

ESTTA Tracking number: **ESTTA902036**

Filing date: **06/08/2018**

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Next Level Internet, Inc.		
Entity	Corporation	Citizenship	California
Address	12310 World Trade Drive, Suite 102 San Diego, CA 92128 UNITED STATES		

Attorney information	Anne Hiaring Hocking Donahue Fitzgerald LLP 80 E. Sir Francis Drake Blvd., Suite 3E Larkspur, CA 94939 UNITED STATES Email: ahocking@donahue.com, ndrake@donahue.com, ebaxter@donahue.com, trademarks@donahue.com Phone: 415-381-4161
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Registration Subject to Cancellation

Registration No.	5025872	Registration date	08/23/2016
Registrant	Next Level Telecommunications Co. 8175 Staples Mill Rd Richmond, VA 23228 UNITED STATES Email: wayne.potter@nextleveltelco.com		


Goods/Services Subject to Cancellation


Class 038. First Use: 2014/12/31 First Use In Commerce: 2014/12/31 All goods and services in the class are subject to cancellation, namely: Data transmission and reception services via telecommunication means; Digital network telecommunications services; Electronic exchange of data stored in databases accessible via telecommunication networks; High bit-rate data transmission services for telecommunication network operators; Information about telecommunication; Leasing of telecommunication equipment; Providing access to telecommunication networks; Providing electronic telecommunication connections; Telecommunications reseller services for businesses, namely, providing long distance telecommunication services, voice telecommunication services, local telephone service, and Internet access services; Consulting in the field of telecommunication services, namely, transmission of voice, data, and documents via telecommunications networks

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87586400	Application Date	08/28/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEXTLEVEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2007/06/01 First Use In Commerce: 2007/06/01 Operation of telephone call centers for others; management of telephone call centers for others; operation and administration of telecommunication systems and networks for others; telecommunications network management services, namely, the operation and administration of telecommunication systems and networks for others</p>		

U.S. Application No.	87586420	Application Date	08/28/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEXTLEVEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 1999/08/10 First Use In Commerce: 1999/08/10 Internet service provider; providing voice communication services via the internet; providing access to the internet; telecommunication access services; providing access to telecommunication networks; telecommunications consultation; providing telecommunications connections to a global computer network; digital network telecommunications services; telecommunication services, namely, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks, and the internet; information about telecommunications; providing co-location services for voice, video and data communications applications</p>		

Attachments	87586400#TMSN.png(bytes) 87586420#TMSN.png(bytes) Petition for Cancellation - NEXT LEVEL and Design 6.8.2018.pdf(103968 bytes)
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Signature	/Anne Hiaring Hocking/
Name	Anne Hiaring Hocking
Date	06/08/2018

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

In the matter of U.S. Registration No. 5,025,872
For the Trademark: NEXT LEVEL & Design
Registered on: August 23, 2016

Next Level Internet, Inc., Petitioner, v. Next Level Telecommunications Co., Registrant.	Cancellation No.:
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PETITION FOR CANCELLATION

Pursuant to 15 U.S.C. §§ 1064, 1068, 37 C.F.R. § 2.111, and TBMP § 309.03, Next Level Internet, Inc., a California corporation whose business address is 12310 World Trade Drive, Suite 102, San Diego, California 92128 (“**Petitioner**”), believes that it is and will be damaged by Registration No. 5,025,872 for the mark NEXT LEVEL & Design (“**Registrant’s Mark**”), currently owned by Next Level Telecommunications Co., a Virginia corporation located at 8175 Staples Mill Road, Richmond, Virginia 23228 (“**Registrant**”), and petitions to cancel said registration.

A. INTRODUCTION AND BACKGROUND OF PARTIES

As grounds of Cancellation, Petitioner alleges that:

1. Petitioner is the owner of U.S. Trademark Application Serial Nos. 87/586,400 and 87/586,420 for the mark NEXTLEVEL (“**Petitioner’s Marks**”), filed on August 28, 2017, in Class 35 for “Operation of telephone call centers for others; management of telephone call centers for others; operation and administration of telecommunication systems and networks for others; telecommunications network management services, namely, the operation and administration of telecommunication systems and networks for others,” and Class 38 for

“Internet service provider; providing voice communication services via the internet; providing access to the internet; telecommunication access services; providing access to telecommunication networks; telecommunications consultation; providing telecommunications connections to a global computer network; digital network telecommunications services; telecommunication services, namely, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks, and the internet; information about telecommunications; providing co-location services for voice, video and data communications applications,” respectively (collectively, “**Petitioner’s Services**”).

