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

Proceeding	92075865
Party	Defendant Linq3 Technologies, LLC
Correspondence Address	LINQ3 TECHNOLOGIES, LLC 250 WILLIAMS STREET SUITE M-100 ATLANTA, GA 30303 UNITED STATES No email provided. No phone number provided.
Submission	Answer
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Signature	/Christiane Campbell/
Date	01/12/2021
Attachments	Answer.pdf(266236 bytes)

2. Since at least as early as June of 2017, Petitioner has engaged in the business of rendering Petitioner's Services in commerce under the QUICKTICKET mark.

ANSWER:

Registrant is without sufficient knowledge or information on which to form a belief as to the truth of Petitioner's allegations set forth in Paragraph 2 and therefore denies same. For the record, Petitioner filed and is listed as the owner of record at the U.S. Trademark Office for intent-to-use trademark applications for its QUICKTICKET marks (Ser. No. 88/082,135 and Ser. No. 88/438,239). Petitioner does not claim any dates of first use in these applications, nor has it amended the filing bases of these applications to claim the marks are in use. Therefore it is unclear how Petitioner can allege it has priority and was rendering services in commerce under the QUICKTICKET mark as early as June 2017 when it has filed intent-to-use trademark applications for QUICKTICKET and not presented evidence of such priority in this proceeding.

3. On August 17, 2018, Petitioner filed an application with the United States Patent and Trademark Office (the "USPTO") to register a stylized QUICKTICKET mark (Ser. No. 88/082,135) for use in connection with "Providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers", in International Class 35.

ANSWER:

Registrant admits the U.S. Trademark Office database shows Petitioner is listed as the owner of record for application Ser. No. 88/082,135 for the mark QUICKTICKET. Application Ser. No. 88/082,135 speaks for itself. Registrant is without sufficient knowledge or information on which to form a belief as to the truth of the remaining allegations set forth in Paragraph 3 and therefore denies same.

4. Pursuant to the request of the USPTO, Petitioner amended the recitation of services in Application Serial No. 88/082,135 to “Providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, electronic cash transactions, credit card and debit card transaction processing services” in Class 36, and “Providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, platform as a service (PAAS) featuring computer software platforms for printing receipts” in Class 42. A copy of the current Trademark Status and Document Retrieval (“TSDR”) report for this application is attached hereto at Exhibit A.

ANSWER:

Registrant admits the U.S. Trademark Office database shows Petitioner is listed as the owner of record for application Ser. No. 88/082,135 for the mark QUICKTICKET. The application for and prosecution history of application Ser. No. 88/082,135 speak for themselves. Registrant is without sufficient knowledge or information on which to form a belief as to the truth of the remaining allegations set forth in Paragraph 4 and therefore denies same.

5. On May 20, 2019, Petitioner filed an application with the USPTO to register the mark QUICKTICKET in standard characters (Ser. No. 88/438,239) for use in connection with “Providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, electronic cash transactions, credit card and debit card transaction processing services” in Class 36 and “Providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, platform as a service (PAAS) featuring computer software platforms for printing receipts” in Class 42. A copy of the current TSDR report for this application is attached hereto at Exhibit B. Petitioner’s

applications to register the QUICKTICKET mark (Ser. Nos. 88/082,135 and 88/438,239) are referred to herein collectively as “Petitioner’s Applications.”

ANSWER:

Registrant admits the U.S. Trademark Office database shows Petitioner is listed as the owner of record for application Ser. No. 88/438,239 for the mark QUICKTICKET. Application Ser. No. 88/438,239 speaks for itself. Registrant is without sufficient knowledge or information on which to form a belief as to the truth of the remaining allegations set forth in Paragraph 5 and therefore denies same.

6. On January 1, 2017, Petitioner and Registrant’s predecessor entered into a Product Distribution Agreement (the “Agreement”) pursuant to which Petitioner and Registrant’s predecessor agreed to develop certain goods and services relating to real-time, ticketless lottery transactions.

ANSWER:

Registrant admits its predecessor was a party to an agreement identified as a Product Distribution Agreement, entered into with Petitioner on January 1, 2017. Registrant is without sufficient knowledge or information on which to form a belief as to the truth of the remaining allegations set forth in Paragraph 6 and therefore denies same.

7. Pursuant to the Agreement, Petitioner owned all right, title, and interest to intellectual property it created or had the right to apply for registration pertaining thereto.

ANSWER:

Registrant admits its predecessor was a party to an agreement identified as a Product Distribution Agreement, entered into with Petitioner's predecessor on January 1, 2017.

Registrant is without sufficient knowledge or information on which to form a belief as to the truth of the remaining allegations set forth in Paragraph 7 and therefore denies same.

