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

Proceeding	92048692
Party	Defendant American Healthnet, Inc.
Correspondence Address	American Healthnet, Inc. 2707 North 108th Street, Suite 100 Omaha, NE 68164 UNITED STATES
Submission	Answer
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HEALTH NET, INC.)	
)	
Petitioner,)	Cancellation No.: 92048692
)	Registration No.: 3,052,085
v.)	Registration No.: 3,094,615
)	
AMERICAN HEALTHNET, INC.,)	
)	
Respondent.)	
_____)	

Commissioner of Patents and Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO PETITION FOR CANCELLATION

Respondent, American Healthnet, Inc., ("American Healthnet") states and avers as follows for its Answer to the Petition for Cancellation ("Petition") in the above-captioned case:

With respect to the introductory paragraphs in the Petition:

a. American Healthnet is without sufficient information or belief as to the status of Petitioner, Health Net, Inc., and its place of business, and therefore denies any such allegations in the Petition.

b. American Healthnet denies that Petitioner is or will be damaged by Reg. No. 3,052,085 for AMERICAN HEALTHNET and Reg. No. 3,094,615 for AHN AMERICAN HEALTHNET (and Design).

c. American Healthnet admits that it owns trademarks registered with the U.S. Patent and Trademark Office, identified by Reg. Nos. 3,052,085 for AMERICAN HEALTHNET and 3,094,615 for AHN AMERICAN HEALTHNET (and Design).

d. American Healthnet, Inc. admits that it is a Nebraska corporation with its principal place of business at 2110 S. 169th Plaza, Omaha, Nebraska 68130.

e. American Healthnet, Inc. admits that it filed applications for registration of AMERICAN HEALTHNET and AHN AMERICAN HEALTHNET (and Design) on or about May 20, 2003, and that said applications were accepted by the U.S. Patent and Trademark Office, and that both marks were registered on the Principal Register as Reg. Nos. 3,052,085 and 3,094,615, both in International Class 042, for "installation of computer software; repair and maintenance of computer software; and computer software development."

f. American Healthnet denies the remaining allegations and statements in the introductory paragraphs of the Petition.

With respect to the numbered paragraphs of the Petition:

1. American Healthnet admits the allegations in paragraph 1 of the Petition.

2. American Healthnet admits the allegations in paragraph 2 of the Petition.

3. American Healthnet admits that its first use in commerce for Registration No. 3,052,085 was at least as early as January 2000, and it denies the remaining allegations in Paragraph 3 of the Petition.

4. American Healthnet denies the allegations in paragraph 4 of the Petition, and it affirmatively states that Exhibit A attached to the Petition is an incomplete copy of American Healthnet's website and further that the allegations in paragraph 4 mischaracterize American Healthnet's products and services.

5. American Healthnet admits the allegations in paragraph 5 of the Petition.

6. American Healthnet admits the allegations in paragraph 6 of the Petition.

7. American Healthnet admits that its first use in commerce date for Reg. No. 3,094,615 for AHN AMERICAN HEALTHNET (and Design) was March 4, 2000, but it denies the remaining allegations in paragraph 7 of the Petition.

8. American Healthnet denies the allegations in paragraph 8 of the Petition and it affirmatively states that Exhibit A attached to the Petition is an incomplete copy of American Healthnet's website and that the allegations in paragraph 8 mischaracterize American Healthnet's products and services.

9. American Healthnet admits the first sentence in paragraph 9 of the Petition, but it denies the remaining allegations of the paragraph.

10. American Healthnet admits the first sentence in paragraph 10 of the Petition, but it denies the remaining allegations of the paragraph.

11. American Healthnet admits the first sentence in paragraph 11 of the Petition, but it denies the remaining allegations of the paragraph. With respect to International Class 042, American Healthnet's registrations, trademarks, and goods and services within this class do not overlap with Health Net's alleged registration.

12. American Healthnet admits the first sentence in paragraph 12 of the Petition, but it denies the remaining allegations of the paragraph. With respect to International Class 042, American Healthnet's registrations, trademarks, and goods and services within this class do not overlap with Health Net's alleged registration.

13. American Healthnet denies the allegations in paragraph 13 of the Petition.

14. American Healthnet denies the allegations in paragraph 14 of the Petition.

15. American Healthnet admits the allegations in paragraph 15 of the Petition, but it affirmatively states that such allegations are neither material nor dispositive in the above-captioned case.

ADDITIONAL AND AFFIRMATIVE DEFENSES

16. The Petition fails to state a claim of cancellation against American Healthnet.

17. Health Net's alleged trademark and registrations do not conflict with American Healthnet's trademarks and registrations.

18. The goods and services with which American Healthnet associates its trademarks are distinctively different than the goods and services allegedly associated with Health Net's registrations and trademark.

19. Health Net is not entitled to exclusive use of HEALTH NET in any way which would prohibit American Healthnet's registrations or American Healthnet's use of its trademarks so registered.

20. Health Net has unreasonably delayed in asserting its alleged rights and is therefore barred by laches.

21. Health Net's alleged trademark is merely descriptive of Health Net's goods and services and/or generic as it pertains to Health Net's goods and services, without secondary meaning or acquired distinctiveness.

22. Health Net's alleged goods, services, and channels of trade are so far removed from American Healthnet's goods, services, and channels of trade that no likelihood of confusion, mistake or deception exists.

23. American Healthnet's trademarks and registrations are not likely to cause confusion, mistake, or deception with Health Net's alleged trademark and registrations.

24. Health Net does not do business in the goods and services associated with American Healthnet's registrations and trademarks, nor does American Healthnet engage in the goods and services associated with Health Net's alleged trademark and registrations.

25. Health Net has no priority over American Healthnet's registrations or trademarks.

26. American Healthnet's trademarks have achieved secondary meaning or acquired distinctiveness.

27. Health Net is estopped from asserting its claims in the above-captioned case.

28. Health Net's claims are barred by acquiescence.

29. Third-parties have used the same or similar trademarks, such that Health Net's alleged trademark is weak and entitled to limited protection which would not justify the cancellation sought in the above-captioned case.

WHEREFORE, American Healthnet respectfully prays for a finding in its favor and that the Petition be dismissed with prejudice and that all costs be taxed against Health Net as allowed by law.

RESPECTFULLY submitted this 19th day of February, 2008.

AMERICAN HEALTHNET, INC.,
Respondent

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of February, 2008, a true and correct copy of the foregoing was served upon counsel for Petitioner, Health Net, Inc., by first class mail, postage prepaid, properly addressed as follows:

Richard H. Zaiten
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Daniel J. Fischer