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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SPLUNK INC.,

Plaintiff,

v.

DEUTSCHE TELEKOM AG,

Defendant.

Case No. 3:20-cv-4377

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT**

TRIAL BY JURY DEMANDED

1 Plaintiff Splunk Inc. (“Splunk”) for its Complaint against Defendant Deutsche Telekom
2 AG (“DT” or “Defendant”) alleges as follows:

3 **INTRODUCTION**

4 1. As one of San Francisco’s most successful homegrown software companies,
5 Splunk develops enterprise software that allows businesses to bring data to every part of their
6 business. Companies of all sizes recognize the value of Splunk’s products and, significantly,
7 more than 90 of the Fortune 100 are Splunk customers.

8 2. DT is a German conglomerate that provides telecommunication services, a
9 completely different field than enterprise-software development. Originating from a state-run
10 monopoly, on information and belief, DT continues to hold a leading market position and enjoy
11 strong consumer recognition in Germany. DT provides its telecommunications products and
12 services worldwide, including in the United States through its subsidiary T-Mobile US, Inc.

13 3. DT has secured trademark rights worldwide to the color magenta, a specific shade
14 of purplish-pink, in the field of telecommunications. Apparently not content with that
15 exclusivity, DT has repeatedly attempted to block companies—even those, like Splunk, in
16 completely different industries—from using any shade of magenta (or even straight pink) in
17 connection with branding. For example, in 2008, DT sent a letter to an online technology blog,
18 Engadget, demanding that it stop using magenta in one of its logos. After Engadget posted DT’s
19 letter to its site, assuring Engadget readers that DT’s claim of potential consumer confusion was
20 “[n]ot an early April Fool’s joke,”¹ DT, on information and belief, backed down. More recently,
21 in 2019, DT threatened Lemonade, an online provider of homeowners and renters insurance that
22 uses the color pink—not magenta—in its branding.² DT’s threats and subsequent litigation
23 prompted Lemonade to petition to cancel DT’s pertinent trademark in the European Union,
24 where it remains pending.

25
26
27 ¹ <https://www.engadget.com/2008-03-31-deutsche-telekom-t-mobile-demands-engadget-mobile-discontinue.html> (last visited June 26, 2020)

28 ² <https://techcrunch.com/2019/11/04/lemonade-gets-a-nastygram-from-deutsche-telekom-over-its-use-of-magenta-says-it-will-fight/> (last visited June 26, 2020)

District to issue a bank guarantee for €270,000 as a security deposit after a different chamber in the German court granted Splunk's request for a temporary stay of the preliminary injunction. The Court also has personal jurisdiction over Defendant because, upon information and belief, Defendant conducts substantial business in this judicial district, and Defendant offers products and services under its asserted magenta trademark within this judicial district. In the alternative, the Court has personal jurisdiction over Defendant pursuant to Fed. R. Civ. P. 4(k)(2) because, upon information and belief, DT is not subject to jurisdiction in any state's courts of general jurisdiction, and is therefore subject to personal jurisdiction in any district because it has registered trademarks with the United States Patent & Trademark Office and alleges that it is using those marks in commerce within the United States.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because Defendant sent Splunk a cease-and-desist letter in this judicial district threatening legal action and because Defendant's activities are causing harm to Splunk in this district. Venue is also proper in this judicial district pursuant to 28 U.S.C. 1391(c)(3) because Defendant is a foreign corporation and thus, for purposes of venue, may be sued in any judicial district.

GENERAL ALLEGATIONS

I. SPLUNK'S BUSINESS

10. Founded in 2003, Splunk is a publicly traded corporation headquartered in San Francisco. Splunk is a developer and provider of enterprise software solutions that enable organizations to gain real-time operational intelligence by harnessing the value of their data regardless of where it is coming from.

11. Splunk's innovative software products enable enterprises to investigate, monitor, analyze, and act on machine data regardless of format or source. In contrast to traditional IT systems that require users to establish the format of their data prior to collection in order to answer a pre-set list of questions, Splunk's software allows users to run queries on data without having to define or understand the structure of the data prior to collection and indexing.

12. Splunk's flagship product, Splunk Enterprise, is a machine data platform that provides a range of capabilities for data collection, indexing, search, reporting, analysis, alerting, monitoring, and management.

13. Splunk's customers leverage its offerings for various uses, including infrastructure and operations management, security and compliance, software development and IT operations, applications management, and business analytics. They are sophisticated businesses and enterprises, government agencies, and educational institutions that select Splunk's products after careful investigation, testing, and deliberation, followed by heavily negotiated purchases.

14. Splunk's products have been hugely successful in the United States and around the world. Its customers include, *inter alia*, Comcast, Coca-Cola, Nasdaq, and the U.S. Census Bureau. As mentioned earlier, more than 90 members of the Fortune 100 currently use Splunk's products.

15. Splunk generated revenue of approximately \$2.359 billion for fiscal year 2020, and employs more than 6,000 people in more than 45 offices worldwide.

16. Splunk has received significant media attention for its revolutionary approach to big data, including in articles in *The New York Times*, *The Wall Street Journal*, and *Forbes*.

II. SPLUNK'S TRADEMARKS AND COLOR GRADIENT

17. Splunk's products and promotional materials prominently feature its house marks, SPLUNK and SPLUNK>, which it has been using since at least 2005, and for which it owns several U.S. trademark registrations, including U.S. Registration No. 3,269,249 for SPLUNK and U.S. Registration No. 4,374,897 for SPLUNK>.

18. On or around July 11, 2019, Splunk began using a color scheme in its promotional materials featuring a gradient with transitions between coral, orange, and magenta that appear to be arbitrary. Splunk specifically chose to include magenta and orange in its color gradient because they are known to be particularly effective at capturing attention. By using a gradient that includes these colors, Splunk's marketing and promotional materials stand out in an industry dominated by blue, black, and gray.

19. Since at least as early as September 18, 2019, Splunk has also used this three-color gradient as a background for some of its logos, some of which include the SPLUNK> house mark.

20. Splunk has applied to register three trademarks that include its three-color gradient (collectively the “Splunk Gradient Marks”):



Coral, Orange, and Magenta Design, U.S. Serial No. 88/786,508.



Attached hereto as **Exhibit A** is a true and correct copy of a print-out of the Trademark Status & Document Retrieval (“TSDR”) page for U.S. Serial No. 88/786,508;



SPLUNK> & Design, U.S. Serial No. 88/786,496. Attached hereto as **Exhibit B** is a true and correct copy of a print-out of the TSDR page for U.S. Serial No. 88/786,496; and

D2E & Design, U.S. Serial No. 88/812,276. Attached hereto as **Exhibit C** is a true and correct copy of a print-out of the TSDR page for U.S. Serial No. 88/812,276.

21. Each of these applications has been approved for publication by the United States Patent & Trademark Office on the Principal register, and each application identifies the following goods in Class 9: “Downloadable computer software for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; downloadable computer software for detecting fraudulent transactions and activities; downloadable computer software for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; downloadable computer software for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; downloadable computer software for use in analyzing and monitoring computer networks; downloadable computer software for diagnosing industrial and business performance issues; downloadable computer software in the field of application analytics; downloadable computer software for providing operational intelligence, business analytics, security information, and troubleshooting based on data; downloadable data

1 mining software,” and the following services in Class 42: “Providing temporary use of non-
2 downloadable software and applications for collecting, analyzing, evaluating, monitoring, and
3 transmitting data in the fields of compliance, network security, enterprise security, and
4 maintenance; providing temporary use of non-downloadable software and applications for
5 detecting fraudulent transactions and activities; providing temporary use of non-downloadable
6 software and applications for investigating, remediating, and responding to fraud and to network
7 and enterprise threat incidents; providing temporary use of non-downloadable software and
8 applications for troubleshooting, diagnosing, and protecting computer software, hardware,
9 networks, virtual machines, and operational technology; providing temporary use of non-
10 downloadable software and applications for use in analyzing and monitoring computer networks;
11 providing temporary use of non-downloadable software and applications for diagnosing
12 industrial and business performance issues; providing temporary use of non-downloadable
13 software and applications in the field of application analytics; providing temporary use of non-
14 downloadable software and applications for providing operational intelligence, business
15 analytics, security information, and troubleshooting based on data; providing temporary use of
16 non-downloadable data mining software; consulting services in the field of information
17 technology; technical consulting services in the fields of datacenter architecture, public and
18 private cloud computing solutions, and evaluation and implementation of information technology
19 and services; technical support services, namely, remote and on-site infrastructure management
20 services for monitoring, administration and management of public and private cloud computing
21 and information technology systems.”

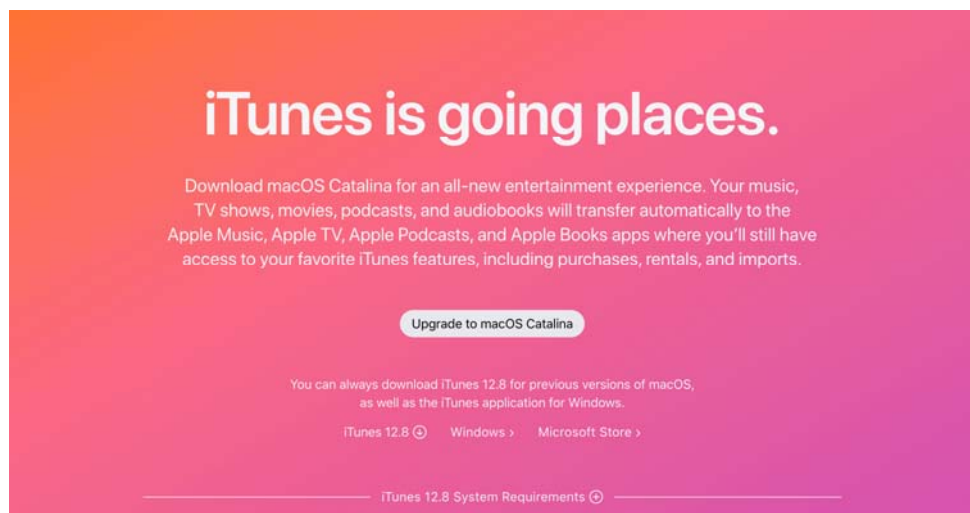
22 22. DT appears to be monitoring the status of Splunk’s trademark applications in the
23 United States. Indeed, for Spunk’s Coral, Orange, and Magenta Design, U.S. Serial No.
24 88/786,508, DT submitted a request to the United States Patent & Trademark Office for a 90-day
25 extension of time to file a notice of opposition against the mark, which the Patent & Trademark
26 Office granted on June 3, 2020. DT did not appear to submit similar requests with respect to
27 Splunk’s SPLUNK and D2E marks.
28

**III. DEFENDANT DEUTSCHE TELEKOM AG HAS THREATENED
NUMEROUS COMPANIES OUTSIDE ITS FIELD WITH TRADEMARK
INFRINGEMENT EVEN THOUGH THE USE OF THE COLOR
MAGENTA IS COMMON AND WIDESPREAD**

23. From its German headquarters, DT operates several subsidiaries worldwide, including the mobile network operator T-Mobile US, Inc.

24. DT has repeatedly and aggressively asserted trademark rights in the color magenta and attempted to block companies—even those in completely different industries—from using any shade of magenta or pink in connection with branding. In addition to the Engadget and Lemonade examples discussed earlier, in 2015, DT threatened a smartwatch company called OXY, forcing OXY to change all of its branding to yellow and black after the small company lacked the financial resources to challenge DT's claims.³ As yet another example, in 2018, DT sent threats to a small British company called DataJAR, which at the time employed a total of seven employees that wrote software to manage Apple iPhone and Mac devices.⁴ Numerous other examples exist.

25. Despite its efforts to do so, DT cannot keep up with the common and widespread use of magenta by companies outside the field of telecommunications. For example, tech-giant Apple has recently started to advertise iTunes using a color gradient very similar to the coral, orange, and magenta gradient used by the Splunk Gradient Marks:⁵



³ <https://www.theverge.com/2015/11/19/9761070/t-mobile-magenta-trademark-oxy-smartwatch> (last visited June 26, 2020)

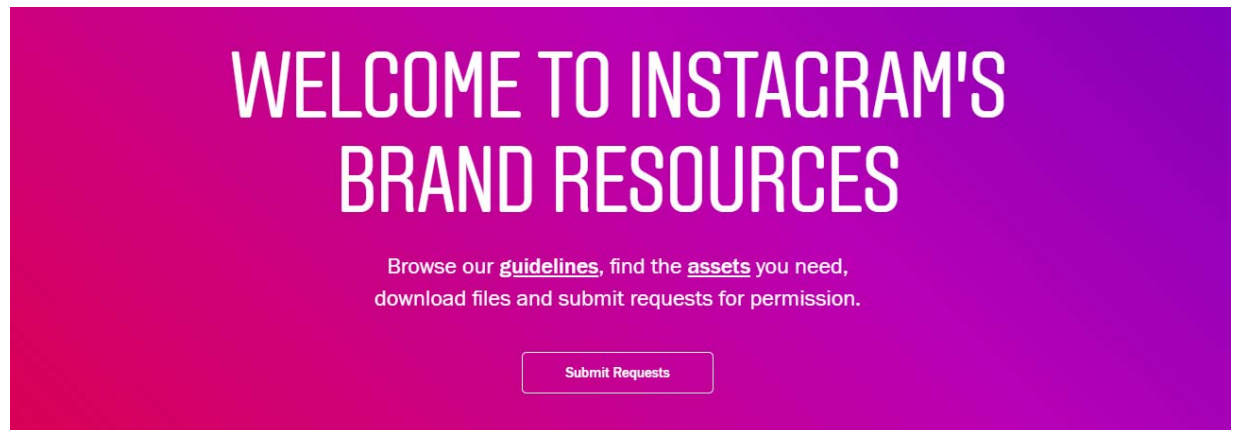
⁴ <https://www.bbc.com/news/uk-england-sussex-44107621> (last visited June 26, 2020)

⁵ <https://www.apple.com/itunes/> (last visited June 26, 2020)