8. Petitioner disclosed Petitioner's QUICKTICKET Mark, and Petitioner's use thereof, to Registrant's predecessor in December of 2017.

ANSWER:

Registrant is without sufficient knowledge or information on which to form a belief as to the truth of Petitioner's allegations set forth in Paragraph 8 and therefore denies same.

9. Notwithstanding and with knowledge of Petitioner's prior rights in and to the QUICKTICKET mark, on June 7, 2018, Registrant's predecessor filed an application to register the mark QUICKTICKET (Serial No. 87/953,104) (the "Application"), purporting to be the owner of the QUICKTICKET mark for use in connection with "Non-magnetically encoded cards for participating in a lottery" in Class 9 and "Administration of lotteries for others; facilitating lottery play and placement of lottery wagers for others, namely, lottery services" in Class 41 ("Registrant's Goods and Services").

ANSWER:

Registrant admits that its predecessor filed the Application on July 7, 2018. The prosecution history for QUICKTICKET (Serial No. 87/953,104) speaks for itself. Except as expressly admitted, Registrant denies the allegations in Paragraph 9.

10. On June 27, 2018, Registrant's predecessor filed a Preliminary Amendment to the Application, submitting therewith the declaration of Jennifer Hilsabeck, the In House Counsel of Petitioner's predecessor, dated June 21, 2018.

ANSWER:

Registrant admits that its predecessor filed a Preliminary Amendment to the Application on July 27, 2018. The contents of the Preliminary Amendment and the prosecution history for QUICKTICKET (Serial No. 87/953,104) speak for themselves. For the record, Jennifer Hilsabeck executed a declaration as In House Counsel and on behalf of *Registrant's* predecessor. Except as expressly admitted, Registrant denies the allegations in Paragraph 10.

11. Based upon on information and belief, in the aforesaid declaration, Registrant's predecessor's In-House Counsel, knowingly and with intent to deceive the USPTO, falsely represented that Registrant's predecessor is "entitled to use in commerce the [QUICKTICKET] trademark and/or service mark sought to be registered", that "no other person has the right to use the [QUICKTICKET] mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods and/or services of such other person, to cause confusion or mistake, or to deceive" and that "all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true."

ANSWER:

The Preliminary Amendment speaks for itself. Paragraph 11 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 11.

12. As a result of these false and material statements, on January 1, 2019, the United States Patent and Trademark Office issued a Notice of Allowance in connection with the Application.

ANSWER:

Registrant admits that the U.S. Trademark Office issued a Notice of Allowance in connection with the Application on January 1, 2019. The prosecution history for QUICKTICKET (Serial No. 87/953,104) speaks for itself. Paragraph 12 consists of legal conclusions, to which no response is required. Except as expressly admitted and to the extent a response is required, Registrant denies the allegations in Paragraph 12.

13. On March 1, 2019, Registrant's predecessor assigned its U.S. application for the mark QUICKTICKET (Serial No. 87/953,104) to Linq3 Acquisition LLC. The assignment was recorded in the records of the USPTO on December 20, 2019, at Reel 006823, Frames 0444-0449.

ANSWER:

Admitted.

14. On June 6, 2019, Linq3 Acquisition LLC changed its name to Linq3 Technologies, LLC. The change of name was recorded in the records of the USPTO on December 20, 2019, at Reel 006823, Frames 0453-0455.

ANSWER:

Admitted.

15. On December 31, 2019, Linq3 Technologies, LLC filed a Statement of Use in its U.S. application Serial No. 87/953,104 for the mark QUICKTICKET, asserting first use of the

mark, and first use in commerce, on November 5, 2019, and stating that “[t]ransfer of ownership of the application from Linq3 Technologies LLC to LINQ3 Acquisition LLC, a successor to the Applicant’s business or portion of the business to which the mark pertains, and the subsequent change of name from LINQ3 Acquisition LLC to Linq3 Technologies, LLC has been recorded with the USPTO on 12/20/2019”.

ANSWER:

Registrant admits that it filed a Statement of Use for QUICKTICKET (Serial No. 87/953,104) on December 31, 2019. The contents of the Statement of Use and prosecution history for QUICKTICKET (Serial No. 87/953,104) speak for themselves. Except as expressly admitted, Registrant denies the allegations in Paragraph 15.

16. Relying in part on these false and material statements by Registrant’s predecessor, on February 18, 2020, the USPTO issued to Linq3 Technologies, LLC, by virtue of the aforesaid assignment and change of name, U.S. Registration No. 5,991,863 (“Registrant’s Registration”) for the mark QUICKTICKET, covering “Non-magnetically encoded cards for participating in a lottery” in Class 9 and “Administration of lotteries for others; facilitating lottery play and placement of lottery wagers for others, namely, lottery services” in Class 41.

