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

Proceeding	92050675
Party	Plaintiff Think Computer Corporation
Correspondence Address	David M. Given Phillips, Erlewine & Given LLP 50 California Street, 35th Floor San Francisco, CA 94111 UNITED STATES dmg@phillaw.com
Submission	Motion to Consolidate
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Signature	/David M. Given/
Date	05/01/2009
Attachments	motion to consolidate 050109.pdf ( 4 pages )(75265 bytes ) counsel decl. iso motion to consolidate.pdf ( 3 pages )(52354 bytes )

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

Think Computer Corporation,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92050675
v.	)	
	)	Mark: THEFACEBOOK
Facebook, Inc.,	)	Reg. No.: 3,041,791
	)	Reg. Date: January 10, 2006
Registrant.	)	
_____	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**PETITIONER THINK COMPUTER CORPORATION'S MOTION TO CONSOLIDATE**

Pursuant to Federal Rule of Civil Procedure 42(a) Petitioner Think Computer Corporation ("Think") hereby moves for an order consolidating this proceeding with cancellation number 92049206, on the grounds that the two proceedings involve identical parties and common issues of law and fact. Think also moves for an order that discovery in this proceeding proceed separately from discovery in proceeding number 92049206.

On April 15, 2008, Think filed a petition to cancel the mark FACEBOOK, registered by respondent Facebook, Inc., on the basis of genericness and likelihood of confusion, priority of use and fraud on the Office ("Action I"). On March 12, 2009, Think filed a petition to cancel the mark "THEFACEBOOK," also registered by Facebook, on the same grounds of genericness and likelihood of confusion, priority of use, and fraud on the Office ("Action II").

Actions I and II both involve the same set of facts. Think's founder and president, Aaron Greenspan, developed a social networking platform, which he called houseSYSTEM, while

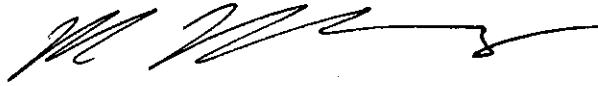
attending Harvard University in 2003. Think began using the marks Facebook, Universal Facebook and FaceNet in connection with houseSYSTEM since at least as early as September 2003. One or more of Facebook's founders, including its CEO, Mark Zuckerberg, were aware of this use and were even subscribers to the houseSYSTEM site.

Discovery in Action I has been proffered and responded to by both parties in Action I. To date, Think has served Facebook with two sets of requests for production of documents, one set of interrogatories, one set of requests for admissions and deposition notices for Facebook and four of its officers/employees. Counsel Decl., ¶ 2. Facebook has also served Think with one set of interrogatories and one set of request for production of documents. *Id.* A motion to compel Facebook to produce documents, answer interrogatories and comply with deposition notices and a motion to test the sufficiency of Facebook's responses to requests for admissions is currently pending in Action I. Counsel Decl., ¶ 3. Discovery in Action II has yet to commence. Counsel Decl., ¶ 4.

While the parties agree that Actions I and II should be consolidated, they disagree as to whether discovery in the two actions should be consolidated. Counsel Decl., ¶ 5. Because discovery in Action I has progressed far beyond that of discovery in Action II, and because Think has already served interrogatories and deposition notices on Facebook, Think requests that the discovery in the two actions proceed separately. Facebook, however, has demanded that discovery be consolidated such that the numerical limits on interrogatories and deposition govern both actions. Counsel Decl., ¶ 5. Among other things, consolidation of discovery would severely undermine Think's ability to serve interrogatories in Action II. Moreover, all the discovery in Action I has been directed solely to matters pertaining to the "FACEBOOK" mark.

For the foregoing reasons, Petitioner respectfully requests that the Board grant this motion and enter an order consolidating this proceeding with cancellation number 92049206 for all purposes except discovery.

Dated: May 1, 2009



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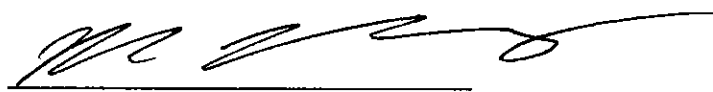
Meagan McKinley-Ball, Esq.  
Phillips, Erlewine & Given LLP  
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San Francisco, CA 94111  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petitioner Think Computer Corporation's Motion to Consolidate was sent via electronic mail and mailed, first-class postage prepaid, to Respondent:

Jeffrey T. Norberg, Esq.  
Cooley Godward Kronish LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306  
jnorberg@cooley.com

Dated: May 1, 2009



Meagan McKinley-Ball (SBN 245375)

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

Think Computer Corporation,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92050675
v.	)	
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Comissioner for Trademarks  
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**DECLARATION OF MEAGAN MCKINLEY-BALL IN SUPPORT OF PETITIONER  
THINK COMPUTER CORPORATION'S MOTION TO CONSOLIDATE**

I, MEAGAN MCKINLEY-BALL, declare as follows:

1. I am an associate in the law firm Phillips, Erlewine & Given, LLP, counsel of record for Petitioner Think Computer Corporation ("Think") in this matter ("Action II") as well as in Cancellation No. 92049206 ("Action I"). Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and, if called to testify as a witness, could and would testify competently thereto.

2. In Action I, Think has served two sets of requests for production of documents, one set of interrogatories (counting an original set and revised set as one set), one set of requests for admissions and deposition notices for Facebook and four of its officers/employees. Also in Cancellation No. 92049206, Respondent Facebook, Inc. has served one set of interrogatories and one set of requests for production of documents.

3. On April 27, 2009, Think filed a motion to compel Facebook to produce documents, answer interrogatories and comply with deposition notices and a motion to test the sufficiency of Facebook's responses to requests for admissions in Action I.

4. To date, no discovery has been conducted in Action II.

5. On April 24, 2009, counsel for Think and Facebook participated in a meet and confer telephone conference, in which they discussed consolidation of Actions I and II. Both parties agreed that the actions should be consolidated, but they disagree as to whether discovery in both proceedings should be consolidated. Think proposed that discovery be conducted separately in the two actions. Facebook rejected that proposal and has demanded that discovery be consolidated such that the numerical limits on interrogatories and deposition govern both actions.

I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct.

Dated: May 1, 2009



Meagan McKinley-Ball

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Declaration of Meagan McKinley-Ball in Support of Petitioner Think Computer Corporation's Motion to Consolidate was sent via electronic mail and mailed, first-class postage prepaid, to Respondent:

Jeffrey T. Norberg, Esq.  
Cooley Godward Kronish LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306  
jnorberg@cooley.com

Dated: May 1, 2009



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Meagan McKinley-Ball (SBN 245375)