

ESTTA Tracking number: **ESTTA245205**

Filing date: **10/27/2008**

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

Proceeding	92049206
Party	Defendant FACEBOOK, INC.
Correspondence Address	ANNE PECK & EMILY BURNS COOLEY GODWARD KRONISH LLP 3000 EL CAMINO REAL PALO ALTO, CA 94306 UNITED STATES
Submission	Answer
Filer's Name	Anne H. Peck
Filer's e-mail	peckah@cooley.com
Signature	/anne h. peck/
Date	10/27/2008
Attachments	Scan_20081027_171350.pdf (7 pages)(118999 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

**REGISTRANT'S ANSWER TO AMENDED PETITION
AND AFFIRMATIVE DEFENSES**

Facebook, Inc. ("Registrant"), for its answer to the Amended Petition to Cancel ("Amended Petition") filed by Think Computer Corporation ("Petitioner") against Registrant's trademark FACEBOOK (the "Mark"), Registration No. 3,122,052, filed February 24, 2005, published in the *Official Gazette* October 4, 2005, and issued July 25, 2006, pleads as follows:

ANSWER

Preamble: Answering the preamble on page 1 of the Amended Petition, Registrant is without information or belief sufficient to admit or deny the allegations concerning Petitioner's organization, location, and/or belief with respect to the Mark and, on that basis, denies those allegations and further denies that Petitioner will be damaged by continued registration of the Mark.

1. Registrant admits that it is the owner of United States Trademark Registration No. 3,122,052 for the mark FACEBOOK which registration is publicly available on the United

States Patent and Trademark Office (“USPTO”) website and thus a matter of public record. To the extent that the allegations in Paragraph 1 vary therewith, Registrant denies such allegations.

2. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 2, and on that basis denies those allegations and demands proof thereof.

3. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 3, and on that basis denies those allegations and demands proof thereof.

4. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 4, and on that basis denies those allegations and demands proof thereof.

COUNT I

(Priority of Use and Likelihood of Confusion)

5. Registrant restates and incorporates by reference its answers to the allegations contained within Paragraphs 1 through 4.

6. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 6, and on that basis denies those allegations and demands proof thereof.

7. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 7, and on that basis denies those allegations and demands proof thereof.

8. Registrant denies the allegations in Paragraph 8.

9. Registrant denies the allegations in Paragraph 9.

10. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 10 concerning Petitioner’s business plans, and on that basis denies those allegations and demands proof thereof. Registrant denies the remainder of the allegations in Paragraph 10.

COUNT II

(Genericness)

11. Registrant restates and incorporates by reference its answers to the allegations contained within Paragraphs 1 through 4.

12. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 12, and on that basis denies those allegations and demands proof thereof.

13. Registrant denies the allegations in Paragraph 13.

COUNT III

(Fraud on the Patent and Trademark Office)

14. Registrant restates and incorporates by reference its answers to the allegations contained within Paragraphs 1 through 4.

15. Registrant admits that Sean Parker and Mark Zuckerberg were officers of Registrant at the time it filed the application for trademark Serial No. 78574730. Registrant further admits that on February 18, 2005, Sean Parker signed a declaration in support of Registrant's application for trademark Serial No. 78574730, which is publicly available on the USPTO website and thus is a matter of public record. Registrant also admits that on May 2, 2005, Heller Ehrman LLP, then counsel for Registrant, filed a Consolidated Petition to Make Special for its application for trademark Serial No. 78574730, and Sean Parker signed the supporting declaration, which are both publicly available on the USPTO website and thus are a matter of public record. Registrant further admits that on May 16, 2005, Lisa Greenwald-Swire of Heller Ehrman LLP filed and signed a Response to Office Action on behalf of Registrant which is publicly available on the USPTO website and thus is a matter of public record. To the

extent that the allegations of Paragraph 15 vary therewith, Registrant denies such allegations.

