

CANCELLATION

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

THINK COMPUTER CORPORATION

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

Cancellation No.

**PETITION TO CANCEL**

Mark: FACEBOOK

Reg. No. 3,122,052

Reg. Date: July 25, 2006

**PETITION TO CANCEL**

Think Computer Corporation (“Think”), having its place of business at 884 College Avenue, Palo Alto, CA 94306-1303, has been and believes it will continue to be damaged by the continued registration of the mark shown in United States Trademark Registration 3,122,052 and hereby seeks cancellation of this registration.

As grounds for the cancellation, Think alleges:

1. Facebook, Inc. (“Respondent”) is the listed owner of United States Trademark Registration No. 3,122,052 for FACEBOOK “providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking,” in International Class 035 and “providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking” in International Class 038 with a filing date of February 24, 2005, an issuance date of July 25, 2006, and an alleged first use in commerce date of November 16, 2004 (“the ‘052 Registration”).

2. Since at least as early as September 19, 2003, Think has been using “FACEBOOK,” “FACE BOOK,” “UNIVERSAL FACE BOOK,” and “FACENET” by themselves and in conjunction with other terms and symbols, as trademarks (“Think’s Marks”).

3. Think has used Think’s Marks in association with on-line information services featuring information regarding, and in the nature of, collegiate life, classifieds, virtual communities and social networking (“Think’s Goods”).

4. Think began using Think's Marks on Think's Goods at least as early as September 19, 2003.

### **COUNT I**

#### **(Priority of Use and Likelihood of Confusion)**

5. Think incorporates by reference paragraphs 1 through 4 as if fully stated here.

6. Since prior to the filing date in '052 Registration, Think has been using Think's Marks in connection with Think's Goods.

7. Since prior to the claimed priority date in the '052 Registration, Think has been using Think's Marks in connection with Think's Goods.

8. The goods listed in the '052 Registration are either identical or closely related to Think's Goods.

9. The subject mark of the '052 Registration so resembles Think's Marks as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '052 Registration.

10. The continuous registration of the subject of the '052 Registration is causing injury to Think's business plans, is impairing Think's rights in its Marks, is inconsistent with Think's rights, and will continue to cause injury to Think until the registration is cancelled.

### **COUNT II**

#### **(Genericness)**

11. Think incorporates by reference paragraphs 1 through 4 as if fully stated here.

12. Notwithstanding the foregoing, the terms "FACEBOOK" and "FACE BOOK" have been used, dating back many decades, to describe books of any format, whether paper or electronic, in which faces of students, employees or other individuals are displayed in a structured manner.

13. The wide general acceptance of the terms "FACEBOOK" and "FACE BOOK" are indicative of their status as generic terms, and as such they do not qualify for the protection granted by a federal trademark.

### **COUNT III**

#### **(Fraud on the Patent and Trademark Office)**

14. Think incorporates by reference paragraphs 1 through 4 as if fully stated here.

15. Think alleges on information and belief that Respondent knew it did not have rights in the subject mark of the '052 Registration when Respondent submitted its application to the United States Patent and Trademark Office.

16. Think alleges on information and belief that Respondent made false statements with the intent to induce authorized agents of the United States Patent and Trademark Office to grant the '052 Registration, and reasonably relying on the truth of said false statements, the USPTO did, in fact, grant this registration to Respondent.

17. The continuous registration of the subject mark of the '052 Registration is causing injury to Think's business plans, is impairing Think's rights in its Marks, is inconsistent with Think's rights, and will continue to cause injury to Think until the registration is cancelled.

18. Respondent is not entitled to continued registration of the '052 Registration because Respondent committed fraud in the procurement of that registration.

WHEREFORE, Think hopes that this cancellation be sustained and that United States Trademark Registration No. 3,122,052 be cancelled.

Respectfully submitted,

THINK COMPUTER CORPORATION

Dated: April 15, 2008

By \_\_\_\_\_

Aaron Greenspan  
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## CERTIFICATE OF MAILING AND SERVICE

I certify that on April 15, 2008, the foregoing **PETITION TO CANCEL** is being electronically transmitted to:

Trademark Trial and Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

It is further certified that on April 15, 2008, the foregoing **PETITION TO CANCEL** is being served by mailing a copy thereof by first-class mail addressed to:

Facebook, Inc.  
156 University Avenue  
Palo Alto, CA 94301

By \_\_\_\_\_  
Aaron Greenspan  
President & CEO  
Think Computer Corporation  
884 College Avenue  
Palo Alto, CA 94306-1303