ANSWER:

Registrant admits that the U.S. Trademark Office issued a registration for QUICKTICKET (Reg. No. 5,991,863) on February 18, 2020. The prosecution history for QUICKTICKET (Reg. No. 5,991,863) speaks for itself. Paragraph 16 consists of legal conclusions, to which no response is required. Except as expressly admitted and to the extent a response is required, Registrant denies the allegations in Paragraph 16.

COUNT I
REGISTRANT IS NOT THE RIGHTFUL OWNER OF THE QUICKTICKET MARK
FOR THE IDENTIFIED GOODS AND SERVICES
Trademark Act Sections 14(1) and 1

17. Pursuant to the Agreement between Petitioner and Registrant's predecessor, which predates the filing date of the Application, Petitioner is the owner of the QUICKTICKET mark as created by Petitioner and disclosed by Petitioner to Registrant's predecessor, for use in connection with the services recited in Petitioner's Applications.

ANSWER:

Paragraph 17 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 17.

18. Accordingly, at the time Registrant's predecessor filed the Application, it was not the owner of the QUICKTICKET mark for use on or in connection with Registrant's Goods and Services. As a result, the Application was void *ab initio*.

ANSWER:

Paragraph 18 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 18.

19. As Petitioner is the rightful owner of the QUICKTICKET mark pursuant to its agreement with Registrant's predecessor, Registrant's continued registration of the QUICKTICKET mark serves as *prima facie* evidence of the validity of the QUICKTICKET mark, and of Registrant's ownership thereof, to the damage and detriment of Petitioner.

ANSWER:

Paragraph 19 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 19.

Count II
PRIORITY AND LIKELIHOOD OF CONFUSION
(Trademark Act Sections 14(1) and 2(d))

20. Petitioner's rights in the QUICKTICKET mark predate the filing date of the Application.

ANSWER:

Paragraph 20 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 20.

21. Registrant's QUICKTICKET mark is identical and/or confusingly similar, in appearance, sound, meaning, and commercial impression to Petitioner's QUICKTICKET mark, and the continued registration and use of the QUICKTICKET mark by Registrant in association with the goods and services recited Registrant's Registration is likely to cause confusion as to the source or origin of Registrant's goods and services and is likely to mislead consumers, all to Petitioner's damage.

ANSWER:

Paragraph 21 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 21.

22. The goods and services Petitioner offers under the QUICKTICKET mark, and the goods and services recited in Registrant's Registration are identical or, at a minimum, closely

related to, the services Petitioner renders under the QUICKTICKET mark and that are recited in Petitioner's Applications.

ANSWER:

Paragraph 22 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 22.

23. Registrant's use of the QUICKTICKET mark in connection with the goods and services recited in Registrant's Registration, is likely to cause confusion, to cause mistake, and to deceive the trade and public, who, upon seeing the QUICKTICKET mark in connection with the registered goods and services, would believe that such goods and services originate with, are approved, sponsored, or endorsed by, or have some connection or affiliation with Petitioner.

ANSWER:

Paragraph 23 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 23.

24. Accordingly, Registrant's continued use and registration of the QUICKTICKET mark would damage Petitioner.

ANSWER:

Paragraph 24 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 24.

25. Petitioner will also be damaged by the continued use and registration of the QUICKTICKET mark in that the Trademark Office has refused registration of Petitioner's application Ser. No. 88/082,135, and has cited the Application as a potential basis for refusal of

Petitioner's application Ser. No. 88/438,239. The stated ground for the Examining Attorney's refusals is a likelihood of confusion with Registrant's QUICKTICKET trademark within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Copies of the Examining Attorneys' Office Actions of June 3, 2020 (88/082,135) and August 12, 2019 (88/438,239) are attached hereto as Exhibits C and D.

ANSWER:

Paragraph 25 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 25.

Count III
FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE
(Trademark Act Section 14(3))

26. On information and belief, Registrant's predecessor made material, false statements with the intent to deceive the USPTO in the declaration it submitted in connection with the Application.

ANSWER:

Paragraph 26 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 26.

27. The USPTO relied in part on these material, false statements to issue Registrant's Registration.

ANSWER:

Paragraph 27 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 27.

28. As Petitioner is the rightful owner of the QUICKTICKET mark pursuant to its agreement with Registrant's predecessor, Registrant's continued registration of the QUICKTICKET mark by virtue of its material, false statements serves as *prima facie* evidence of the validity of the QUICKTICKET mark, and of Registrant's ownership thereof, to the damage and detriment of Petitioner.

ANSWER:

Paragraph 28 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 28.

