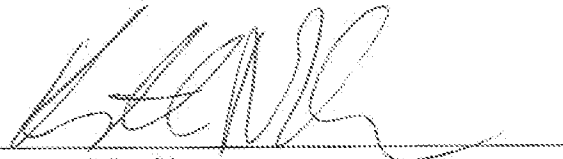
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CERTIFICATE OF SERVICE

This is to certify that on the 26<sup>th</sup> day of September, 2006, a true and correct copy of **Petitioner's Motion for Leave to File First Amended Petition for Cancellation** and the accompanying copy of the amended petition was served via facsimile to counsel for Respondent as follows:

Keana Taylor, Esq.  
Wong, Cabello, Lutsch, Rutherford  
& Brucculeri, L.L.P.  
20333 SH 249, Suite 600  
Houston, TX 77070



\_\_\_\_\_  
Kenneth R. Glaser

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METRO Q	§	
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	§	Registration No. 2,119,139
GAY & LESBIAN YELLOW PAGES, INC.,	§	
	§	
Respondent/Registrant.	§	

**FIRST AMENDED PETITION FOR CANCELLATION  
OF REGISTRATION 2,119,139**

Petitioner, MetroQ ("Petitioner"), hereby files this its first amended petition for cancellation, as follows:

1. Petitioner believes and alleges that it is being damaged by Registration No. 2,119,139 and hereby petitions to cancel the same for the reasons set out hereinafter.

2. Based upon the records of the Patent and Trademark Office, Respondent Gay & Lesbian Yellow Pages, Inc. is the owner of Registration No. 2,119,139 of GAY YELLOW PAGES for telephone directories and related advertising services directed at various gay and lesbian communities and markets nationwide ("Respondent's Mark").

**First Ground for Cancellation – Registered Mark is Generic.**

3. The term GAY YELLOW PAGES is a generic name for the goods and services for which it was registered. Therefore, it is not now, nor was it ever, subject to proper registration, and is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

**Second Ground for Cancellation – Fraudulent Oaths.**

4. Registration No. 2,119,139 was fraudulently obtained, in that Respondent knowingly filed a series of false declarations in connection with its application for registration of

Respondent's Mark, which were relied upon by the Patent and Trademark Office. Specifically, on May 6, 1996, Respondent executed an erroneous Declaration ("First Declaration") which was filed on July 1, 1996 with the application for registration of the GAY YELLOW PAGES mark. The First Declaration stated that to the best of Respondent's knowledge, "no other person, firm, corporation or association" had the right to use Gay Yellow Pages, in commerce, "either in the identical form thereof or such near resemblance thereto as to be likely...to cause confusion..." Respondent has complained of Petitioner's use of the term "Gay Pages," contending that "Gay Pages" is essentially identical to "Gay Yellow Pages." The First Declaration was therefore false in that, contrary to Respondent's sworn representation to the Trademark Office, other business entities were in fact using not only "Gay Pages", but also "Gayellow Pages," and such entities were known by Respondent to be operating with those names at the time this First Declaration was executed. Respondent therefore knew its sworn statement to be false at the time it was made, and thereafter.

5. Additionally, following the rejection of the application for the present registration by the examining attorney, Respondent filed a second false Declaration ("Second Declaration"), executed June 24, 1997, swearing under oath that Respondent's use of Gay Yellow Pages had been substantially exclusive for a period of five years preceding the date of the second Declaration. Contrary to that assertion, however, Respondent was aware at the time of numerous business entities bearing the names "gay pages" and "gayellow pages", as well as names similar thereto.

### **Third Ground for Cancellation -- Abandonment for Lack of Control of Mark.**

6. Upon information and belief, the Respondent has permitted the use of the GAY YELLOW PAGES mark by others, but has failed to adequately control the quality and nature of

the goods and services with which such mark has been used. Accordingly, the Respondent has legally abandoned the GAY YELLOW PAGES mark.

**Fourth Ground for Cancellation – Abandonment for Failure to Monitor Marketplace.**

7. Since at least as early as the date of Registration No. 2,119,139, a plethora of companies have commenced business, and are continuing to conduct business, under trade names essentially the same or deceptively similar to Respondent's Mark made the subject of Registration No. 2,119,139. Upon information and belief, Respondent has omitted taking any and/or sufficient action to prevent this proliferation.

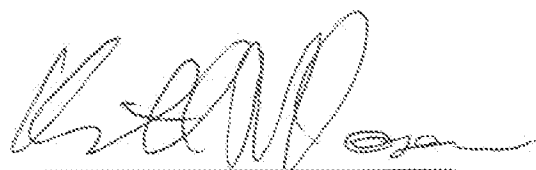
8. As a consequence of Respondent's omissions, Respondent's Mark has become the generic name for the goods and services of Registration No. 2,119,139 and/or has otherwise lost any significance as an enforceable mark. Respondent's Mark has therefore become abandoned.

WHEREFORE, by reason of the aforementioned grounds, Petitioner prays that, pursuant to the authority of 15 U.S.C. 1064, this cancellation petition be granted and that the above-identified registration of Respondent, Registration No. 2,119,139, be canceled.

Respectfully submitted,

Date: \_\_\_\_\_

9/25/06



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