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

Proceeding	92050675
Party	Defendant FACEBOOK, INC.
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Date	04/21/2009
Attachments	Answer.pdf (7 pages)(186946 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. 92050675

Mark: FACEBOOK

Reg. No. 3,041,791

Reg. Date: January 10, 2006

**REGISTRANT’S ANSWER TO PETITION TO CANCEL
AND AFFIRMATIVE DEFENSES**

Facebook, Inc. (“Registrant”), for its answer to the Petition to Cancel (“Petition”) filed by Think Computer Corporation (“Petitioner”) against Registrant’s trademark FACEBOOK (the “Mark”), Registration No. 3,041,791, filed February 24, 2005, published in the *Official Gazette* October 18, 2005, and issued January 10, 2006, pleads as follows:

ANSWER

Preamble: Answering the preamble on page 1 of the 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. 3,041,791 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 allegation in Paragraph 4, and on that basis denies that allegation 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, and on that basis denies those allegations and demands proof thereof.

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 Think's business plans and 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 contained in Paragraph 18.

19. Registrant admits that Sean Parker is not a current employee of Facebook, Inc. Registrant denies the remainder of the allegations contained in Paragraph 19.

20. Registrant denies the allegations contained 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 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 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 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 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 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 Petition is barred by the doctrine of unclean hands.

7. Petitioner lacks standing 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 Petition to cancel 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 Petition is barred because Registrant's actions were based on good, sufficient and legal cause.

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

Dated: April 21, 2009

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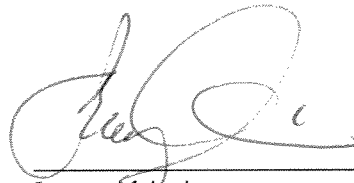
Attorneys for Respondent

CERTIFICATE OF SERVICE

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

Think Computer Corporation
David M. Given, Esq.
Phillips, Erlewine & Given LLP
50 California Street, 35th Floor
San Francisco, CA 94111

Date: April 21, 2009



Lucy Altieri