

ESTTA Tracking number: **ESTTA219766**

Filing date: **06/23/2008**

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

Proceeding	92049206
Party	Defendant FACEBOOK, INC.
Correspondence Address	FACEBOOK, INC. 156 UNIVERSITY AVENUE PALO ALTO, CA 94301 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Anne H. Peck
Filer's e-mail	Trademarks@cooley.com, peckah@cooley.com, eburns@cooley.com
Signature	/Anne H. Peck/
Date	06/23/2008
Attachments	Opposition to Motion.pdf ( 4 pages )(80728 bytes )

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

THINK COMPUTER CORPORATION

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

Cancellation No. 92049206

Mark: FACEBOOK  
Reg. No. 3,122,052  
Reg. Date: July 25, 2006

**OPPOSITION TO MOTION FOR DEFAULT JUDGMENT**

**I. INTRODUCTION**

Registrant Facebook, Inc. (“Facebook”) hereby moves the Trademark Trial and Appeal Board (the “Board”) to deny petitioner Think Computer Corporation’s (“Petitioner”) Motion for Default Judgment (“Motion for Default”), on the grounds that Facebook’s Answer to Petitioner’s Petition for Cancellation was properly filed on May 27, 2008, consistent with Rule 6 of the Federal Rules of Civil Procedure.

**II. RELEVANT FACTS**

Petitioner filed the present action, seeking to cancel Facebook’s federal trademark registration for the FACEBOOK mark, on April 15, 2008 (“Petition”), and the Board provided notice of the Petition on April 16, 2008. Facebook filed its timely Answer on May 27, 2008. Memorial Day is a legal holiday in the United States, occurring on May 26, 2008. On June 12, 2008, Petitioner filed the Motion for Default, based on the mistaken belief that Facebook’s Answer was filed one day too late.

### III. THE BOARD SHOULD DENY THINK'S MOTION FOR DEFAULT JUDGMENT

Petitioner, for a second time in the short history of this dispute, files a motion that ignores, and is in violation of, the Federal Rules of Civil Procedure and the rules of procedure established by this Board. Although Petitioner is permitted to represent itself *pro se* in these proceedings, *pro se* representation does not excuse a disregard of the Board's rules and procedures.

According to section 310.03(b) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Facebook had a period of forty (40) days during which it could file its Answer to the Petition for Cancellation. As Facebook has noted previously, procedure in inter partes trademark proceedings is governed by the Federal Rules of Civil Procedure where "applicable and appropriate." *See* 37 CFR § 2.116(a); *see also* TBMP § 315. Federal Rule of Civil Procedure 6 sets forth the rules of computing time to file motion papers, and in particular, subsection (a)(3) of the rule provides that where the last day of a time period for a responsive pleading is a legal holiday, the period is extended to the next court day. Fed. R. Civ. P. § 6(a)(3). Memorial Day is a legal holiday for purposes of the rule. Fed. R. Civ. P. § 6(a)(4). The clear import of Rule 6 is that Facebook had until May 27, the first court day following Memorial Day (May 26, 2008), to file its Answer to the Petition. Facebook followed the rules of procedure by filing its Answer on May 27, 2008. It follows that Petitioner's Motion for Default must be denied as a matter of law.

**IV. CONCLUSION**

For all the reasons stated above, Facebook respectfully requests that the Board deny Petitioner's Motion for Default Judgment, and admonish Petitioner to follow proper procedure when filing pleadings before the Board.

Dated: June 23, 2008

COOLEY GODWARD KRONISH LLP  
MICHAEL G. RHODES (116127)  
ANNE H. PECK (124790)  
EMILY F. BURNS (228123)

By: Anne H. Peck  
Anne H. Peck (124790)

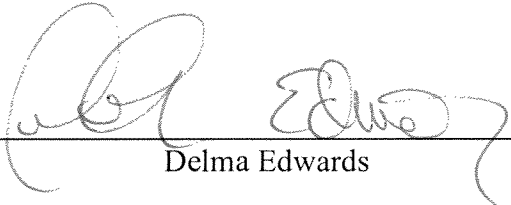
Attorneys for Respondent  
5 Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306  
415-843-5000

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Registrant's *OPPOSITION TO MOTION FOR DEFAULT JUDGMENT* was mailed, first-class postage prepaid, to Petitioner:

Think Computer Corporation  
Attn: Aaron Greenspan  
884 College Avenue  
Palo Alto, CA 94306-1303

Date: June 13, 2008

  
\_\_\_\_\_  
Delma Edwards