As another example, Amazon prominently uses magenta to advertise its music streaming service:⁶



As yet another example, Instagram uses a color gradient featuring magenta in its logo and branding:⁷



The logos of the software products In Design⁸ and Xd Vector⁹ offered by Adobe Systems also feature magenta, and so do the logos of Samsung's Galaxy Store¹⁰ and the popular JusTalk video calling app:¹¹

⁶ https://www.instagram.com/p/B_Kxct3jr52 (last visited June 26, 2020)

⁷ <https://en.instagram-brand.com> (last visited June 26, 2020)

⁸ <https://www.adobe.com/products/indesign.html> (last visited June 26, 2020)

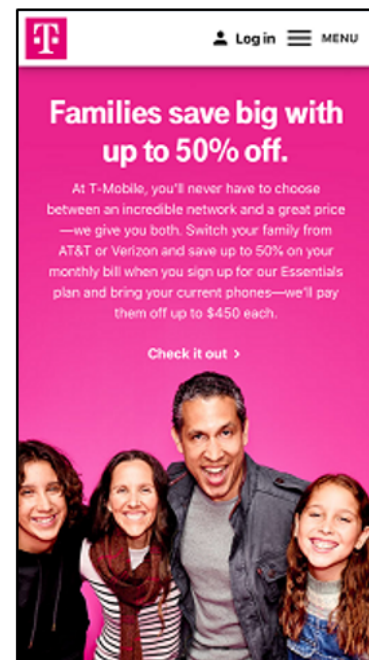
⁹ <https://www.adobe.com/products/xd.html> (last visited June 26, 2020)

¹⁰ <https://www.samsung.com/global/galaxy/apps/galaxy-store> (last visited June 26, 2020)

¹¹ <https://justalk.com/> (last visited June 26, 2020)



These are just a few of the companies using magenta outside the field of telecommunications. As these examples show, no company—except DT—believes that magenta is completely off limits. These logos, and not to mention the Splunk Gradient Marks, are readily distinguishable from DT’s branding:¹²



B. Defendant’s Cease & Desist Letter to Splunk

26. No company is safe from DT’s self-proclaimed monopoly on the use of magenta in corporate branding. On February 12, 2020, DT sent a letter to Splunk’s San Francisco and Munich offices, claiming that Splunk’s use of the color magenta was unlawful. Attached hereto as **Exhibit D** is a true and correct copy of DT’s February 12, 2020, letter to Splunk.

27. In its letter, DT alleges that it uses the color magenta in all company communications and in all advertising materials in Germany, elsewhere in the EU, and

¹² <https://www.t-systems.com/de/en> (last visited June 26, 2020); <https://www.t-mobile.com/offers/big-savings-when-you-switch> (last visited June 26, 2020)

1 worldwide. It alleges that through its intense use of the color, magenta “has become a unique
2 and well-known identifier for the goods and services of DT.” *Id.* ¶ 1.

3 28. DT also alleges that its subsidiary, T-Systems, uses magenta as intensively as DT
4 and offers IT and telecommunication services. *Id.* ¶ 3.

5 29. DT alleges that it owns various trademark registrations worldwide to protect its
6 trademark for the color magenta. DT specifically identifies an EU registration and two German
7 registrations. *Id.* ¶ 4.

8 30. DT also alleges that it owns trademark registrations in the United States that
9 incorporate magenta.

10 31. DT is identified as the owner of U.S. Registration No. 5,706,644 for “the color
11 magenta applied as a background carrier for advertisements for telecommunication and
12 information technology services, personal communications services, electronic mail services,
13 electronic transmission and broadcasting services, and wireless Internet access services.” The
14 registration identifies the following services in Class 38: “Telecommunications and information
15 technology services, namely, wireless transmission of voice, data, images, audio, video, and
16 information; telecommunications services, namely, personal communication services; electronic
17 transmission of mail and messages; providing multiple-user access to a global computer
18 information network; transmission of audio and video by telecommunications networks, wireless
19 communication networks, the Internet, and satellite; broadcasting of radio and television
20 programs; providing wireless Internet access.” Attached hereto as **Exhibit E** is a true and correct
21 copy of a print-out of the TSDR page for U.S. Registration No. 5,706,644.

22 32. DT is identified as the owner of U.S. Registration No. 5,674,478 for “the color
23 magenta as applied to the surface of product packaging for prepaid smart cards, mobile phones,
24 tablet computers, mobile hotspot devices, wireless communication devices, battery chargers,
25 cases for mobile phones and table computers, head phones, and accessories for the foregoing.”
26 The registration identifies the following goods in Class 9: “Telecommunications and information
27 technology equipment, namely, mobile phones, tablet computers, mobile hotspot devices,
28 wireless communication devices for voice, data or image transmission, battery chargers, cases

1 for mobile phones and tablet computers, headphones, and accessories therefore, namely, mobile
2 telephone belt clips, headphone replacement ear pieces, screen protectors comprised of plastic or
3 glass adapted for use with portable electronic devices, stands for mobile phones; prepaid smart
4 cards for mobile telephones and internet access.” Attached hereto as **Exhibit F** is a true and
5 correct copy of a print-out of the TSDR page for U.S. Registration No. 5,674,478.

6 33. DT is identified as the owner of U.S. Registration No. 5,601,454 for “the color
7 magenta as applied to the splash screen of mobile computer applications.” The registration
8 identifies the following goods in Class 9: “Mobile applications for wireless data communication
9 and managing user account settings.” Attached hereto as **Exhibit G** is a true and correct copy of
10 a print-out of the TSDR page for U.S. Registration No. 5,601,454.

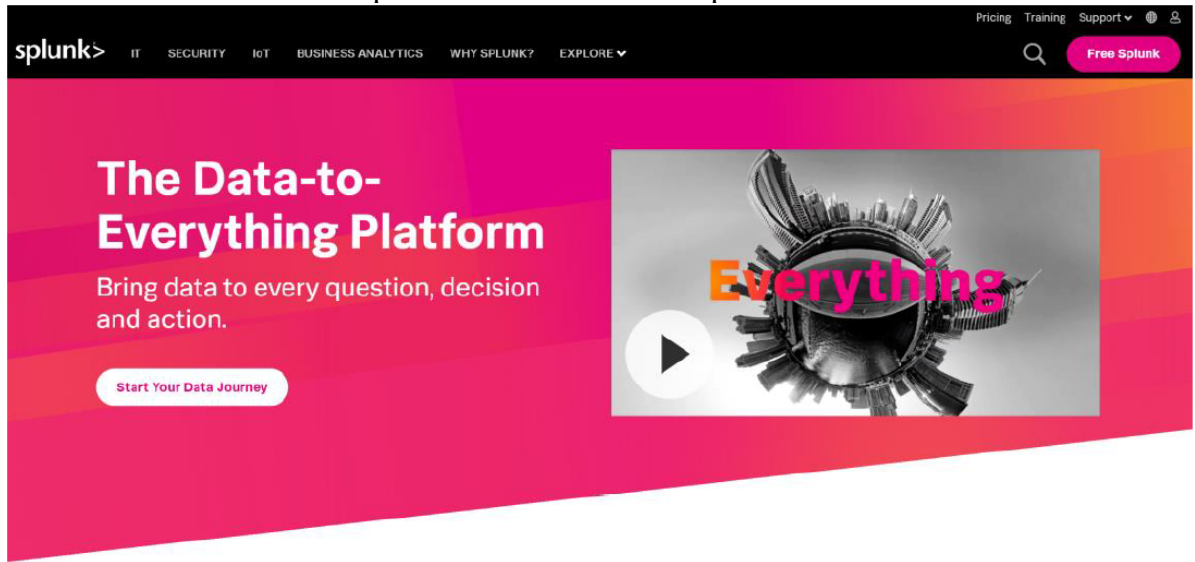
11 34. DT is identified as the owner of U.S. Registration No. 3,263,625 on the
12 Supplemental Register for “the color magenta alone, which is the approximate equivalent of
13 Pantone Matching System, Rhodamine Red U, used on the background of product displays and
14 advertisements found in a store.” The registration identifies the following services in Class 38:
15 “Telecommunication and information technology services, namely, wireless transmission of
16 voice and data; providing multi-user access to a global communications network; two-way
17 wireless transmission of electronic mail, text and images between mobile telecommunications
18 terminals and computers; voice mail and messaging services; wireless broadcasting of textual
19 content to mobile telecommunications terminals and computers; providing customized audio
20 playback of musical, spoken word and other auditory content over a telecommunications
21 network.” Attached hereto as **Exhibit H** is a true and correct copy of a print-out of the TSDR
22 page for U.S. Registration No. 3,263,625.

23 35. DT’s letter alleges that Splunk’s use of magenta on its website, app, social media
24 profiles, and in its advertising infringes DT’s magenta color marks, and reserves its right to take
25 legal action against the use of the color magenta by Splunk “according to unfair competition law
26 as well as based on US trademark law.” Ex. D ¶¶ 6 and 13.

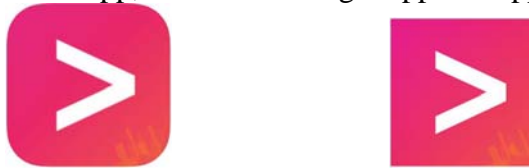
27 36. DT’s letter specifically reproduces images of Splunk’s website available at
28 www.splunk.com, mobile app icons, social media logos and content, a Splunk brochure, and

Splunk's U.S. and foreign advertising materials as examples of Splunk's allegedly infringing use of the color magenta through Splunk's three-color gradient:

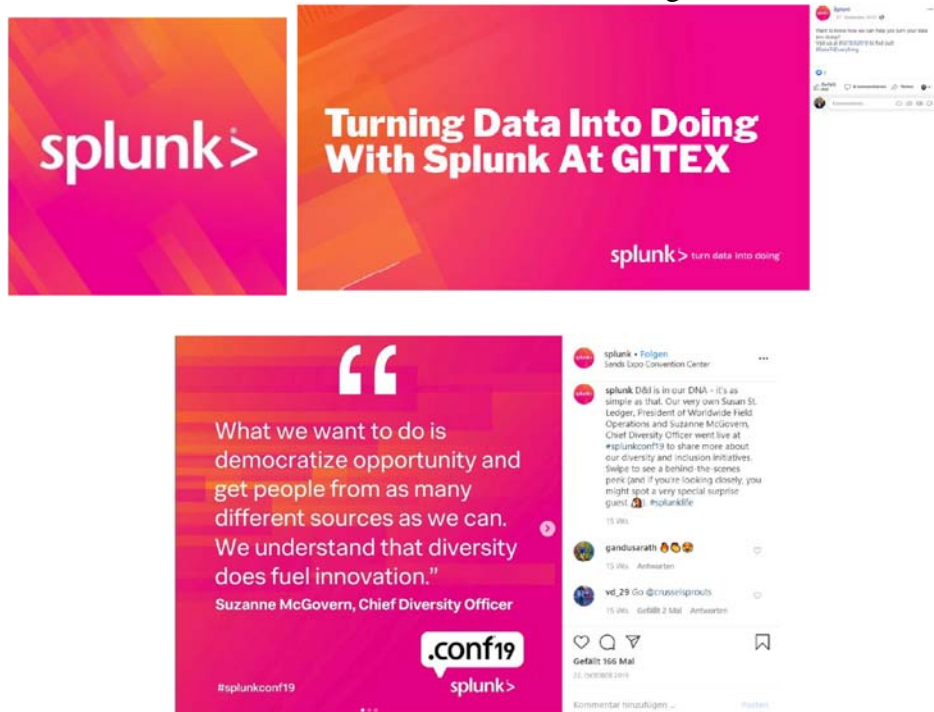
Splunk's Website at www.splunk.com



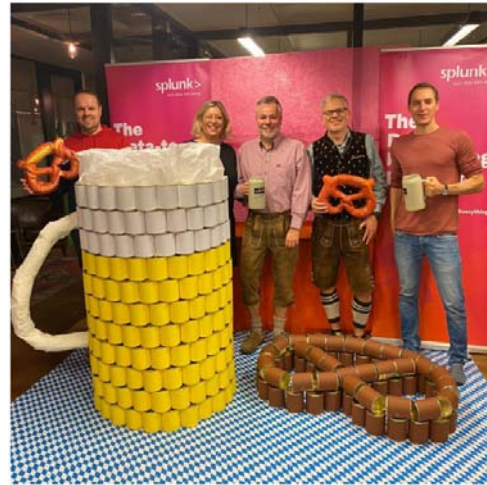
Icons used for Splunk Mobile app, available through Apple's App Store, and Google Play



Splunk Social Media Content on Facebook, Twitter, Instagram, YouTube & LinkedIn



U.S., German, and Canadian Marketing and Promotional Materials



37. DT alleges that “Splunk and [DT] both provide services in connection with the collecting and delivering of data (database services). Therefore, consumers will be misled that there is an organizational or economic connection between Splunk and [DT].” *Id.* ¶ 6.

38. DT threatens that it is “fully prepared to take all legal measures necessary before the competent courts in order to defend its valuable Magenta trademarks.” *Id.* ¶ 10. It also alleges that in addition to claims for an injunction, it would have claims for damages. *Id.*

C. Defendant’s Legal Actions in Germany

39. On March 19, 2020, DT informed Splunk that it had filed for an EU-wide preliminary injunction against Splunk’s use of the color magenta, and that the Civil Chamber of the Regional Court of Hamburg, which oversees general civil matters, had granted the injunction.

40. Because Splunk is headquartered in San Francisco, the injunction will require Splunk to take action in this judicial district to modify its products, its website, and its marketing and promotional materials. The injunction will also require Splunk to take action in this judicial district with respect to the Splunk Mobile app available through the Apple App Store and Google

1 Play and its social media logos and content on Facebook, Twitter, Instagram, YouTube &
2 LinkedIn.

3 41. On March 25, 2020, Splunk sought review of the preliminary injunction order
4 from the Chamber for Commercial Disputes at the Regional Court of Hamburg, which
5 specializes in hearing commercial disputes including trademark matters. Splunk also requested a
6 temporary stay of the preliminary injunction during the pendency of the review, which the court
7 granted on April 17, 2020, conditioned on Splunk securing a bank guarantee for €270,000
8 (around \$293,000 USD) as a security deposit.

