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

|                           |   |
|---------------------------|---|
| Proceeding                | 92052005  |
| Party                     | Defendant<br>Pilgrim Telephone, Inc.  |
| Correspondence<br>Address | Pilgrim Telephone, Inc.<br>181 Spring Street<br>Lexington, MA 02421<br>UNITED STATES            |
| Submission                | Answer  |
| Filer's Name              | Walter Steimel, Jr.   |
| Filer's e-mail            | steimelw@gtlaw.com, harriscolemanm@gtlaw.com, dcipmail@gtlaw.com                                |
| Signature                 | /Walter Steimel Jr./  |
| Date                      | 03/10/2010  |
| Attachments               | Pilgrim Telephone Inc Answer in TTAB Proceeding for Megaphone.pdf ( 7 pages<br>) (29358 bytes ) |

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

PLAY MEGAPHONE, INC.

Petitioner,

v.

PILGRIM TELEPHONE, INC.

Registrant.

Cancellation No. 92052005

Registration Nos. 3,268,714  
3,360,126

Mark: MEGAPHONE

ANSWER AND RESPONSE TO

CONSOLIDATED PETITION FOR CANCELLATION

PILGRIM TELEPHONE, INC., (“Pilgrim” or “Registrant”), hereby answers the Consolidated Petition for Cancellation (“Petition”), filed by PLAY MEGAPHONE, INC.. (“Petitioner”), and which seeks to cancel Registration Nos. 3,268,714 and 3,360,126 for the mark MEGAPHONE as shown below.

## MEGAPHONE

1. Answering the introductory paragraphs and Paragraph 1 of the grounds for cancellation, Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations concerning Petitioner’s business, and whether there is similarity in the issues raised by Petitioner, and therefore denies the same. Registrant denies that Petitioner has been or will continue to be damaged by Registrant’s marks, and denies the inference that Petitioner has any right to use either Registrant’s, Petitioner’s or any similar marks. Registrant admits the allegations contained in Paragraph 1 concerning the procedural history of Registrant’s marks. Registrant denies any other allegations contained therein not specifically identified above.

2. Answering Paragraph 2 of the grounds for cancellation, Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations concerning Petitioner’s business and therefore denies the same. Registrant denies any other allegations contained therein not specifically identified above.

With regard to the averments in support of cancellation, Registrant responds as follows:

1. Answering Paragraph 1 of the Petition, Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations concerning Petitioner's business and therefore denies the same. Registrant denies any other allegations contained therein not specifically identified above.

2. Answering Paragraph 2 of the Petition, Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations concerning Petitioner's business and therefore denies the same. Registrant denies any other allegations contained therein not specifically identified above.

3. Answering Paragraph 3 of the Petition, Registrant denies the allegations contained therein. Registrant denies any other allegations contained therein not specifically identified above.

4. Answering Paragraph 4 of the Petition, Registrant admits that the allegations contained therein.

5. Answering Paragraph 5 of the Petition, Registrant admits the subject registrations were issued less than five (5) years ago.

6. Answering Paragraph 6 of the Petition, Registrant admits the allegations contained therein.

7. Answering Paragraph 7 of the Petition, Registrant denies the allegations contained therein as stated by Petitioner. Registrant's statements are for use "at least as early as" and its use predates that alleged by Petitioner. Registrant denies any other allegations contained therein not specifically identified above.

8. Answering Paragraph 8 of the Petition, Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations concerning Petitioner's business and therefore denies the same. Registrant admits that Office Actions have been attached to the Petition to Cancel, but denies Petitioner's

characterization of the Office Actions or the Examining Attorney's beliefs. Registrant denies any other allegations contained therein not specifically identified above.

9. Answering Paragraph 9 of the Petition, Registrant admits the allegations contained therein.

10. Answering Paragraph 10 of the Petition, Registrant lacks sufficient knowledge as to any investigation conducted by Petitioner and, therefore denies any allegations concerning same. Petitioner expressly denies its marks have not been used in commerce for the services listed in the registrations. Registrant denies that Petitioner could have performed any investigation, and any other allegations contained therein not specifically identified above.

11. Answering Paragraph 11 of the Petition, Registrant lacks sufficient knowledge as to any investigation conducted by Petitioner and, therefore denies any allegations concerning same. Petitioner expressly denies its marks have not been used in commerce for the services listed in the registrations, including during the last three years. Registrant denies that Petitioner could have performed any investigation, and any other allegations contained therein not specifically identified above.

