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Filing date: **04/27/2022**

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	Acronis International GmbH		
Entity	Limited Liability Company	Citizenship	Switzerland
Address	RHEINWEG 9 SCHAFFHAUSEN, 8200 SWITZERLAND		

Attorney information	KATHLEEN M. BURCH K&L GATES LLP ONE LINCOLN STREET STATE STREET FINANCIAL CENTER BOSTON, MA 02111 UNITED STATES Primary email: kathleen.burch@klgates.com Secondary email(s): ttablitigationdocket@klgates.com 617-261-3100		
Docket no.			

Registration subject to cancellation

Registration no.	5157902	Registration date	03/07/2017
Register	Principal		
Registrant	NH-ISAC, Inc. STATE ROAD 405, BUILDING M6-306 KENNEDY SPACE CENTER, FL 32899 UNITED STATES		

Goods/services subject to cancellation

<p>Class 042. First Use: Nov 14, 2016 First Use In Commerce: Nov 14, 2016 All goods and services in the class are subject to cancellation, namely: Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely,</p>

providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Cancellation Petition for CYBERFIT No. 5157902.pdf(193855 bytes)
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Signature	/Kathleen M. Burch/
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Name	Kathleen M. Burch
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Date	04/27/2022
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration. No.: 5,157,902


Mark: 
Filed: April 15, 2016
Registered: March 7, 2017
Int'l Class: 042


ACRONIS INTERNATIONAL GMBH,)
a Swiss Limited Liability Company)
)
Petitioner,)
)
v.)
)
NH-ISAC, INC.)
a Florida Corporation)
)
Respondent.)

Cancellation No.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451


PETITION FOR CANCELLATION

Acronis International GmbH, a Swiss limited liability company, having a business address at Rheinweg 9, Schaffhausen, Switzerland 8200 (“Petitioner”), believes it will be damaged by Trademark Registration No. 5,157,902, registered March 7, 2017 for the mark  and hereby petitions to cancel the same. To the best of Petitioner’s knowledge, the name and address of the current owner of the registration are NH-ISAC, Inc., State Road 405, Building M6-306, Kennedy Space Center, Florida 32899 (“Respondent”). The grounds for cancellation are as follows:


1. Registration No. 5,157,902 is for the  mark (the “CYBERFIT & Design Registration”) and was filed on April 15, 2016 for “technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others” in International Class 42. The mark registered on August 22, 2017. A true and correct printout showing the current status of the CYBERFIT & Design Registration from the United States Patent and Trademark Office (“USPTO”) Trademark Status & Document Retrieval (“TSDR”) page is attached as Exhibit A.

2. Petitioner has a bona fide intent to use and register the mark #CYBERFIT and filed U.S. Application Serial No. 90/540,769 for the #CYBERFIT word mark on February 23, 2021 (the “#CYBERFIT Application”) for “downloadable computer software for disk backup and restoration, disk imaging, and bare-metal restore for computers, namely, servers, workstations, desktops, laptops, and mobile computers; downloadable software for file backup, deployment of backup agents on remote computers, creation of disk backup images over the network, restoration of databases, files and folders, disk cloning, incremental disk backup and backup image verification; downloadable software for backup scheduling and scripting and manuals sold therewith; downloadable computer software for system deployment using disk imaging; downloadable software for the creation of a disk image of a standard configuration, including the operating system and applications; downloadable software for the deployment of the image to multiple computer systems; downloadable software for configuration management tools to configure system settings, manage files, and execute applications on networked systems during and after the deployment and manuals sold therewith; downloadable anti-spyware software for networked computers, workstations, desktops, palmtops, laptops and other mobile devices in business, home and mobile environments; downloadable software for protection of computers from spyware, adware, keyloggers, hidden dialers, browser hijackers, and other malicious programs; downloadable software for prevention of exposure of confidential information, management of spyware control and prevention tasks, namely, management of spyware-related tasks on networked, mobile, desktop, and non-networked computers, and management of spyware-related tasks from a central location; downloadable software for the removal of spyware programs; downloadable software for monitoring computer system for suspicious applications; downloadable software for prevention of spyware installation and updating of spyware definitions; downloadable

software for prevention of pop-ups and blocking/preventing pop-up advertisements and manuals sold therewith; downloadable software for secure deletion of data and disk partitions on a hard disk; downloadable software for disk wiping; downloadable software for formatting the disk drive and for partitioning the disk drive and deletion of selected partitions along with the disk wiping process and manuals sold therewith; downloadable software for resizing, copying, deleting and moving of disk partitions; downloadable software for the creation of dual boot and multi-boot environments, manual editing of the hard disk, and partition recovery of lost or deleted partitions and manuals sold therewith; downloadable software for continuous data protection; downloadable software for malware scan, prevention and remediation; downloadable software for system and application vulnerability assessment and patch management; downloadable software for remote management and configuration; downloadable software for system, applications and hardware health status monitoring; downloadable software for data compliance reporting” in International Class 9 and “software as a service (SAAS) services featuring software for recovery of computer data, data replication, erasure encoding, data redundancy, continuous data protection, malware scan, prevention and remediation, system and application vulnerability assessment and patch management, remote management and configuration, system, applications and hardware health status monitoring, and data compliance reporting” in International Class 42. A true and correct printout showing the current status of the #CYBERFIT Application from the USPTO’s TSDR page is attached as Exhibit B.


3. The Examining Attorney assigned to Petitioner’s application has refused registration of Petitioner’s #CYBERFIT mark under Section 2(d) of the Trademark Act on the asserted grounds that Petitioner’s #CYBERFIT mark when used in connection with Petitioner’s goods and services would purportedly be likely to cause confusion with Respondent’s  Registration No.

5,157,902. Accordingly, Respondent's CYBERFIT & Design Registration is preventing the registration of Petitioner's #CYBERFIT Application, and Petitioner is being damaged by the continued presence of Respondent's CYBERFIT & Design Registration on the Register. A true and correct copy of the #CYBERFIT Office Action is attached as Exhibit C.


4. On information and belief, Respondent has abandoned the CYBERFIT & Design Registration because Respondent has ceased use of the  mark and does not have an intent to resume use of the mark.


5. On information and belief, Respondent is not currently offering "technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability;

compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others” under the CYBERFIT & Design Registration.

6. On information and belief, Respondent operates a website at <https://h-isac.org/>. The website does not mention any current use of the  mark. Attached as Exhibit D is screenshot of the <https://h-isac.org/> website.

7. On information and belief, Respondent has no plans to offer “Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of

computer hardware and software controls for cyber-security systems of others” under the CYBERFIT & Design Registration and has an intent not to resume use of the  mark.

8. Accordingly, Registration No. 5,157,902 should be cancelled pursuant to 15 U.S.C. § 1064 by reason of Respondent’s abandonment of the  mark.

9. WHEREFORE, Petitioner prays that the Trademark Trial and Appeal Board enter judgment in its favor and cancel the above-identified registration.

DATED this 27th day of April 2022.

Respectfully submitted,

By: /Kathleen M. Burch/

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