9 42. The Chamber for Commercial Disputes held a hearing on June 9, 2020, and
10 indicated it would issue a decision on the merits of DT's claims on or before July 7, 2020. The
11 court declined to lift the stay of the preliminary injunction.

12 **D. The Parties' Attempts to Resolve This Matter Informally Failed**

13 43. For months, the parties engaged in confidential discussions to resolve this matter
14 informally but could not reach an agreement. Splunk will not discuss the content of those
15 discussions here. But Splunk proposed reducing the amount of magenta in the Splunk Gradient
16 Marks while preserving the character and integrity of its branding approach. Splunk proactively
17 did this not because it believes it is legally required to, but because Splunk prefers to avoid
18 litigation except as a final resort (as, regrettably, is the case here). Splunk will not agree,
19 however, to completely eliminate magenta from the Splunk Gradient Marks, as that would harm
20 its brand and condone DT's improper threats and overreach. The updated Splunk Gradient
21 Marks, representative samples of which are shown below, cannot and do not infringe any
22 pertinent DT mark. Unfortunately, DT has refused to provide Splunk assurances that even the
23 updated Splunk Gradient Marks do not infringe.



IV. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN DEFENDANT’S ASSERTED MAGENTA MARKS AND THE SPLUNK GRADIENT MARKS

44. Splunk disputes that its use of the original and updated Splunk Gradient Marks will cause any likelihood of confusion.

45. The Splunk Gradient Marks (hereinafter referring to both the original and updated Splunk Gradient Marks) do not feature the uninterrupted use of magenta as DT’s asserted mark. Instead, the Splunk Gradient Marks feature a gradient that transitions between three colors (orange, magenta, and coral) in a fashion that appears to be arbitrary. Further, because the Splunk Gradient Marks are always used in conjunction with, or in close proximity to, its SPLUNK and SPLUNK> house marks, consumers will rely on those house marks, not the color gradient, to identify the source of Splunk’s goods and services. Thus, the asserted magenta mark is not at all similar to the Splunk Gradient Marks as they are encountered in the marketplace.

46. Moreover, the goods and services offered under the Splunk Gradient Marks are not competitive with or related to the goods and services DT offers in the United States under its asserted magenta mark. Splunk’s software solutions are for data analysis. Indeed, its applications to register the Splunk Gradient Marks identify goods such as “[d]ownloadable

1 computer software for collecting, analyzing, evaluating, monitoring, and transmitting data in the
2 fields of compliance, network security, enterprise security, and maintenance,” in Class 9 and
3 similar downloadable software services in Class 42. Splunk does not offer telecommunications
4 services, nor did it include any telecommunications services in its applications to register the
5 Splunk Gradient Marks.

6 47. In contrast, DT provides telecommunications services and mobile
7 telecommunications equipment, such as mobile phones and tablets, but no goods or services for
8 data analysis. DT’s Registration No. 5,706,644 for the color magenta identifies services such as
9 “telecommunications services, namely, personal communication services.” DT’s Registration
10 No. 5,674,478 identifies goods such as “mobile phones, tablet computers, mobile hotspot
11 devices, [and] wireless communication devices.” DT’s Registration No. 5,601,454 identifies
12 goods such as “[m]obile applications for wireless data communication.” DT’s Registration No.
13 3,263,625 identifies services such as “wireless transmission of voice and data.” These goods and
14 services are not similar, nor closely related, to Splunk’s complex data analysis software.

15 48. DT alleges that Splunk and DT’s goods and services are related because “Splunk
16 and [DT] both provide services in connection with the collecting and delivering of data (database
17 services).” (Ex. D ¶ 6.) This broad description is not sufficient to establish that the goods and
18 services offered by DT and Splunk are related because all software (regardless of purpose)
19 collects data of some type—whether from user input, a local hard drive, remote servers, etc., and
20 delivers data, whether to an output device such as a monitor, or a hard drive or server. Software
21 is not related to telecommunications services merely because software collects and uses data
22 while telecommunications services transmit data. Were that not the case, any distinction
23 between software and telecommunications would collapse, thereby eviscerating the public-notice
24 function of trademark use descriptions and different trademark classes.

25 49. Furthermore, there is no overlap in consumers in the pertinent fields or channels
26 of trade used by the parties to market their products and services. Splunk’s goods and services
27 offered under the Splunk Gradient Marks are directed to highly sophisticated business consumers
28 who require advanced tools for analysis of big data. They are not commodity goods or services.

1 Purchasing decisions often take weeks or months and involve multiple conversations and, on
2 many occasions, meetings—resulting in negotiated prices and customized software designed to
3 meet each customers’ specific needs. Splunk does not market its goods or services to individual
4 consumers, or in the channels of trade that are used to market telecommunications services and
5 mobile devices.

6 50. In contrast, DT’s telecommunications services and mobile devices are commodity
7 goods and services promoted primarily to individuals seeking mobile telephony and internet
8 services. They are primarily offered in retail locations that an individual who needs to replace a
9 broken or lost mobile device or who wants to change his or her mobile service provider visits in
10 person, or orders online. To the extent DT offers telecommunications services to businesses, it
11 occurs in an entirely different context and channel of trade than sales of Splunk’s software for
12 data analysis because such services are related to business connectivity needs, not data analysis
13 needs.

14 51. DT alleges that Splunk is trying to associate itself with DT so that consumers are
15 led to believe that Splunk is endorsed by or affiliated with DT. That is false. As the vast
16 majority of the Fortune 100 would attest, Splunk has its own successful product suite and brand
17 and has absolutely no reason to attempt to associate itself with DT. As discussed above, Splunk
18 specifically chose to include magenta and orange in its color gradient because those colors are
19 effective at capturing attention, and magenta is one of the four primary colors used in digital
20 printing. Contrary to DT’s belief, it does not have an unfettered monopoly on the use of magenta
21 in any corporate branding, particularly in view of the functional benefit the bright color alone or
22 in combination has at capturing attention.

23 **V. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN**
24 **DEFENDANT’S ASSERTED MAGENTA MARK AND SPLUNK’S**
25 **DECORATIVE USE OF ITS THREE-COLOR GRADIENT**

26 52. Splunk further disputes that decorative uses of a gradient that transitions between
27 coral, orange, and magenta on its website and in written and online materials is source-
28 identifying or likely to cause confusion.

53. Significantly, Splunk's website and written materials are all branded with its house marks, SPLUNK and SPLUNK>, on which consumers will rely to identify the source of Splunk's goods and services. This alone will serve to distinguish the source of the parties' goods and services.

54. Further, as noted above, Splunk's goods and services are not competitive with or even related to the goods and services DT offers under its claimed magenta mark. There also is no overlap in the consumers or channels of trade used by the parties. Defendant sells commodity telecommunications services and mobile devices, while Splunk offers sophisticated data collection and analysis software to businesses. Most consumers of DT's goods and services are not likely even to see Splunk's website or written materials, and those who do will be sophisticated business consumers who will not mistakenly believe that Splunk's goods and services originate from or are affiliated with DT.

55. Despite the large scale and reach of Splunk's business and substantial use of a three-color gradient on its website and in written materials since mid-2019, Splunk is not aware of any instances of actual confusion. DT has identified none.

FIRST CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement

56. Splunk incorporates by reference the allegations set forth in paragraphs 1-55, as if fully set forth herein.

57. DT has alleged infringement under U.S. trademark law based upon rights that it claims in the color magenta.

58. DT has alleged that the color magenta has become a unique and well-known identifier for its goods and services because of its intensive use of the color in all communications and advertising materials worldwide.

59. DT owns U.S. Registration No. 5,706,644 for "the color magenta applied as a background carrier for advertisements for telecommunication and information technology services, personal communications services, electronic mail services, electronic transmission and broadcasting services, and wireless Internet access services." The registration identifies certain

1 telecommunications services in Class 38. DT also owns U.S. Registration No. 5,674,478 for “the
2 color magenta as applied to the surface of product packaging for prepaid smart cards, mobile
3 phones, tablet computers, mobile hotspot devices, wireless communication devices, battery
4 chargers, cases for mobile phones and table computers, head phones, and accessories for the
5 foregoing.” The registration identifies certain telecommunications equipment in Class 9. DT
6 also owns U.S. Registration No. 5,601,454 for “the color magenta as applied to the splash screen
7 of mobile computer applications.” The registration identifies mobile applications for
8 telecommunications in Class 9. DT also owns U.S. Registration No. 3,263,625 for “the color
9 magenta alone . . . used on the background of product displays and advertisements found in a
10 store.” The registration identifies certain telecommunications services in Class 38.

11 60. DT has threatened to seek injunctive relief and damages for trademark
12 infringement, including under U.S. trademark law, arising from Splunk’s use of the color
13 magenta as part of the decorative three-color gradient that Splunk has been using on its website,
14 social media, and in written materials, as well as Splunk’s use of the Splunk Gradient Marks.

15 61. DT’s allegations of U.S. trademark infringement have caused, and will continue
16 to cause, damage to Splunk.

17 62. There is an actual case or controversy concerning Splunk’s right to use its three-
18 color gradient on its product and in its marketing and promotional materials, and as an element
19 of the Splunk Gradient Marks, such that the Court has jurisdiction over Splunk’s request for
20 declaratory relief.

21 63. There is no likelihood of confusion between Splunk’s use of its three-color
22 gradient, or of the Splunk Gradient Marks, in connection with its software goods and services
23 and DT’s use of magenta in connection with telecommunications services and mobile devices.

24 64. Splunk requests relief from the uncertainty and controversy that DT’s threats of
25 legal action have created, and that the Court declare that Splunk’s use of its three-color gradient
26 and of the Splunk Gradient Marks does not infringe any trademark rights that DT may have in
27 the color magenta.
28

PRAYER FOR RELIEF

WHEREFORE, Splunk prays for the following relief:

65. That judgment be entered in favor of Splunk and against Defendant on each and every Count of this Complaint;

66. That this Court deny Defendant relief of any kind based upon its claim to rights in the magenta color;

67. That Splunk be awarded its costs incurred, including reasonable attorneys' fees; and

That the Court grant such other and further relief as it deems just and proper.

Date: June 30, 2020

Respectfully submitted,
DAVIS POLK & WARDWELL LLP

/s/ Ashok Ramani

Ashok Ramani (SBN 200020)
ashok.ramani@davispolk.com
Philip T. Sheng (SBN 278422)
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Menlo Park, California 94025
Telephone: (650) 752-2000
Facsimile: (650) 752-2111

Counsel for Plaintiff Splunk Inc.

Exhibit A

Generated on: This page was generated by TSDR on 2020-06-28 15:42:24 EDT

Mark:



US Serial Number: 88786508

Application Filing Date: Feb. 05, 2020

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jun. 03, 2020

Publication Date: May 05, 2020

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a circle design colored in a gradient of coral, orange and magenta (in various degrees).

Color Drawing: Yes

Color(s) Claimed: The color(s) coral, orange and magenta is/are claimed as a feature of the mark.

Design Search Code(s): 26.01.21 - Circles that are totally or partially shaded.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable computer software for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; downloadable computer software for detecting fraudulent transactions and activities; downloadable computer software for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; downloadable computer software for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; downloadable computer software for use in analyzing and monitoring computer networks; downloadable computer software for diagnosing industrial and business performance issues; downloadable computer software in the field of application analytics; downloadable computer software for providing operational intelligence, business analytics, security information, and troubleshooting based on data; downloadable data mining software

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 18, 2019

Use in Commerce: Sep. 18, 2019

For: Providing temporary use of non-downloadable software and applications for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; providing temporary use of non-

downloadable software and applications for detecting fraudulent transactions and activities; providing temporary use of non-downloadable software and applications for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; providing temporary use of non-downloadable software and applications for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; providing temporary use of non-downloadable software and applications for use in analyzing and monitoring computer networks; providing temporary use of non-downloadable software and applications for diagnosing industrial and business performance issues; providing temporary use of non-downloadable software and applications in the field of application analytics; providing temporary use of non-downloadable software and applications for providing operational intelligence, business analytics, security information, and troubleshooting based on data; providing temporary use of non-downloadable data mining software; consulting services in the field of information technology; technical consulting services in the fields of datacenter architecture, public and private cloud computing solutions, and evaluation and implementation of information technology and services; technical support services, namely, remote and on-site infrastructure management services for monitoring, administration and management of public and private cloud computing and information technology systems

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 18, 2019

Use in Commerce: Sep. 18, 2019

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Splunk Inc.

Owner Address: 270 Brannan Street
San Francisco, CALIFORNIA UNITED STATES 94107

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jennifer Lee Taylor

Docket Number: 707736002000

Attorney Primary Email Address: TMDocket@mofo.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Jennifer Lee Taylor
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA UNITED STATES 94105

Phone: 415-261-6538

Fax: 415-268-7522

Correspondent e-mail: TMDocket@mofo.com MHug@mofo.com kgalt@mofo.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jun. 03, 2020	EXTENSION OF TIME TO OPPOSE RECEIVED	
May 05, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 05, 2020	PUBLISHED FOR OPPOSITION	
Apr. 15, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 26, 2020	ASSIGNED TO LIE	70633
Mar. 21, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	

Mar. 21, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Mar. 21, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Mar. 21, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Mar. 21, 2020	EXAMINERS AMENDMENT -WRITTEN	76741
Mar. 21, 2020	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	88888
Mar. 20, 2020	TEAS VOLUNTARY AMENDMENT RECEIVED	
Mar. 10, 2020	ASSIGNED TO EXAMINER	76741
Feb. 11, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Feb. 10, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 08, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CHHINA, KARANENDRA S

Law Office LAW OFFICE 114
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 30, 2020

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Extension of Time

Proceeding [88786508](#)
Number:

Filing Date: Jun 03, 2020

Status: Extension of Time to Oppose Filed

Status Date: Jun 03, 2020

Interlocutory
Attorney:

Defendant

Name: Splunk Inc.