12. Answering Paragraph 12 of the Petition, Registrant lacks sufficient knowledge as to any investigation conducted by Petitioner and, therefore denies any allegations concerning same. Petitioner expressly denies its marks have been abandoned, and have not been used in commerce for the services listed in the registrations during the relevant time period. Registrant denies that Petitioner could have performed any investigation, and any other allegations contained therein not specifically identified above.

13. Answering Paragraph 13 of the Petition, Registrant denies the allegations contained therein.

14. Answering Paragraph 14 of the Petition, Registrant denies the allegations contained therein.

15. Answering Paragraph 15 of the Petition, Registrant denies the allegations

contained therein.

16. Answering Paragraph 16 of the Petition, Registrant denies the allegations contained therein.

17. Answering Paragraph 17 of the Petition, Registrant admits it submitted a Statement of Use in connection with Registration No. 3,360,126 to the USPTO on September 7, 2007 with appropriate, acceptable samples of the mark in use. Registrant denies any insinuations contained therein.

18. Answering Paragraph 18 of the Petition, Registrant admits it submitted a Statement of Use in connection with Registration No. 3,268,714 to the USPTO on December 21, 2006 with appropriate, acceptable samples of the mark in use. Registrant denies any insinuations contained therein.

19. Answering Paragraph 19 of the Petition, Registrant denies the allegations contained therein.

20. Answering Paragraph 20 of the Petition, Registrant denies the allegations contained therein.

21. Answering Paragraph 21 of the Petition, Registrant denies the allegations contained therein.

22. Answering Paragraph 22 of the Petition, Registrant is without sufficient knowledge as to the realization or belief of the USPTO and denies the allegations concerning same. Registrant expressly denies its declaration was false. Registrant denies any other allegations contained therein not specifically identified above.

23. Answering Paragraph 23 of the Petition, Registrant denies it made any misrepresentations. Registrant denies any other allegations contained therein not specifically identified above.

24. Answering Paragraph 24 of the Petition, Registrant denies it made any fraudulent statements or misrepresentations. Registrant further denies Petitioner has been damaged, or that Petitioner's marks are legitimate. Registrant denies any other allegations contained therein not specifically identified above.

25. Answering Paragraph 25 of the Petition, Registrant denies the allegations contained therein.

26. Answering the WHEREFORE clause, Registrant denies the Petitioner is entitled to the relief sought.

### **AFFIRMATIVE DEFENSES**

1. Registrant repeats, realleges and incorporates herein each and every allegation of the preceding paragraphs as if fully set forth herein.

2. Petitioner does not have standing to bring this Petition because it is not the owner of a valid federal MEGAPHONE trademark.

3. Petitioner does not have standing to bring this Petition because it is not the owner of a valid MEGAPHONE mark at common law.

4. Petitioner does not have standing to bring this Petition because it does not use the MEGAPHONE mark in commerce.

5. Petitioner's Petition is barred because it does not have priority of use of a MEGAPHONE mark.

6. Petitioner's Petition is barred by the doctrine of unclean hands because it adopted its MEGAPHONE mark with the bad faith intent to trade on the goodwill of Registrant's mark.

7. Petitioner has not pleaded any law or facts that justify the cancellation of the Registrant's MEGAPHONE mark.

8. Petitioner failed to state a claim upon which relief can be granted.

Registrant respectfully requests:

(a) That the Petition for Cancellation be denied in its entirety;

(b) That judgment be entered in favor of Registrant;

(c) That Registrant be granted attorney's fees and costs for its defense of

a frivolous cancellation petition;  
(d) That Registrant be granted such other and further relief as the Board  
deems just and proper.

DATED: March 10, 2010.

GREENBERG TRAURIG

/s/ Walter Steimel, Jr.

Walter Steimel, Jr.

Counsel for Registrant  
PILGRIM TELEPHONE, INC.

## CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2010, I served the foregoing Answer and Response to Petition for Cancellation on:

Thayer M. Preece  
Harold J. Milstein  
Sheppard, Mullin, Richter & Hampton LLP  
990 Marsh Road  
Menlo, Park, California 94025  
Facsimile: 650-815-2601  
*Attorney for Petitioner, Play Megaphone, Inc.*

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

- by mailing in a sealed, first-class postage-prepaid envelope, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service at Washington, D.C.
- by hand delivery.
- by sending via overnight courier in a sealed envelope.
- by faxing to the attorney at the fax number that is the last-known fax number.
- by electronic mail to the last known e-mail address.

/s/ Michelle Coleman  
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An employee of Greenberg Traurig