2. On December 11, 2017, Petitioner’s Marks were refused registration by the USPTO Examining Attorney on the ground of a perceived likelihood of confusion with Registrant’s Mark.

3. Registrant applied to register Registrant’s Mark on December 16, 2015 for “Data transmission and reception services via telecommunication means; Digital network telecommunications services; Electronic exchange of data stored in databases accessible via telecommunication networks; High bit-rate data transmission services for telecommunication network operators; Information about telecommunication; Leasing of telecommunication equipment; Providing access to telecommunication networks; Providing electronic telecommunication connections; Telecommunications reseller services for businesses, namely, providing long distance telecommunication services, voice telecommunication services, local telephone service, and Internet access services; Consulting in the field of telecommunication services, namely, transmission of voice, data, and documents via telecommunications networks” in Class 38 (“**Registrant’s Services**”).

4. Registrant’s Mark was thereafter registered on August 23, 2016, U.S. Registration No. 5,025,872 (“**Registrant’s Registration**”).

5. According to Registrant’s Registration, Registrant claims that it has used Registrant’s Mark in commerce in connection with Registrant’s Services since December 31, 2014.

6. Petitioner's Marks are subsisting and not abandoned.

7. Petitioner has continuously used Petitioner's Marks in interstate commerce since at least as early as June 1, 2007, and for certain uses, as early as August 10, 1999.

8. Petitioner has not licensed or authorized Registrant's use of Registrant's Mark in any way.

9. Petitioner has invested time, money, and effort in marketing, advertising, and promotion of Petitioner's Marks in connection with the sale of Petitioner's Services.

10. As a consequence of Petitioner's long and continuous use, and its investment in marketing, advertising, and promotion of Petitioner's Marks in connection with Petitioner's Services, Petitioner's Marks have acquired a high degree of distinctiveness indicating source in Petitioner, and Petitioner has established significant and valuable goodwill in Petitioner's Marks.

B. REGISTRANT'S MARK CREATES A LIKELIHOOD OF CONFUSION WITH PETITIONER'S MARKS

11. Petitioner repeats, realleges, and incorporates by reference, as though set forth in full, paragraphs 1 through 10 above.

12. As ground for Cancellation, Petitioner alleges that Registrant's Mark is nearly identical to Petitioner's Marks, and thus Registrant's Mark is confusingly similar to Petitioner's Marks.

13. Registrant's Services are closely related to Petitioner's Services.

14. Petitioner has consistently used Petitioner's Marks in connection with Petitioner's Services since over seven years prior to Registrant's claimed first use in commerce date, and thus Petitioner has the right of priority in Petitioner's Marks over Registrant's right, if any, in Registrant's Mark.

15. Registrant's Mark creates a likelihood of confusion with Petitioner's Marks.

16. If Registrant's Registration is not cancelled, Registrant will continue to or begin to use Registrant's confusingly similar Mark in connection with Registrant's Services and continue to damage Petitioner, the prior user of the NEXTLEVEL mark.

C. REGISTRANT’S MARK SHOULD BE CANCELLED

17. As Petitioner’s attempt to register Petitioner’s Marks as shown in Petitioner’s Application Serial Nos. 87/586,400 and 87/586,420 will be impaired by the continued registration of Registrant’s Mark, Petitioner respectfully requests that Registrant’s Mark, U.S. Registration No. 5,025,872, be cancelled.

FEE AND DEPOSIT REQUEST

The filing fee in the amount of \$400.00 is submitted with this Petition for Cancellation.

Date: June 8, 2018

Respectfully submitted,

DONAHUE FITZGERALD LLP

/Anne Hiaring Hocking/

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