Correspondent JENNIFER LEE TAYLOR

Address: MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO CA UNITED STATES , 94105

Correspondent e-mail: TMDocket@mofo.com , MHuq@mofo.com , kgalt@mofo.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
	Request For Extension of Time to File Opposition	88786508	

Potential Opposer(s)

Name: Deutsche Telekom AG

Correspondent ROSS Q. PANKO

Address: ARENT FOX LLP
1717 K ST., NW
WASHINGTON DC UNITED STATES , 20006

Correspondent e-mail: tmddocket@arentfox.com , ross.panko@arentfox.com , craig.horak@arentfox.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	Jun 03, 2020	
2	EXT GRANTED	Jun 03, 2020	

Exhibit B

Generated on: This page was generated by TSDR on 2020-06-28 15:43:11 EDT

Mark: SPLUNK>



US Serial Number: 88786496

Application Filing Date: Feb. 05, 2020

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: May 05, 2020

Publication Date: May 05, 2020

Mark Information

Mark Literal Elements: SPLUNK>

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a circle design colored in a gradient of coral, orange and magenta (in various degrees) with the word "SPLUNK >" in white displayed thereon.

Color Drawing: Yes

Color(s) Claimed: The color(s) white, coral, orange and magenta is/are claimed as a feature of the mark.

Design Search Code(s): 24.17.25 - Biohazard symbol; Degree sign (°); Equal sign (=); Greater than symbol > (mathematical); Handicapped symbol; Hazardous materials symbol; Less than symbol < (mathematical); Pound sign (#)
26.01.21 - Circles that are totally or partially shaded.
26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Downloadable computer software for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; downloadable computer software for detecting fraudulent transactions and activities; downloadable computer software for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; downloadable computer software for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; downloadable computer software for use in analyzing and monitoring computer networks; downloadable computer software for diagnosing industrial and business performance issues; downloadable computer software in the field of application analytics; downloadable computer software for providing operational intelligence, business analytics, security information, and troubleshooting based on data; downloadable data mining software

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 18, 2019

Use in Commerce: Sep. 18, 2019

For: Providing temporary use of non-downloadable software and applications for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; providing temporary use of non-downloadable software and applications for detecting fraudulent transactions and activities; providing temporary use of non-downloadable software and applications for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; providing temporary use of non-downloadable software and applications for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; providing temporary use of non-downloadable software and applications for use in analyzing and monitoring computer networks; providing temporary use of non-downloadable software and applications for diagnosing industrial and business performance issues; providing temporary use of non-downloadable software and applications in the field of application analytics; providing temporary use of non-downloadable software and applications for providing operational intelligence, business analytics, security information, and troubleshooting based on data; providing temporary use of non-downloadable data mining software; consulting services in the field of information technology; technical consulting services in the fields of datacenter architecture, public and private cloud computing solutions, and evaluation and implementation of information technology and services; technical support services, namely, remote and on-site infrastructure management services for monitoring, administration and management of public and private cloud computing and information technology systems

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 18, 2019

Use in Commerce: Sep. 18, 2019

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Splunk Inc.

Owner Address: 270 Brannan Street
San Francisco, CALIFORNIA UNITED STATES 94107

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jennifer Lee Taylor

Docket Number: 707736001000

Attorney Primary Email Address: TMDocket@mofo.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Jennifer Lee Taylor
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA UNITED STATES 94105

Phone: 415-261-6538

Fax: 415-268-7522

Correspondent e-mail: TMDocket@mofo.com MHuq@mofo.com kgalt@mofo.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 05, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 05, 2020	PUBLISHED FOR OPPOSITION	
Apr. 15, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 26, 2020	ASSIGNED TO LIE	70633
Mar. 21, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	

Mar. 21, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Mar. 21, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Mar. 21, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Mar. 21, 2020	EXAMINERS AMENDMENT -WRITTEN	76741
Mar. 21, 2020	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	88888
Mar. 20, 2020	TEAS VOLUNTARY AMENDMENT RECEIVED	
Mar. 10, 2020	ASSIGNED TO EXAMINER	76741
Feb. 11, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Feb. 10, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 08, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CHHINA, KARANENDRA S

Law Office LAW OFFICE 114
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 30, 2020

Exhibit C

Generated on: This page was generated by TSDR on 2020-06-28 15:43:56 EDT

Mark: D2E



US Serial Number: 88812276

Application Filing Date: Feb. 26, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: May 19, 2020

Publication Date: May 19, 2020

Mark Information

Mark Literal Elements: D2E

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a circle design colored in a gradient of coral, orange and magenta (in various degrees) with the word "D2E" in white displayed thereon.

Color Drawing: Yes

Color(s) Claimed: The color(s) white, coral, orange and magenta is/are claimed as a feature of the mark.

Design Search Code(s): 26.01.02 - Circles, plain single line; Plain single line circles

26.01.21 - Circles that are totally or partially shaded.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable computer software for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; downloadable computer software for detecting fraudulent transactions and activities; downloadable computer software for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; downloadable computer software for troubleshooting, diagnosing, and protecting computer software, hardware, networks, virtual machines, and operational technology; downloadable computer software for use in analyzing and monitoring computer networks; downloadable computer software for diagnosing industrial and business performance issues; downloadable computer software for application analytics; downloadable computer software for providing operational intelligence, business analytics, security information, and troubleshooting based on data; downloadable data mining software

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 10, 2020

Use in Commerce: Feb. 10, 2020

For: Providing temporary use of non-downloadable software and applications for collecting, analyzing, evaluating, monitoring, and transmitting data in the fields of compliance, network security, enterprise security, and maintenance; providing temporary use of non-downloadable software and applications for detecting fraudulent transactions and activities; providing temporary use of non-downloadable software and applications for investigating, remediating, and responding to fraud and to network and enterprise threat incidents; providing temporary use of non-downloadable software and applications for troubleshooting, diagnosing, and protecting

computer software, hardware, networks, virtual machines, and operational technology; providing temporary use of non-downloadable software and applications for use in analyzing and monitoring computer networks; providing temporary use of non-downloadable software and applications for diagnosing industrial and business performance issues; providing temporary use of non-downloadable software and applications for application analytics; providing temporary use of non-downloadable software and applications for providing operational intelligence, business analytics, security information, and troubleshooting based on data; providing temporary use of non-downloadable data mining software; consulting services in the field of information technology; technical consulting services in the fields of datacenter architecture, public and private cloud computing solutions, and evaluation and implementation of information technology and services; technical support services, namely, remote and on-site infrastructure management services for monitoring, administration and management of public and private cloud computing and information technology systems

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 10, 2020

Use in Commerce: Feb. 10, 2020

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Splunk Inc.

Owner Address: 270 Brannan Street
San Francisco, CALIFORNIA UNITED STATES 94107

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jennifer Lee Taylor

Docket Number: 707336005000

Attorney Primary Email Address: TMDocket@mofo.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JENNIFER LEE TAYLOR
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA UNITED STATES 94105

Phone: 415-261-6538

Fax: 415-268-7522

Correspondent e-mail: TMDocket@mofo.com JTaylor@mofo.com kgalt@mofo.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 19, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 19, 2020	PUBLISHED FOR OPPOSITION	
Apr. 29, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 14, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 14, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Apr. 14, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Apr. 14, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 14, 2020	EXAMINERS AMENDMENT -WRITTEN	76741

Apr. 14, 2020	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Apr. 07, 2020	WITHDRAWN FROM PUB - OG REVIEW QUERY	99910
Mar. 25, 2020	ASSIGNED TO LIE	66121
Mar. 18, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 18, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Mar. 18, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Mar. 18, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Mar. 18, 2020	EXAMINERS AMENDMENT -WRITTEN	76741
Mar. 10, 2020	ASSIGNED TO EXAMINER	76741
Mar. 10, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Mar. 07, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 05, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CHHINA, KARANENDRA S

Law Office LAW OFFICE 114
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 15, 2020

Exhibit D

**Hogan
Lovells**

Hogan Lovells International LLP
Alstertor 21
20095 Hamburg
T +49 40 419 93 0
F +49 40 419 93 200
www.hoganlovells.com

In advance by email:

legal@splunk.com
ncmartin@splunk.com

By courier:

Splunk Inc.
250 Brannan Street
San Francisco, CA 94107
USA

Mareike Hunfeld, LL.M (UCL)
Rechtsanwältin

Phone: +49 (0) 40 419 93-310
mareike.hunfeld@hoganlovells.com

Our ref 1564135
File no. 1JD776.003884

12 February 2020

and

Splunk Services Germany GmbH
Salvatorplatz 3
80333 München
Germany

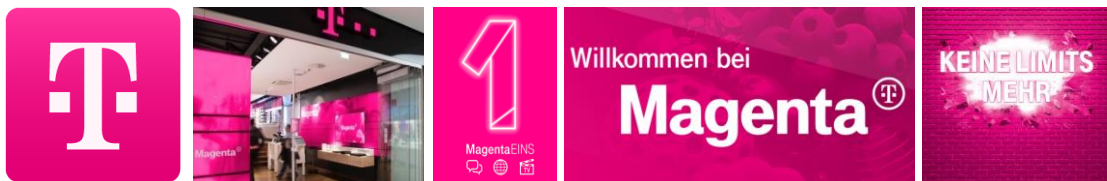
UNLAWFUL USE OF MAGENTA BY SPLUNK INC. – DEADLINE TO REPLY: 20 FEBRUARY 2020

Dear Sir or Madam,

We are contacting you on behalf of our client, Deutsche Telekom AG (DTAG), established in Bonn, Germany, with respect to your use of the colour Magenta in connection with your company and your software, both called "Splunk", as well as the associated website www.splunk.com and the Splunk app. Since the direct contact between DTAG and Splunk Inc. did not lead to a fruitful exchange, we as lawyers now write to you.

1. As you may know, DTAG is one of the world's leading telecommunications and information technology companies with a presence in around fifty countries worldwide. The colour Magenta is the core element of DTAG's corporate identity and one for which it is very well-known. Our client, as well as its affiliated companies, uses Magenta as a distinctive sign for its entire range of goods and services. Due to the intensive use of the colour Magenta in all company communications and in all advertising materials in Germany, elsewhere in the EU and worldwide, the colour Magenta has become a unique and well-known identifier for the goods and services of DTAG.

The intensive use of Magenta by DTAG is illustrated by the following examples:



Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. The Hamburg branch office is registered with Amtsgericht Hamburg under number PR 1144.

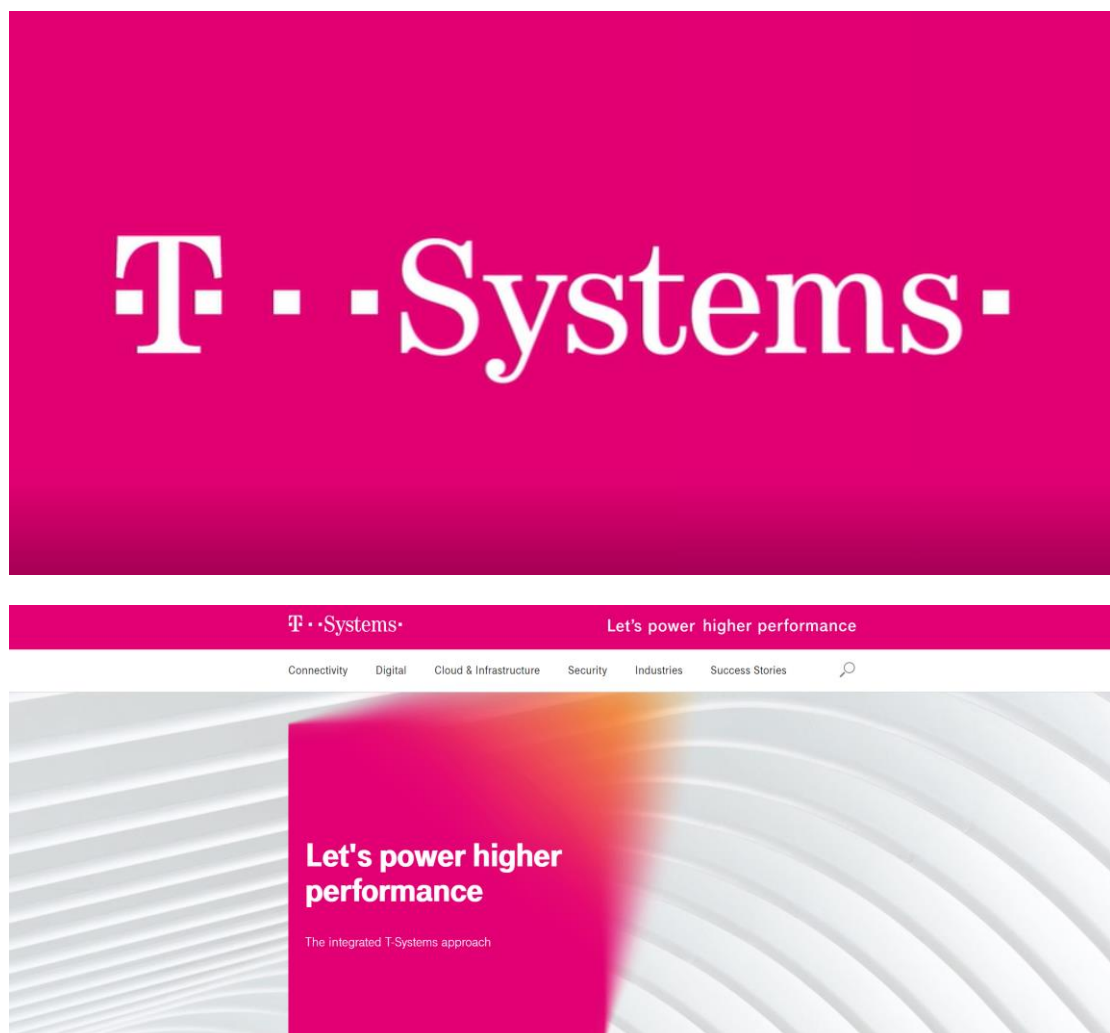
"Hogan Lovells" is an international legal practice that includes Hogan Lovells International LLP and Hogan Lovells US LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Riyadh Shanghai FTZ Ulaanbaatar Zagreb. Business Services Centers: Johannesburg Louisville. Legal Services Center: Berlin.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. A list of the members of Hogan Lovells International LLP is open to inspection at the above address. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

2. DTAG and its affiliates offer a wide range of telecommunication and information technology products to private and corporate customers in Germany, other countries of the EU and worldwide.
3. As you probably know, one of the best known subsidiaries of DTAG is T-Systems. With locations in over 20 countries, 37,500 employees, and an external turnover of 6.9 billion euros (2018), T-Systems is one of the world-leading cross-manufacturer digital service providers. T-Systems offers integrated solutions for corporate customers. T-Systems offers everything from one source: from secure operation of existing systems and conventional IT and telecommunication services to transformation into the cloud, including international networks. From demand-oriented infrastructure, platforms, and software, down to new business models and innovation projects in the Internet of Things. The basis for this is the global reach of landline and mobile communications, high-security data centers, a comprehensive cloud ecosystem with standardized platforms, worldwide partnerships, and the highest security.

