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

Proceeding	92049936
Party	Defendant AgaMatrix, Inc.
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Submission	Answer
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Date	10/27/2008
Attachments	AgaMatrix's Answer to the Petition to Cancel.pdf (6 pages)(81389 bytes)

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

WAVESENSE, INC.,

Petitioner,

vs.

AGAMATRIX, INC.

Respondent

Cancellation No. 92049936

**RESPONDENT AGAMATRIX, INC.'S ANSWER TO WAVESENSE, INC.'S PETITION
TO CANCEL**

Respondent AgaMatrix, Inc., through its counsel, hereby answers the Petition to Cancel of Wavesense, Inc., which was filed on September 15, 2008, as follows. Each numbered paragraph in this Response corresponds to the identically numbered paragraph in Wavesense's Petition. AgaMatrix denies all allegations, declarations, claims or assertions in this Petition to Cancel that are not specifically admitted in this Answer.

1. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition to Cancel and, thus, denies the same.

2. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition to Cancel and, thus, denies the same.

3. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition to Cancel and, thus, denies the same.

4. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition to Cancel and, thus, denies the same.

5. AgaMatrix admits that its U.S. trademark registration for the mark POWERED BY WAVESENSE (Reg. No. 3,327,697, hereinafter, the “‘697 Registration”) recites a first-use date and first-use-in-commerce date of January 31, 2007. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the Petition to Cancel, and thus, denies the same.

6. AgaMatrix admits the factual allegations contained in paragraph 6 of the Petition to Cancel.

7. AgaMatrix denies the allegations contained in paragraph 7 of the Petition to Cancel.

8. AgaMatrix admits the allegations contained in paragraph 8 of the Petition to Cancel.

9. AgaMatrix denies that it made willful material misrepresentations in the declaration supporting its Application Serial No. 78/870,512 (the “‘512 Application”), as set forth in paragraph 9 of the Petition to Cancel. AgaMatrix admits that it did not inform Petitioner that the ‘512 Application had been filed or that the ‘697 Registration had issued, but maintains

that it had no obligation to provide such information to Petitioner and had no duty to police Petitioner's purported WAVESENSE trademark and/or trade name.

10. AgaMatrix denies the allegations contained in paragraph 10 of the Petition to Cancel.

11. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Petition to Cancel and, thus, denies the same.

12. AgaMatrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Petition to Cancel and, thus, denies the same.

13. AgaMatrix denies the allegations contained in paragraph 13 of the Petition to Cancel.

14. AgaMatrix denies the allegations contained in paragraph 14 of the Petition to Cancel.

15. AgaMatrix denies the allegations contained in paragraph 15 of the Petition to Cancel.

16. AgaMatrix denies the allegations contained in paragraph 16 of the Petition to Cancel.

17. AgaMatrix admits the allegations contained in paragraph 17 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

AgaMatrix, for its affirmative defenses, states as follows:

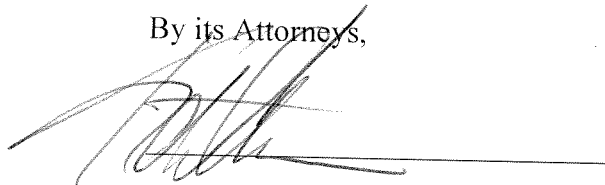
1. The Petition to Cancel fails to state any claims upon which relief can be granted.
2. Petitioner has abandoned any rights in the mark WAVESENSE.
3. The goods recited in AgaMatrix's registration for the mark POWERED BY WAVESENSE (U.S. Reg. No. 3,327,697) are not the same as, or similar to, Petitioner's goods and/or services.
4. AgaMatrix does not sell, market, and/or promote its POWERED BY WAVESENSE goods in channels of trade that are the same as or similar to Petitioner's channels of trade.
5. AgaMatrix's POWERED BY WAVESENSE mark and Petitioner's purported WAVESENSE mark are not confusingly similar.
6. The Petition to Cancel is barred by acquiescence.
7. Petitioner cannot establish that it has priority in the mark WAVESENSE.

Dated: October 27, 2008

Respectfully submitted,

AGAMATRIX, INC.

By its Attorneys,

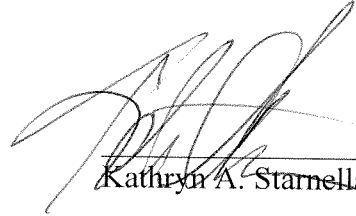


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the RESPONDENT AGAMATRIX, INC.'S ANSWER TO WAVESENSE, INC.'S PETITION TO CANCEL has been served by first class mail on October 27, 2008 upon:

Matthew A. Newboles, Esq.
Stephen Z. Vegh, Esq.
STETINA BRUNDA GARRED & BRUCKER
75 Enterprise, Suite 250
Aliso Viejo, CA 92656



Kathryn A. Starnella