

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

SURESTREAM, INC.,

Opposer

v.

REALNETWORKS, INC.,

Applicant.

Opposition No. 115,085

**DECLARATION OF RACHEL E.
MATTEO-BOEHM IN SUPPORT OF
MOTION TO SUSPEND**

I, Rachel E. Matteo-Boehm, declare as follows:

1. I am an attorney in the law firm of Steinhart & Falconer LLP, counsel of record for Applicant RealNetworks, Inc. ("RealNetworks"). I have personal knowledge of each of the facts set forth in this Declaration, and could testify competently thereto.

2. On or about September 19, 2002, Opposer Surestream, Inc. ("Opposer") filed a complaint against RealNetworks in the United States District Court for the Western District of Oklahoma, alleging claims for federal unfair competition in violation of the Lanham Act, federal common law unfair competition, state common law unfair competition and violation of the Oklahoma Deceptive Trade Practices Act, all based on RealNetworks' use of the mark SURESTREAM. A true and correct copy of that complaint is attached hereto as Exhibit A.

3. In light of Opposer's filing of its federal district court complaint, on October 8, 2002, RealNetworks filed a motion to suspend the opposition proceeding, which was granted by the Trademark Trial and Appeal Board by order dated October 11, 2002. A true and correct copy of the Board's October 11, 2002 Order is attached hereto as Exhibit B

OFFICE FILED

4. On November 1, 2002, Opposer dismissed its federal district court action without prejudice and moved to resume this opposition proceeding. A true and correct copy of RealNetworks' opposition to Opposer's motion to resume is attached hereto as Exhibit C. A true and correct copy of Opposer's reply in support of its motion to resume is attached hereto as Exhibit D. A true and correct copy of the Board's April 9, 2003 Order granting Opposer's motion to resume and resetting the dates for RealNetworks' testimony period and the rebuttal testimony period is attached hereto as Exhibit E.

5. On October 28, 2003 a trademark infringement complaint was filed in the Western District of Oklahoma against RealNetworks, alleging claims for unfair competition in violation of the Lanham Act, state common law unfair competition, and violation of the Oklahoma Deceptive Trade Practices Act, all based on RealNetworks' use of the mark SURESTREAM. The named plaintiffs in that action are George Cole, president of Surestream, Inc., and Floyd Burns, vice president of Surestream, Inc. Except for the substitution of plaintiffs and the elimination of the federal common law cause of action, the October 28, 2003 complaint is identical to the September 2002 complaint referred to in paragraph 2 above. A true and correct copy of the October 28, 2003 complaint, together with Mr. Burns' and Mr. Cole's request for waiver of service of summons, and a copy of the waiver of service of summons signed by RealNetworks on November 26, 2003, is attached hereto as Exhibit F.

6. On December 17, 2003, I contacted Jeff Look, counsel for Opposer, to determine whether Opposer would stipulate to a suspension of the opposition proceeding pending final disposition of the new civil action, and informed Mr. Look that in the event Opposer declined to so stipulate, RealNetworks would be filing a motion to suspend the

opposition proceeding. I received a voice mail message from Mr. Look later that same day informing me that Opposer would not agree to suspend the opposition proceeding.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 19, 2003 in San Francisco, California.



Rachel E. Matteo-Boehm

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SURESTREAM, INC.

Plaintiff,

v.

REALNETWORKS, INC.

Defendant.

CIV 02-1308 M

Case No.

Judge

A Jury Trial is Demanded.

FILED

SEP 19 2002

COMPLAINT

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT - WESTERN DIST. OF OKLA.
BY [Signature] DEPUTY

Plaintiff SureStream, Inc., by its undersigned attorneys, for its Complaint against Defendant RealNetworks, Inc. alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff SureStream, Inc. is an Oklahoma corporation with a principal business address of P.O. Box 57356, Oklahoma City, Oklahoma, 73157.
2. Defendant RealNetworks, Inc. is, upon information and belief, a Washington corporation having a principal office or place of business at 1111 Third Avenue, Ste. 2900, Seattle, Washington 98101.
3. This is a civil action arising under the Lanham Act, 15 U.S.C. §§ 1051 et seq., and the statutes and common law of the State of Oklahoma for Defendant's unfair competition and deceptive trade practice under state law. Jurisdiction is conferred on this Court by 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338, and the doctrine of

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