For more information, please visit the homepage of T-Systems: www.t-systems.com.

T-Systems uses Magenta as intensively as DTAG, as the following examples illustrate:



4. DTAG owns various trademark registrations worldwide to protect its Magenta colour trademark, including the European Union trademark registration EUTM 212787 and German trademark registrations DE 39864846 and DE 39552630, which inter alia cover

- *"computer programming",*
- *"Database services, namely collecting and delivering data, messages and information" as well as*
- *"Rental of data processing equipment and computers"*

in class 42 of the nice classification.

DTAG's Magenta colour mark is depicted below:



We enclose copies of these registrations for your reference.

Therefore, the colour Magenta is protected for DTAG in accordance with Article 9 para 2 lit. a and lit. b of the Regulation on the European Union Trademark as well as Section 14 para 2 no. 1 and no. 2 of the German Trademark Act. Moreover, the colour Magenta is protected as a business identifier pursuant to Section 5 para 2 and Section 15 para 2 and 3 of the German Trademark Act as well.

In addition, the colour Magenta enjoys protection as a trademark having a reputation according to Article 9 para 2 lit. c of the Regulation on the European Union Trademark and Section 14 para. 2 no. 3 of the German Trademark Act.

Finally, Magenta is a protected business identifier pursuant to Section 15 para. 2 and 3 of the German Trademark Act as well.

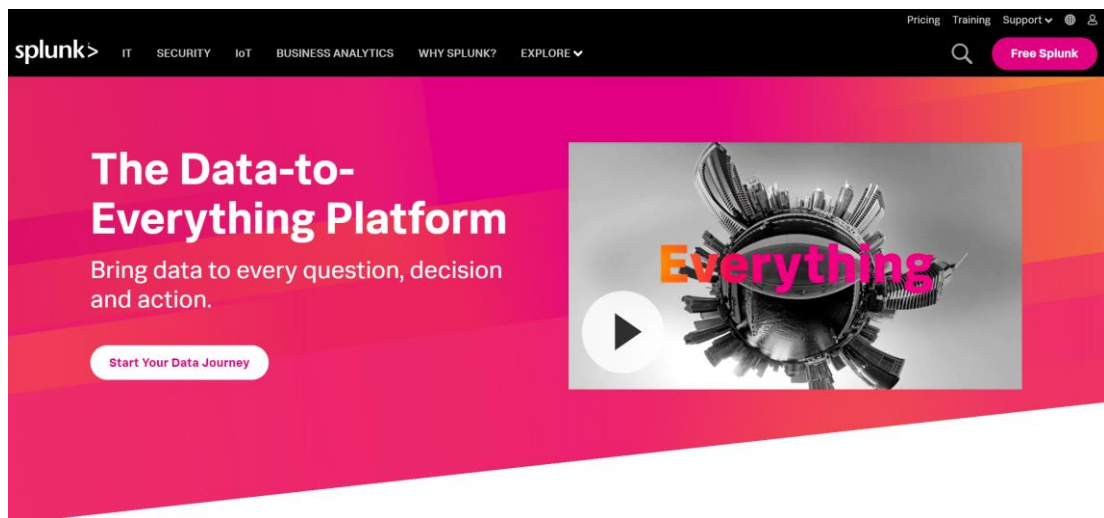
5. It has come to the attention of our client that Splunk Inc. (Splunk) uses intensively the colour Magenta (and barely noticeably Orange) to mark their goods and services.

As far as we know, Splunk produces software for searching, monitoring, and analysing machine-generated data. The software by Splunk, inter alia, seems to capture, index, and correlate real-time data in a searchable repository from which it can generate graphs, reports, alerts, dashboards, and visualizations. Therefore, Splunk seems to offer primarily database services, namely the collecting and delivering of data.

Splunk uses Magenta intensively on their website, for their app called "Splunk Mobile" as well as on social media. Furthermore, Magenta is also intensively used for brochures and other advertising measures online as well as offline.

The following examples demonstrate the dominant use of Magenta by Splunk:

- a) Website: www.splunk.com



- b) App icon: Splunk Mobile (iOS and Android)



iOS version

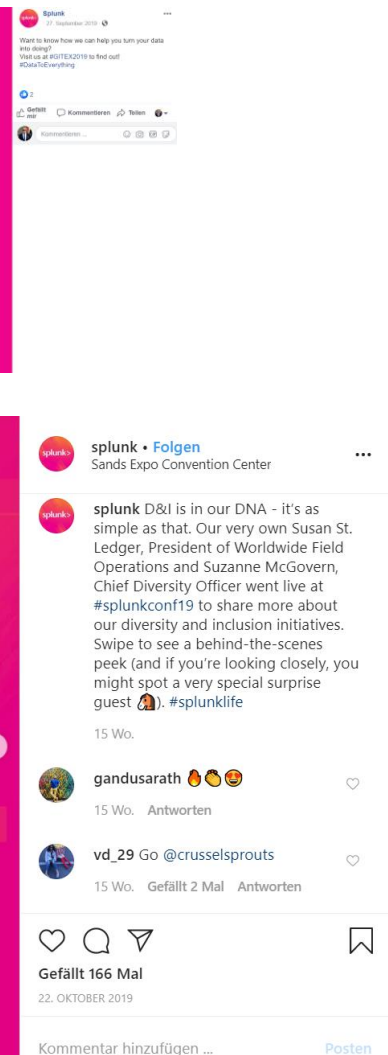
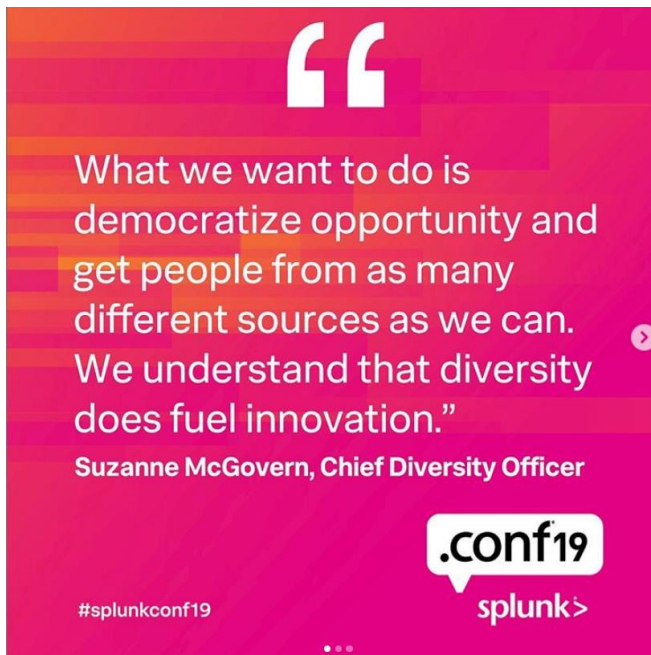


Android version

c) Social media: logo (Facebook, Twitter, Instagram, YouTube & LinkedIn)



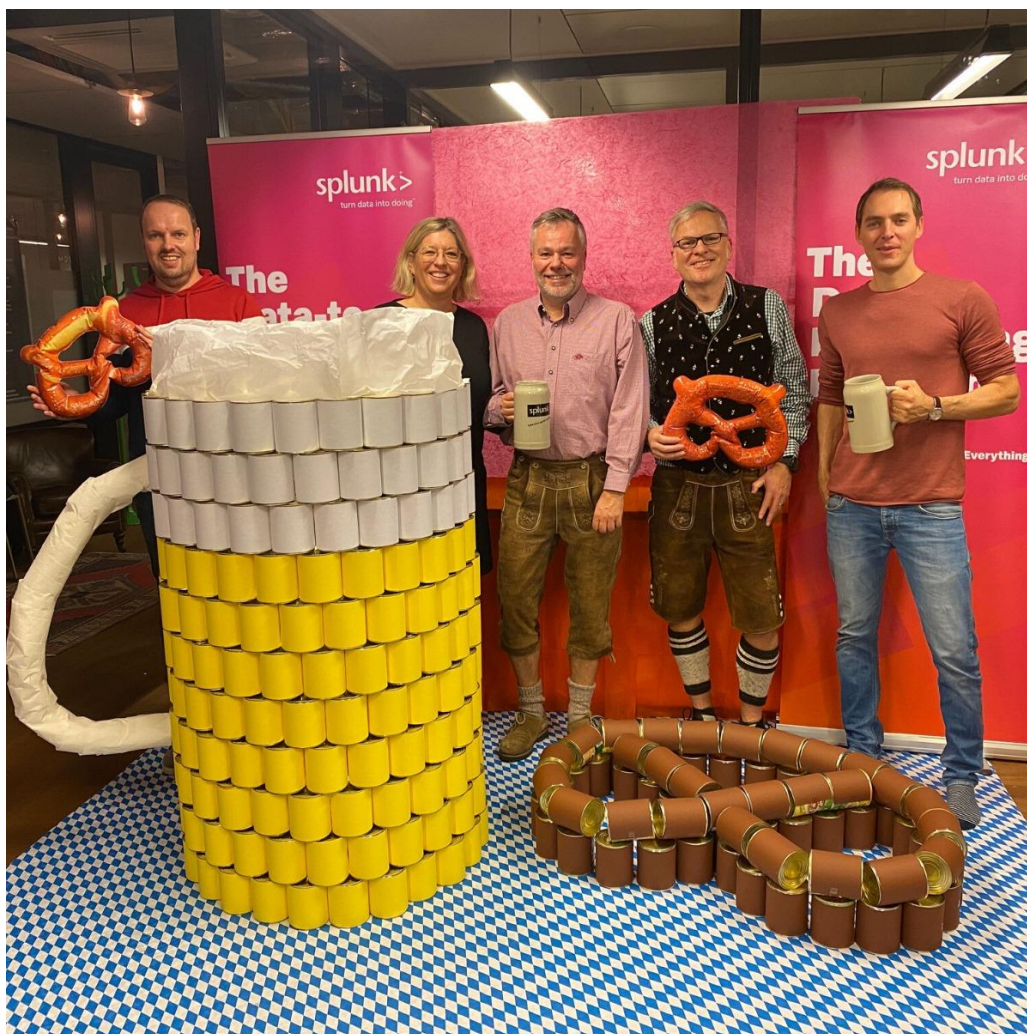
d) Social media: content (Facebook & Instagram)



e) Brochures (Splunk Prognosen für 2020 [in German])



f) Further advertising measures (found on the internet)



6. The use by Splunk of a colour identical to or at least confusingly similar to Magenta for the website and the app as well as on social media and for further advertising measures infringes our client's Magenta colour marks. In more detail:

- The use by Splunk of the colour Magenta or a highly similar colour creates a likelihood of confusion and therefore infringes DTAG's Magenta trademark rights pursuant to Article 9 para 2 lit. b of the Regulation on the European Union Trademark as well as Section 14 para 2 no. 2 of the German Trademark Act.
- Splunk uses Magenta as an indication of origin for their goods and services and not only for decorative purposes. This is obvious from the intensive, recurring and extremely prominent use of Magenta as well as from the fact that the Splunk logo can be found almost without exception on a background in Magenta. With regard to the logo, the general public generally perceives the colour of a corporate logo as a distinctive element of the corporate identity. This is true despite the minimal use of orange. At most, the use of orange has the character of a creative effect or suggests a cooperation with DTAG.
- The relevant public will not be able to distinguish the colour used by Splunk from the Magenta colour widely used by and protected for DTAG. In this regard, it has to be kept in mind that a consumer cannot compare both colours directly but has to rely on his memory (see CJEU, Decision of 5 May 2003, C- 104/01, par. 47 – *Libertel*).
- Moreover, Splunk uses Magenta for services which are identical or at least highly similar to the services that are protected by DTAG's Magenta marks. In addition, there is an obvious business overlap, since Splunk and our client both provide services in connection with the collecting and delivering of data (database services). Therefore, consumers will be misled that there is an organisational or economic connection between Splunk and our client.
- Furthermore, the Magenta colour marks enjoy a reputation in Germany and other countries of the European Union pursuant to Article 9 para 2 lit. c of the Regulation on the European Union Trademark and Section 14 para. 2 no. 3 of the German Trademark Act. The use by Splunk of the colour Magenta or a colour highly similar to Magenta takes unfair advantage of, and is detrimental to, the distinctive character and the repute of the Magenta trademarks.
- In addition, the use by Splunk of Magenta constitutes an infringement of our client's protected business identifier pursuant to Section 15 para. 2 and 3 of the German Trademark Act.
- With regard to the German trademarks, there is a necessary commercial effect, *inter alia* due to the fact that the website and the app are available in Germany.

7. The intensive use of the colour Magenta by Splunk raises our client's concerns. Our client is particularly concerned that Splunk is apparently aware of the fact that Magenta is a prior trademark of DTAG, but uses the colour anyway. In particular, Splunk uses generally the same website design and colouring for the different language versions of their website. Only the German website of Splunk has slightly less Magenta, as illustrated below. This suggests that Splunk knows exactly that Magenta is associated with DTAG.