The Registrant denies the remainder of the allegations in Paragraph 15.

16. Registrant admits that on May 2, 2005, Heller Ehrman LLP, then counsel for Registrant, filed a Consolidated Petition to Make Special for its application for trademark Serial No. 78574730, which is publicly available on the USPTO website and thus is a matter of public record. Registrant further admits that the Commissioner for Trademarks granted Registrant's Consolidated Petition to Make Special on May 11, 2005, and that this decision is publicly available on the USPTO website and thus is a matter of public record. To the extent that the allegations of Paragraph 16 vary therewith, Registrant denies such allegations. Registrant denies the remainder of the allegations in Paragraph 16.

17. Registrant lacks information or belief sufficient to admit or deny the allegations in Paragraph 17 with respect to Petitioner's business plans, advertising activities and efforts, and its interactions with any search engine, and on that basis denies those allegations and demands proof thereof. Registrant denies the remainder of the allegations in Paragraph 17.

18. Registrant denies the allegations in Paragraph 18.

19. Registrant admits that, during an October 26, 2005 interview conducted by Jim Breyer, then Managing Partner of Accel, at Stanford University in Palo Alto, California, Mark Zuckerberg responded to the question "what's The Facebook?" by stating in part "So, um, I did two years at Harvard. During my sophomore year, I decided that Harvard needed a Facebook. It didn't have one, so I made it. That's basically how it got started." Registrant further admits that Sean Parker is not a current employee of Registrant. Registrant denies the remainder of the allegations in Paragraph 19.

20. Registrant denies the allegations in Paragraph 20.

AFFIRMATIVE DEFENSES

In asserting the following affirmative defenses, Registrant does not concede that it has the burden of proof as to each of them.


1. The Amended Petition fails to state a basis for the relief sought.
2. To the extent that Petitioner is deemed to have enforceable rights, which Registrant expressly denies, the Amended Petition is barred by the doctrine of waiver.
3. To the extent that Petitioner is deemed to have enforceable rights, which Registrant expressly denies, the Amended Petition is barred by the doctrine of laches.
4. To the extent that Petitioner is deemed to have enforceable rights, which Registrant expressly denies, the Amended Petition is barred by the doctrine of estoppel.
5. To the extent that Petitioner is deemed to have enforceable rights, which Registrant expressly denies, the Amended Petition is barred by the doctrine of acquiescence.
6. To the extent that Petitioner is deemed to have enforceable rights, which Registrant expressly denies, the Amended Petition is barred by the doctrine of unclean hands.
7. Petitioner lacks standing sufficient to cancel registration of the Mark.
8. Petitioner lacks standing to cancel registration of the Mark in that Petitioner does not have rights, superior or otherwise, sufficient to support the Amended Petition of Registrant's rights in Registrant's famous Mark.
9. Petitioner lacks standing to cancel registration of the Mark in that Petitioner has abandoned any interest it may have had in its alleged marks "FACEBOOK," "FACE BOOK," "UNIVERSAL FACE BOOK," and "FACENET."
10. Petitioner lacks standing to cancel registration of the Mark in that Petitioner is not likely to be damaged by the continued registration of the Mark.

11. The Amended Petition is barred because Registrant's actions were based on good, sufficient and legal cause.

WHEREFORE, Registrant requests that the Amended Petition be dismissed in its entirety and that Registrant's mark FACEBOOK in International Classes 35 and 38 remain in good standing.

Dated: October 27, 2008

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

By: 

Anne H. Peck (124790)

Attorneys for Respondent

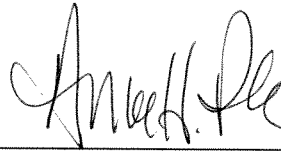
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Registrant's ANSWER TO AMENDED PETITION AND AFFIRMATIVE DEFENSES was mailed, first-class postage prepaid, to Petitioner:

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

Date: October 27, 2008



Anne H. Peck (124790)