29. Due to the fraud Registrant's predecessor committed in connection with the aforesaid declaration submitted with the Application, Registrant's Registration should be cancelled in its entirety.

ANSWER:

Paragraph 29 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 29.

30. WHEREFORE, Petitioner believes that it has been, and will continue to be, damaged by Registration No. 5,991,863, and therefore respectfully requests that this Petition for Cancellation be granted, and that such registration be cancelled from the Principal Register.

ANSWER:

Paragraph 30 consists of legal conclusions, to which no response is required. To the extent a response is required, Registrant denies the allegations in Paragraph 30.

REGISTRANT'S AFFIRMATIVE DEFENSES

1. Registrant repeats and re-alleges its Answer in Paragraphs 1 through 30 as though set forth fully herein.

2. Registrant reserves the right to raise additional affirmative defenses as may become apparent through discovery and up to trial.

3. Petitioner has alleged, as a ground for cancellation of the Registrant's Registration, fraud. Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application with intent to deceive the USPTO. *In re Bose Corp.*, 580 F.3d 1240, 91 U.S.P.Q.2d 1938, 1941 (Fed. Cir. 2009). A party alleging fraud in the procurement of a registration bears the heavy burden of proving fraud with clear and convincing evidence. *Id.* At 1939 (quoting *Smith Int'l, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1044 (TTAB 1981)). Petitioner's Petition for Cancellation fails to demonstrate Registrant committed fraud on the Office such that Petitioner would be entitled to the relief sought, *i.e.*, cancellation of the Registrant's Registration.

4. Registrant, itself or through its licensees or predecessors, is and has been offering non-magnetically encoded cards for participating in a lottery and lottery services in U.S. Commerce since *at least as early as* (and indeed earlier than) November 5, 2019.

5. Registrant did not procure or maintain Registrant's Registration fraudulently.

6. Registrant is the owner of the QUICKTICKET mark and variants, and corresponding applications and registrations throughout the world, including those referenced in the present cancellation action.

7. Registrant's Registration for QUICKTICKET gives Registrant a presumption of ownership and validity and exclusive rights to use and prevent unauthorized use of the

QUICKTICKET mark, or confusingly similar marks, on and in connection with the relevant goods and services, or competing or related goods and services.

8. Registrant and Petitioner through their respective predecessors were parties to a Product Distribution Agreement (“Agreement”) dated January 1, 2017.

9. The QUICKTICKET mark in the United States is entirely of Registrant’s independent creation and did not result from the Agreement with Petitioner or originate with Petitioner.

10. Petitioner is not licensed or otherwise authorized to use Registrant’s QUICKTICKET mark in any capacity.

11. Petitioner cannot credibly argue that it would be harmed by the continued registration of Registrant’s QUICKTICKET mark.

12. Petitioner is before the Board with unclean hands. Specifically, Petitioner is using this Cancellation Proceeding to forcibly remove Registrant’s registration as a bar to Petitioner’s own applications for QUICKTICKET.

13. Petitioner is estopped from cancelling Registrant’s registration for QUICKTICKET. Specifically, Petitioner alleges its rights in QUICKTICKET date back to at least as early as June 2017, though this date is questionable because Petitioner’s Applications are intent-to-use and were filed two months after Registrant filed its trademark application for QUICKTICKET. Additionally, Petitioner did not object to Registrant’s use of QUICKTICKET, (grounds for the same are not admitted) and did not object to Registrant’s corresponding application when it was filed in June 2018 or published in November 2018 (grounds for the same are not admitted). Only when the U.S. Trademark Office cited Registrant’s registration against Petitioner’s own applications for QUICKTICKET did Petitioner object to the same.

14. It is unclear from the record and the Petition for Cancellation how Petitioner can claim priority rights in QUICKTICKET that date back to June 2017. First, Petitioner did not file its trademark applications for QUICKTICKET until two months after Registrant filed its application for QUICKTICKET in 2018. Second, Petitioner filed its trademark applications for QUICKTICKET on intent-to-use bases, not actual use. Third, Petitioner has not submitted any evidence to support Petitioner's claims that it has priority rights in QUICKTICKET, which is contradictory to its filing of intent-to-use applications over a year after its claim of a June 2017 priority date. Based on the record at the U.S. Trademark Office and Petitioner initiating this proceeding, one would expect Petitioner to have presented evidence of priority rights.

15. Consumers encountering Registrant's mark will understand the connection to Registrant and will not be confused into thinking that Petitioner is the source or that there is some other connection between Registrant and Petitioner.

16. On information and belief, and in consideration of allegations set forth herein, it is implausible that any QUICKTICKET mark Petitioner adopts or uses could have been the subject of independent creation.

Dated: January 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2021 the foregoing Answer to Petition for Cancellation was served on the following by email:

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