Japanese



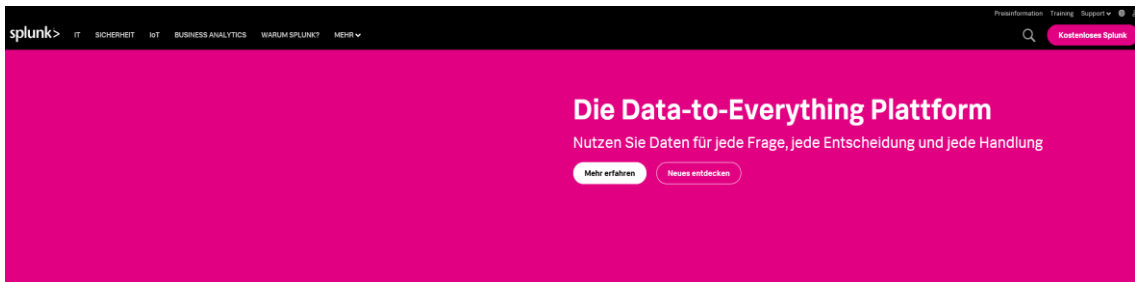
German



French



8. To make it worse, if you open the website of Splunk with the Internet Explorer, the website is nothing but Magenta, even in the German language version.



9. Furthermore, Splunk started to use Magenta only recently. Up to and including the year 2019, Splunk still used green and blue as their corporate colours, as illustrated below. We cannot see any other reason to change to Magenta, a colour that is widely known in the relevant market as a trademark of DTAG, than intending to make a conscious reference to DTAG.



10. As an owner of valuable intellectual property rights, DTAG has to defend the same in order to avoid any likelihood of confusion at the customer's end and any dilution of its trademarks. Therefore, our client is fully prepared to take all legal measures necessary before the competent courts in order to defend its valuable Magenta trademarks. In addition to cease and desist claims, our client would even have claims for information and damages.
11. Yet, our client would like to spare both sides the time and expanses of lengthy and costly court proceedings. Therefore, DTAG would prefer to settle this matter amicably.
12. We therefore request Splunk to immediately stop the contested colour use described above and declare in writing that Splunk will abstain from using the colour Magenta or confusingly similar colour shades to identify goods and services in relation to computer programming and database services in the future anywhere in the European Union. To this end, we have prepared the attached cease and desist declaration which we ask you to sign and send back to us by

20 February 2020.

Under German law, only such a declaration secured by a penalty is apt to sufficiently exclude the danger of recurrence. If we do not receive the requested declaration, we will advise our client to seek relief by the competent courts.

13. Please note that our client expressly reserves its right to take legal action against the use of Magenta by Splunk according to unfair competition law as well as based on US trademark law.

If you would like to discuss this matter over the phone, please feel free to contact us.

We are looking forward to hearing from you.

Yours sincerely

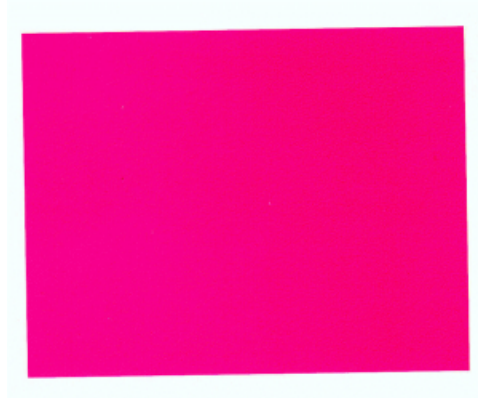


Mareike Hunfeld

Rechtsanwältin

Enclosures:

- European Union Trademark No. 212787
- German Trademark No.39864846
- German Trademark No. 39552630
- Cease and Desist Declaration

**Trademark**

Trademark No EM00212787

Legal status Registered - cancellation pending

Language of application First DE, Second EN

Type Colour mark
Colour claimed

Entry date EUIPO 10.04.1996

Filing date 01.04.1996

Notification date 24.01.2000

Registration date 03.08.2000

Publication date 18.09.2000

Expiry date 01.04.2026

Renewal date 07.05.2006

polymark date polymark update 02.12.2019

Colours Magenta (RAL 4010 telemagenta)

Nice classification 38, 42

Vienna classification 29.01.11, 29.01.99

Owner Deutsche Telekom AG, Friedrich-Ebert-Allee 140, 53113 Bonn, DE

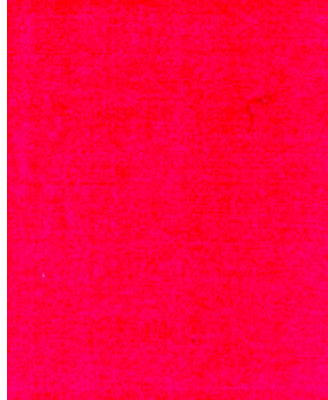
Agent HOGAN LOVELLS INTERNATIONAL LLP, Alstertor 21, 20095 Hamburg, DE

Goods & Services 38 Telecommunications; rental of telecommunication equipment; information about telecommunication; rental of message sending apparatus; telecommunications value-added services included in class 38, namely telecommunications services with above-average utility providers; telecommunication services for others; all the aforesaid services including related information and consultancy services; none of the aforementioned services including news agencies.
42 Designing installations and equipment for telecommunications.

History

Publ.Date	Bulletin	Text
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Publ.Date	Bulletin	Text
24.01.2000	2000/007	Part A. 1 - CTM applications published under Article 40 of the CTMR
18.09.2000	2000/074	Part B. 1 - Registrations with no amendments since the application was published
28.11.2003		Change of legal status to: Registration published
10.07.2006	2006/028	Part D. 1 - Renewals
12.03.2007	2007/010	Part C. 4.1 - Licences granted
02.04.2007	2007/013	Part C. 3.6 - Trade mark - International trade mark
16.04.2007	2007/015	Part C. 2.4 - Deletion of the representative
23.04.2007		Change of legal status to: Cancellation pending
02.07.2007	2007/030	Part C. 2.3 - Appointment of a new representative
27.08.2007	2007/045	Part C. 2.2 - Replacement of the representative
29.10.2007	2007/060	Part C. 2.1 - Representative - Change of name and professional address
05.11.2007	2007/061	Part B. 4.2 - Relative errors
05.05.2008	2008/018	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
26.05.2008	2008/021	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
18.08.2008	2008/033	Part C. 2.2 - Replacement of the representative
06.10.2008	2008/040	Part C. 9.1 - Applications for revocation or for a declaration of invalidity
02.02.2009	2009/004	Part C. 2.2 - Replacement of the representative
20.07.2009	2009/027	Part C. 9.3 - Counterclaims for revocation or for a declaration of invalidity
28.01.2010		Change of legal status to: Registration published
10.05.2010	2010/084	Part C. 2.1 - Representative - Change of name and professional address
02.08.2010	2010/141	Part C. 9.2 - Decisions on applications for revocation or for a declaration of invalidity
30.04.2012		Change of legal status to: Cancellation pending
18.02.2013	2013/034	Part C. 9.2 - Decisions on applications for revocation or for a declaration of invalidity
31.03.2016	2016/060	Part D. 1 - Renewals
16.01.2018	2018/010	Part C. 2.2 - Replacement of the representative
21.02.2018	2018/036	Part C. 3.2 - Trade mark - Partial surrender
25.10.2019	2019/204	Part C. 9.1 - Applications for revocation or for a declaration of invalidity

**Trademark****Trademark No** DE39864846**File number of application** 398648468**Legal status** Registered**Type** Colour mark
Coloured**Filing date** 04.11.1998**Registration date** 21.11.2002**Publication date** 03.01.2003**Renewal date** 01.12.2008**polymark date** polymark update 14.01.2019**Colours** magenta**Nice classification** 09, 16, 36, 37, 38, 41, 42**Vienna classification** 26.04.02, 29.01.01**Owner** Deutsche Telekom AG, 53113 Bonn, DE**Agent** Hogan Lovells International LLP, 20095 Hamburg, DE**Address of correspondence** Hogan Lovells International LLP, Alstertor 21, 20095 Hamburg**Goods & Services**

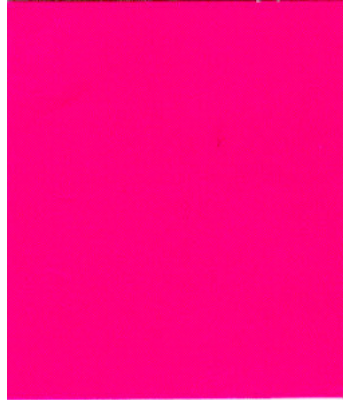
[English - computerised translation:]

Electric, electronic, optical, measuring, signaling, checking or teaching apparatus and instruments (included in class 9); Apparatus for recording, transmission, processing and reproduction of sound, images or data; machine-readable data record carriers; Mechanisms for coin-operated apparatus; Data processing equipment and computers; Printed matter, namely telephone directories and other directories for telecommunications; Finance; Real estate affairs; Building construction; Installation, maintenance and repair of telecommunications equipment; Telecommunications; Operating and rental of telecommunications equipment, in particular radio and television; Education; Training; Entertainment; Organization of sporting and cultural events; Publication of books, periodicals and other printed matter and related electronic media (including CD-ROMs and CD-I's); Computer programming; Database services, namely, leasing access time to and operating databases, and collecting and delivering data, messages and

information; Rental of data processing equipment and computers; Design and planning of telecommunications equipment

History

Publ.Date	Part	Text
03.01.2003	1a	Publication of registration Main class: 38
17.04.2003	8b	Change of agent details
23.05.2003	2a	Opposition period expired, no opposition
28.11.2003	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
09.01.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
30.04.2004	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
01.10.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolute grounds for refusal of protection (§ 50 MarkenG)
18.02.2005	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
26.10.2007	8b	Change of agent details Former name or address of agent: "Kanzlei Mayer, Brown, Rowe & Maw LLP, Frankfurt"
19.09.2008	8b	Change of agent details Former name or address of agent: "Kanzlei Mayer Brown LLP, Frankfurt"
29.05.2009	4	Renewal on 01.12.2008
11.06.2010	8b	Change of agent details Former name or address of agent: "Lovells LLP, 20095 Hamburg"
16.11.2012	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG
27.09.2013	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
11.01.2019	4	Renewal on 01.12.2018
	5g	Partial deletion upon declaration of the owner as from 01.12.2018

**Trademark****Trademark No** DE39552630**File number of application** 395526302**Legal status** Registered**Type** Colour mark
Coloured**Filing date** 27.12.1995**Registration date** 12.09.2000**Publication date** 07.12.2000**Renewal date** 01.01.2006**polymark date** polymark update 01.03.2019**Colours** magenta**Nice classification** 09, 16, 37, 38, 42**Vienna classification** 26.04.05, 29.01.01**Owner** Deutsche Telekom AG, 53113 Bonn, DE**Agent** Hogan Lovells International LLP, 20095 Hamburg, DE**Address of correspondence** Hogan Lovells International LLP, Alstertor 21, 20095 Hamburg**Goods & Services**

[English - computerised translation:]

Apparatus for recording, transmission, processing and reproduction of sound, images or data for telecommunications; Printed matter, namely telephone directories and other directories for telecommunications; Installation, maintenance and repair of telecommunications equipment; Telecommunications; Rental of telecommunications equipment; Rental of apparatus for recording, transmission, processing and reproduction of sound, images or data for telecommunications; Rental of access time to databases in the form of providing access to the Internet, for others (online service and Internet service providers) and providing content accessible via the Internet; Design and planning of telecommunication facilities

History

Publ.Date	Part	Text
12.10.2000	1a	Publication of registration Main class: 38
07.12.2000	1ab	New publication of registration
	8e	Corrections, other changes "Die Veröffentlichung im Markenblatt Teil 1a aa) (Heft 41/2000) ist aufgrund der fehlerhaften Wiedergabe der Bildmarke ungültig. Mit der Neuveröffentlichung in Teil 1a bb) beginnt die Widerspruchsfrist erneut zu laufen."
05.04.2001	8e	Corrections, other changes "Der Bestandteil 'sonstige Markenform' tritt hinzu."
22.11.2002	8b	Change of agent details
21.11.2003	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
09.01.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
30.04.2004	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
01.10.2004	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG Legal basis: Invalidity because of absolut grounds for refusal of protection (§ 50 MarkenG)
18.02.2005	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
27.05.2005	4	Renewal on 01.01.2006
04.01.2008	2a	Oppositon period expired, no opposition
	8b	Change of agent details
09.04.2010	8b	Change of agent details Former name or address of agent: "Mayer Brown LLP, 60323 Frankfurt"
11.06.2010	8b	Change of agent details Former name or address of agent: "Lovells LLP, 20095 Hamburg"
03.02.2012	5a	Third party request of cancellation of a registered trademark according to § 50 MarkenG
27.09.2013	5c	Cancellation proceedings upon request of a third party closed according § 50 MarkenG (no effect to the trademark)
04.09.2015	4	Renewal on 01.01.2016

CEASE AND DESIST DECLARATION

Splunk Inc., 250 Brannan Street, San Francisco, CA 94107, USA

as well as

Splunk Services Germany GmbH, Salvatorplatz 3, 80333 München, Germany

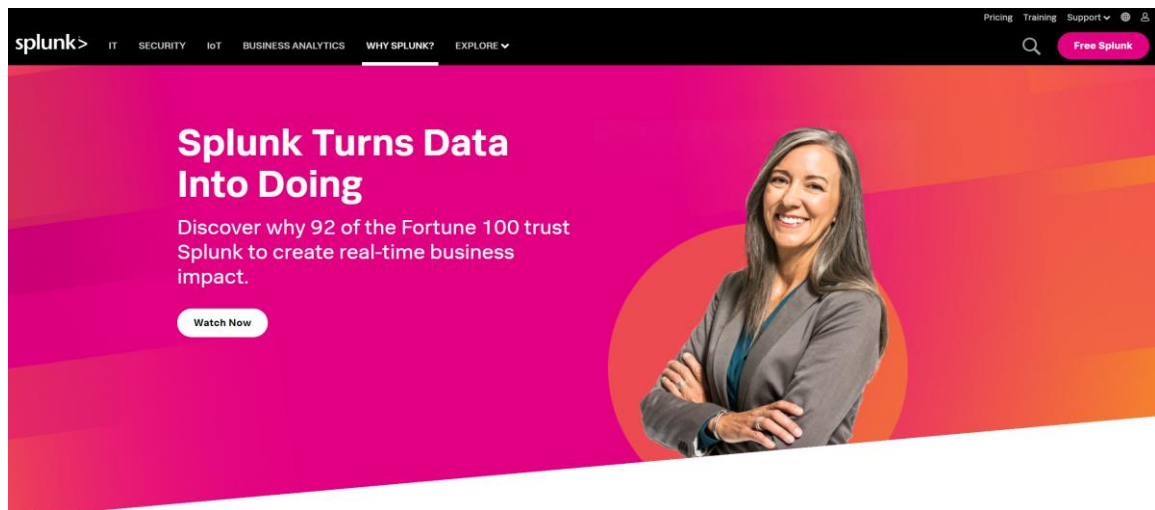
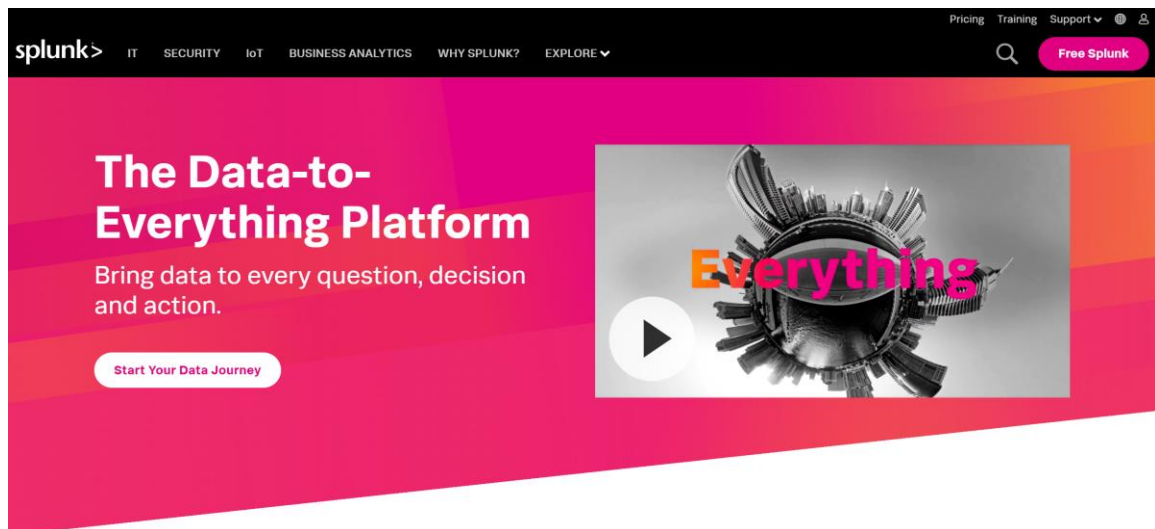
hereby undertake as joint and several debtors towards

Deutsche Telekom AG, Friedrich Ebert-Allee 140, 53113 Bonn, Germany

as follows:

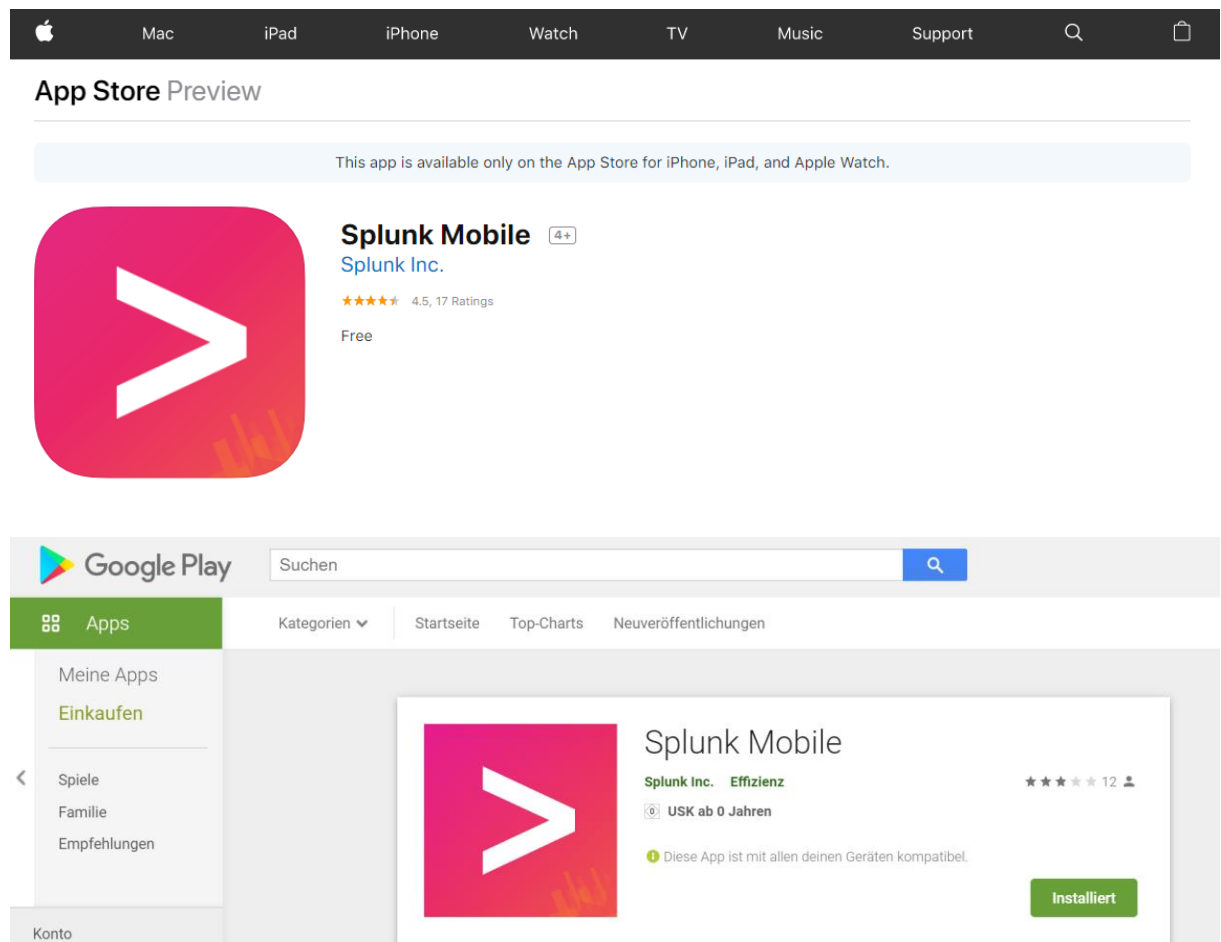
1. to cease and desist from using and/or allowing any subsidiary, affiliated or other company to use the colour Magenta or any colour similar thereto in the course of business for goods and services in relation to computer programming as well as the collecting and delivering of data (database services), including, but not limited to, software, such as the "Splunk" software, as well as apps, such as the "Splunk Mobile" app. This undertaking applies to all member states of the European Union, in particular, but not limited to the colour use as depicted below:

- a. Website (www.splunk.com)



- 2 -

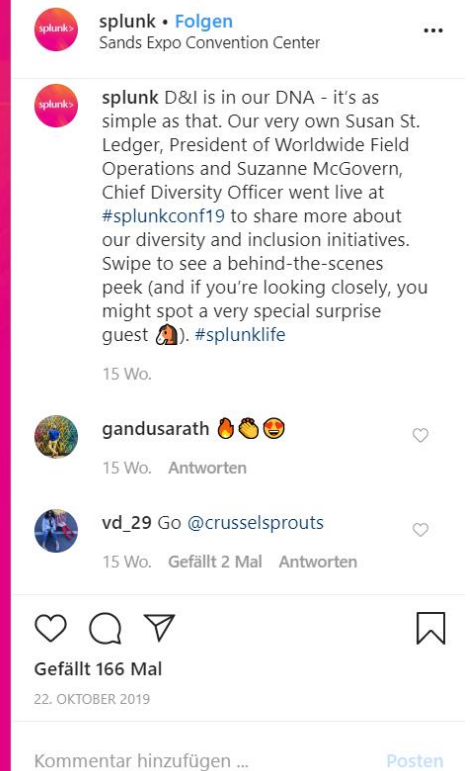
b. App (Splunk Mobile)



c. Social media: logo (Facebook, Twitter, Instagram, YouTube & LinkedIn)



d. Social media: content (Facebook & Instagram)



e. Brochures



f. Advertising measures offline as well as online



2. for each future infringement of clause 1 above, to pay to Deutsche Telekom AG a penalty of a reasonable amount, minimum 5,001 Euro, to be determined by Deutsche Telekom AG in each individual case. The amount of the penalty, if contested by Splunk Inc. or the Splunk Services Germany GmbH, shall be made subject to judicial review of the Regional Court Hamburg. The payment of such penalty is not to be understood as a waiver of any rights Deutsche Telekom AG may have and shall not be counted towards any damages to which Deutsche Telekom AG may be entitled.

All disputes arising in connection with this declaration shall be subject to German as well as applicable EU law and the jurisdiction of the competent courts of Hamburg.

Splunk Inc.

Splunk Services Germany GmbH

.....
Place/date

.....
Place/date

.....
Print name

.....
Print name

.....
Function

.....
Function

.....
Signature

.....
Signature

Exhibit E

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Mark:



US Serial Number: 87403319

Application Filing Date: Apr. 07, 2017

US Registration Number: 5706644

Registration Date: Mar. 26, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 26, 2019

Publication Date: Jan. 08, 2019

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the color magenta applied as a background carrier for advertisements for telecommunication and information technology services, personal communications services, electronic mail services, electronic transmission and broadcasting services, and wireless Internet access services, and the matter shown in broken lines is not part of the mark and serves only to show the position or placement of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) magenta is/are claimed as a feature of the mark.

Acquired Distinctiveness Claim: In whole

Design Search Code(s): 07.03.06 - Bars, cocktail Lounge; Art galleries; Theaters; Supermarket; Delicatessens; Discos; Drive-in-theaters; Galleries, art; Grocery stores; Restaurants; Service stations; Stores (building)
15.05.02 - Keyboards, computer; Computer keyboard; Keypads, numeric
15.05.03 - Computer terminal; Computer (desktop); Laptop computer; Monitors, computer (without keyboards)
15.05.04 - Computer devices; CPU (central processing unit); Mainframes (computer); PDAs (handheld computer); Printer (computer); Servers, computer; Tape drives (computer)
15.05.08 - Computer mouse; Mouse, computer
16.01.07 - Head phones; Headphones; Headsets; Microphones
16.01.08 - Telephones
29.02.01 - Red or pink (single color used for the entire goods/services)
29.03.01 - Red or pink (single color used on a portion of the goods)
29.04.01 - Red or pink (single color used on packaging, labels or signs)

Related Properties Information

Claimed Ownership of US Registrations: 3263625, 5000563, 5088970, 5088971 and others

Parent Of: 87976606, 87976607

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Telecommunications and information technology services, namely, wireless transmission of voice, data, images, audio, video, and information; telecommunications services, namely, personal communication services; electronic transmission of mail and messages; providing multiple-user access to a global computer information network; transmission of audio and video by telecommunications networks, wireless communication networks, the Internet, and satellite; broadcasting of radio and television programs; providing wireless Internet access

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 18, 2002

Use in Commerce: Jul. 18, 2002

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Deutsche Telekom AG

Owner Address: Friedrich-Ebert-Allee 140
Bonn GERMANY 53113

Legal Entity Type: CORPORATION

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ross Q. Panko

Docket Number: 037496.00035

Attorney Primary Email Address: TMDocket@arentfox.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ROSS Q. PANKO
ARENT FOX LLP
1717 K STREET, NW
1717 K STREET, NW
WASHINGTON, DISTRICT OF COLUMBIA UNITED STATES 20006-5344

Phone: 2028576000

Fax: 2028576395

Correspondent e-mail: TMDocket@arentfox.com Ross.Panko@arentfox.com
com Anthony.Lupo@arentfox.com Amy.Salomon@arentfox.com Judy.Yolles@arentfox.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 26, 2019	REGISTERED-PRINCIPAL REGISTER	
Jan. 08, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 08, 2019	PUBLISHED FOR OPPOSITION	
Dec. 19, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 19, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	

Nov. 10, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Nov. 09, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Nov. 09, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 29, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 29, 2018	NON-FINAL ACTION E-MAILED	6325
Jun. 29, 2018	NON-FINAL ACTION WRITTEN	76508
Jan. 16, 2018	DIVISIONAL PROCESSING COMPLETE	
Jan. 16, 2018	DIVISIONAL PROCESSING COMPLETE	
Dec. 11, 2017	DIVISIONAL REQUEST RECEIVED	
Jan. 10, 2018	RESPONSE TO ITU OFFICE ACTION ENTERED	65362
Jan. 10, 2018	TEAS VOLUNTARY AMENDMENT RECEIVED	
Dec. 22, 2017	ITU OFFICE ACTION ISSUED FOR DIVISIONAL REQUEST	65362
Dec. 22, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Nov. 11, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Nov. 10, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Nov. 10, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 09, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION WRITTEN	76508
May 10, 2017	ASSIGNED TO EXAMINER	76508
Apr. 15, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Apr. 14, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 11, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 26, 2019

Exhibit F

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Mark:



US Serial Number: 87976606

Application Filing Date: Apr. 07, 2017

US Registration Number: 5674478

Registration Date: Feb. 12, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Feb. 12, 2019

Publication Date: Nov. 27, 2018

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the color magenta as applied to the surface of product packaging for prepaid smart cards, mobile phones, tablet computers, mobile hotspot devices, wireless communication devices, battery chargers, cases for mobile phones and table computers, head phones, and accessories for the foregoing, and the matter shown in broken lines is not part of the mark and serves only to show the position or placement of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) magenta is/are claimed as a feature of the mark.

Acquired Distinctiveness Claim: In whole

Design Search Code(s): 07.03.06 - Bars, cocktail Lounge; Art galleries; Theaters; Supermarket; Delicatessens; Discos; Drive-in-theaters; Galleries, art; Grocery stores; Restaurants; Service stations; Stores (building)
15.05.02 - Keyboards, computer; Computer keyboard; Keypads, numeric
15.05.03 - Computer terminal; Computer (desktop); Laptop computer; Monitors, computer (without keyboards)
15.05.04 - Computer devices; CPU (central processing unit); Mainframes (computer); PDAs (handheld computer); Printer (computer); Servers, computer; Tape drives (computer)
15.05.08 - Computer mouse; Mouse, computer
16.01.07 - Head phones; Headphones; Headsets; Microphones
16.01.08 - Telephones
29.02.01 - Red or pink (single color used for the entire goods/services)
29.03.01 - Red or pink (single color used on a portion of the goods)
29.04.01 - Red or pink (single color used on packaging, labels or signs)

Related Properties Information

Claimed Ownership of US Registrations: 3263625, 5000563, 5088970, 5088971 and others

Child Of: 87403319

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Telecommunications and information technology equipment, namely, mobile phones, tablet computers, mobile hotspot devices, wireless communication devices for voice, data or image transmission, battery chargers, cases for mobile phones and tablet computers, headphones, and accessories therefore, namely, mobile telephone belt clips, headphone replacement ear pieces, screen protectors comprised of plastic or glass adapted for use with portable electronic devices, stands for mobile phones; prepaid smart cards for mobile telephones and internet access

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 18, 2002

Use in Commerce: Jul. 18, 2002

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Deutsche Telekom AG

Owner Address: Friedrich-Ebert-Allee 140
Bonn GERMANY 53113

Legal Entity Type: CORPORATION

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ross Q. Panko

Docket Number: 037496.00035

Attorney Primary Email Address: TMDocket@arentfox.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ROSS Q. PANKO
ARENT FOX LLP
1717 K STREET, NW
1717 K STREET, NW
WASHINGTON, DISTRICT OF COLUMBIA UNITED STATES 20006-5344

Phone: 2028576000

Fax: 2028576395

Correspondent e-mail: TMDocket@arentfox.com Ross.Panko@arentfox.com
com Anthony.Lupo@arentfox.com Amy.Salomon@arentfox.com Judy.Yolles@arentfox.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 12, 2019	REGISTERED-PRINCIPAL REGISTER	
Nov. 27, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 27, 2018	PUBLISHED FOR OPPOSITION	
Nov. 07, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Oct. 19, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	

Oct. 02, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	66121
Oct. 02, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	66121
Sep. 19, 2018	ASSIGNED TO LIE	66121
Sep. 13, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 29, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 29, 2018	NON-FINAL ACTION E-MAILED	6325
Jun. 29, 2018	NON-FINAL ACTION WRITTEN	76508
Jan. 17, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 16, 2018	DIVISIONAL PROCESSING COMPLETE	
Dec. 11, 2017	DIVISIONAL REQUEST RECEIVED	
Jan. 10, 2018	RESPONSE TO ITU OFFICE ACTION ENTERED	65362
Jan. 10, 2018	TEAS VOLUNTARY AMENDMENT RECEIVED	
Dec. 22, 2017	ITU OFFICE ACTION ISSUED FOR DIVISIONAL REQUEST	65362
Dec. 22, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Nov. 11, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Nov. 10, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Nov. 10, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 09, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION WRITTEN	76508
May 10, 2017	ASSIGNED TO EXAMINER	76508
Apr. 15, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Apr. 14, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 11, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 12, 2019

Exhibit G

Generated on: This page was generated by TSDR on 2020-06-28 15:45:25 EDT

Mark:



US Serial Number: 87976607

Application Filing Date: Apr. 07, 2017

US Registration Number: 5601454

Registration Date: Nov. 06, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Nov. 06, 2018

Publication Date: Aug. 21, 2018

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the color magenta as applied to the splash screen of mobile computer applications and the matter shown in broken lines is not part of the mark and serves only to show the position or placement of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) magenta is/are claimed as a feature of the mark.

Acquired Distinctiveness Claim: In whole

Design Search Code(s): 07.03.06 - Bars, cocktail Lounge; Art galleries; Theaters; Supermarket; Delicatessens; Discos; Drive-in-theaters; Galleries, art; Grocery stores; Restaurants; Service stations; Stores (building)
 15.05.02 - Keyboards, computer; Computer keyboard; Keypads, numeric
 15.05.03 - Computer terminal; Computer (desktop); Laptop computer; Monitors, computer (without keyboards)
 15.05.04 - Computer devices; CPU (central processing unit); Mainframes (computer); PDAs (handheld computer); Printer (computer); Servers, computer; Tape drives (computer)
 15.05.08 - Computer mouse; Mouse, computer
 16.01.07 - Head phones; Headphones; Headsets; Microphones
 16.01.08 - Telephones
 29.02.01 - Red or pink (single color used for the entire goods/services)
 29.03.01 - Red or pink (single color used on a portion of the goods)
 29.04.01 - Red or pink (single color used on packaging, labels or signs)

Related Properties Information

Claimed Ownership of US Registrations: 3263625, 5000563, 5088970, 5088971 and others

Child Of: 87403319

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Mobile applications for wireless data communication and managing user account settings

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 18, 2002

Use in Commerce: Jul. 18, 2002

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Deutsche Telekom AG

Owner Address: Friedrich-Ebert-Allee 140
Bonn GERMANY 53113

Legal Entity Type: CORPORATION

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ross Q. Panko

Docket Number: 037496.00035

Attorney Primary Email Address: TMDocket@arentfox.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ROSS Q. PANKO
ARENT FOX LLP
1717 K STREET, NW
1717 K STREET, NW
WASHINGTON, DISTRICT OF COLUMBIA UNITED STATES 20006-5344

Phone: 2028576000

Fax: 2028576395

Correspondent e-mail: TMDocket@arentfox.com Ross.Panko@arentfox.com
Anthony.Lupo@arentfox.com Amy.Salomon@arentfox.com Judy.Yolles@arentfox.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 06, 2018	REGISTERED-PRINCIPAL REGISTER	
Aug. 21, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 21, 2018	PUBLISHED FOR OPPOSITION	
Aug. 01, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jul. 16, 2018	ASSIGNED TO LIE	70138
Jun. 29, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 17, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jan. 16, 2018	DIVISIONAL PROCESSING COMPLETE	
Dec. 11, 2017	DIVISIONAL REQUEST RECEIVED	

Jan. 10, 2018	RESPONSE TO ITU OFFICE ACTION ENTERED	65362
Jan. 10, 2018	TEAS VOLUNTARY AMENDMENT RECEIVED	
Dec. 22, 2017	ITU OFFICE ACTION ISSUED FOR DIVISIONAL REQUEST	65362
Dec. 22, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Dec. 11, 2017	TEAS REQUEST TO DIVIDE RECEIVED	
Nov. 11, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Nov. 10, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Nov. 10, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 09, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION E-MAILED	6325
Jun. 09, 2017	NON-FINAL ACTION WRITTEN	76508
May 10, 2017	ASSIGNED TO EXAMINER	76508
Apr. 15, 2017	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Apr. 14, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 11, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Nov. 06, 2018

Exhibit H

Generated on: This page was generated by TSDR on 2020-06-28 15:45:53 EDT

Mark:

US Serial Number: 78798428

Application Filing Date: Jan. 24, 2006

US Registration Number: 3263625

Registration Date: Jul. 10, 2007

Register: Supplemental

Mark Type: Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Amended to Principal Register: No

Date Amended to Current Register: Mar. 26, 2007

Status: The registration has been renewed.

Status Date: Nov. 29, 2017

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the color magenta alone, which is the approximate equivalent of Pantone Matching System, Rhodamine Red U, used on the background of product displays and advertisements found in a store. The matter shown in dotted lines serves to show positioning of the mark and is not part of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) magenta is/are claimed as a feature of the mark.

Design Search Code(s): 26.09.21 - Squares that are completely or partially shaded
29.04.01 - Red or pink (single color used on packaging, labels or signs)

Related Properties Information

Claimed Ownership of US Registrations: 3007240, 3034207 and others

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Telecommunication and information technology services, namely, wireless transmission of voice and data; providing multi-user access to a global communications network; two-way wireless transmission of electronic mail, text and images between mobile telecommunications terminals and computers; voice mail and messaging services; wireless broadcasting of textual content content to mobile telecommunications terminals and computers; providing customized audio playback of musical, spoken word and other auditory content over a telecommunications network

International Class(es): 038 - Primary Class

U.S Class(es): 100, 101, 104

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 18, 2002

Use in Commerce: Jul. 18, 2002

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Deutsche Telekom AG

Owner Address: Friedrich-Ebert-Allee 140
Bonn GERMANY 53113

Legal Entity Type: CORPORATION

State or Country Where Organized: GERMANY

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ross Q. Panko, Esq.

Docket Number: 037496.00236

Attorney Primary Email Address: TMDocket@arentfox.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Ross Q. Panko, Esq.
Arent Fox LLP
1717 K Street, NW
Washington, DISTRICT OF COLUMBIA UNITED STATES 20006-5344

Phone: 2028576000

Fax: 2028576395

Correspondent e-mail: TMDocket@arentfox.com

Correspondent e-mail Authorized: Yes

Domestic Representative

Domestic Representative Name: Ross Q. Panko, Esq.

Phone: 2028576000

Fax: 2028576395

Domestic Representative e-mail: TMDocket@arentfox.com

Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
Nov. 29, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Nov. 29, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	69471
Nov. 29, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69471
Nov. 29, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69471
Nov. 02, 2017	TEAS SECTION 8 & 9 RECEIVED	
Jul. 10, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Sep. 11, 2013	NOTICE OF SUIT	
Jul. 24, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Jul. 24, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED	75461
Jul. 24, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	75461
Jul. 10, 2013	TEAS SECTION 8 RECEIVED	
Apr. 27, 2012	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Apr. 27, 2012	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	

Jul. 10, 2007	REGISTERED-SUPPLEMENTAL REGISTER	
May 02, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
May 02, 2007	ASSIGNED TO LIE	73797
Apr. 12, 2007	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Apr. 12, 2007	EXAMINERS AMENDMENT MAILED	
Apr. 12, 2007	EXAMINER'S AMENDMENT ENTERED	88888
Apr. 12, 2007	EXAMINERS AMENDMENT -WRITTEN	61380
Mar. 27, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Mar. 26, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Mar. 26, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 28, 2006	NON-FINAL ACTION MAILED	
Sep. 27, 2006	NON-FINAL ACTION WRITTEN	61380
Jul. 13, 2006	ASSIGNED TO EXAMINER	61380
Jul. 13, 2006	ASSIGNED TO EXAMINER	76838
May 12, 2006	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	59554
May 12, 2006	TEAS VOLUNTARY AMENDMENT RECEIVED	
Apr. 20, 2006	NOTICE OF DESIGN SEARCH CODE MAILED	
Jan. 31, 2006	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Nov. 29, 2017

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Splunk Inc.

(b) County of Residence of First Listed Plaintiff San Francisco, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Ashok Ramani, Philip T. Sheng
Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, California 94025
(650) 752-20000

DEFENDANTS

Deutsche Telekom AG

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question
(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div> <div>REAL PROPERTY</div> <div>210 Land Condemnation</div> <div>220 Foreclosure</div> <div>230 Rent Lease & Ejectment</div> <div>240 Torts to Land</div> <div>245 Tort Product Liability</div> <div>290 All Other Real Property</div>	<div><div>PERSONAL INJURY</div><div>310 Airplane</div><div>315 Airplane Product Liability</div><div>320 Assault, Libel & Slander</div><div>330 Federal Employers' Liability</div><div>340 Marine</div><div>345 Marine Product Liability</div><div>350 Motor Vehicle</div><div>355 Motor Vehicle Product Liability</div><div>360 Other Personal Injury</div><div>362 Personal Injury -Medical Malpractice</div><div>CIVIL RIGHTS</div><div>440 Other Civil Rights</div><div>441 Voting</div><div>442 Employment</div><div>443 Housing/ Accommodations</div><div>445 Amer. w/Disabilities-- Employment</div><div>446 Amer. w/Disabilities--Other</div><div>448 Education</div><div>PERSONAL INJURY</div><div>365 Personal Injury -- Product Liability</div><div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div><div>368 Asbestos Personal Injury Product Liability</div><div>PERSONAL PROPERTY</div><div>370 Other Fraud</div><div>371 Truth in Lending</div><div>380 Other Personal Property Damage</div><div>385 Property Damage Product Liability</div><div>PRISONER PETITIONS</div><div>HABEAS CORPUS</div><div>463 Alien Detainee</div><div>510 Motions to Vacate Sentence</div><div>530 General</div><div>535 Death Penalty</div><div>OTHER</div><div>540 Mandamus & Other</div><div>550 Civil Rights</div><div>555 Prison Condition</div><div>560 Civil Detainee-- Conditions of Confinement</div></div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div>720 Labor/Management Relations</div> <div>740 Railway Labor Act</div> <div>751 Family and Medical Leave Act</div> <div>790 Other Labor Litigation</div> <div>791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>835 Patent--Abbreviated New Drug Application</div> <div><input checked="" type="checkbox"/> 840 Trademark</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSID Title XVI</div> <div>865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS--Third Party 26 USC § 7609</div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced & Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>485 Telephone Consumer Protection Act</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/ Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation--Transfer

☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Plaintiff seeks declaration of non-infringement of Defendant's trademarks.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND: Declaration of Non-Infringement.

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 06/30/2020

SIGNATURE OF ATTORNEY OF RECORD /s/ Ashok Ramani

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.