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

Proceeding	92063552 91214578
Party	Defendant LeMar X. Lewis
Correspondence Address	LEMAR X LEWIS 878 SUMMITE GREENS BLVD CLERMONT, FL 34711 UNITED STATES lemarlewis@hotmail.com, wsp@NJPLS.com
Submission	Opposition/Response to Motion
Filer's Name	/LeMar Xavier Lewis/
Filer's e-mail	lemarlewis@hotmail.com
Signature	/LeMar Xavier Lewis/
Date	09/02/2016
Attachments	Respondent Motion against Summary Judgement.pdf(3159511 bytes)

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

LeMar Xavier Lewis
Respondent/Applicant

Parent Opposition No. 91214578

Mark: THORO Serial No. 85/956,925

Opposition No. 91226723

Mark: THÖRÖ /Serial No. 86/367,828

LeMans Corporation
Petitioner

Cancellation No. 92063552

Mark: THORO (Stylized)

Reg. No, 3,206,498

Respondents/Applicant: Motion To Deny Summary Judgement

I, LeMar Xavier Lewis owner of Thoro(stylized) Reg. No, 3,206,498

And applicant for "THORO" standard font serial number No. 85/956,925 and Mark: THÖRÖ

Serial No. 86/367,828 would like to respectfully request that the U.S.P.T.O Trial and Appeal

Board Deny "Petitioners" request for 'Summary Judgement' regarding cancellation

No.92063552. The primary reasoning for respondent's request for denial of cancellations are

based on the following reasons.

1. No discovery has yet been submitted in this "Cancellation" proceeding No. 92063552 to validate and defend against Petitioners/Lemans Corp absolutely baseless claims of "Non use", Likelihood of confusion, and most questionably accusations of "Fraud" by Respondent/Applicant LeMar Xavier Lewis. Which makes me ask the questions, what are Petitioners/LeMans Corp. claims based on? The Petitioner (Lemans Corp) **has not** yet proven their far reaching claims that Applicant/Respondent was not using any of the THORO marks at any time during the 10 yr. period I have owned them. "Respondent/Applicant" believes "Petitioners/Lemans Corp" accusations couldn't be further from the truth (which I'm confident upcoming discovery will support). Any "Unverified", Incomplete and inadmissible discovery information from a previous THORO (Standard Font 85,956,925/prior consolidation) opposition be deemed "inadmissible" in this current cancellation proceeding 92063552. This request is based on the ruling by the U.S.P.T.O trial appeal board that the previous submitted discovery (for THORO standard mark 85/956,925) was ruled 'Unverified and Unacceptable" by board standards making that submitted discovery void and incomplete. The most recent ruling by the Board states that the cancellation proceedings will continue and applicant and petitioner are currently in the "Discovery Phase". Applicant has prepared complete, full and "verifiable discovery" for this current cancellation proceeding and will submit to the U.S.P.T.O trial and appeal board in compliance with U.S.P.T.O board's rules and

regulations. Respondent/Applicant reiterates at this moment **NO Valid/current discovery has been submitted by either Respondent or Petitioner in this current cancellation proceeding**, Sanctions were placed on the THORO standard font Serial num 85,956,925 and not Thoro (styled) Reg. Mark number

2. Petitioner/LeMan's Corporation is attempting to use unverified, incomplete, and outdated discovery responses from a previous separate opposition (prior to consolidation) and as a basis for their accusations and claims of "Fraud" (Even though the "unverified discovery" by LeMar Xavier Lewis/Respondent included more than enough information/documentation to support Applicant's claims of "use"}, and against the "likelihood of confusion" and against Petitioners/Lemans Corp.'s accusations. Respondent/Applicant feels that Petitioner/LeMan's Corp is being willfully "blind to the facts" and picking and choosing from that discovery what to believe, and what not to believe that were included in that submission (although unverified). Part of the issue with the previous discovery for THORO (Standard Font 85/956,925) from respondent's perspective was a lack of clarification of whether "Respondents/Applicant" 10yr registered THORO Stylized Mark (Reg.No 3206498) and THORO Standard Mark (85/956,925) **were considered to be the same, or if the THORO Standard Mark and THORO Stylized were considered to be different.** This greatly impacted "Respondents/Applicants" ability to provide complete and relevant discovery information for that previous proceeding. Initial responses to aspects of Petitioners/Lemans Corp discovery request where "This information is not available at this time". I LeMar Xavier Lewis was instructed by the Petitioner and the board that those were not valid responses. "This information Does Not Exist" or "None" was the only acceptable response if the information couldn't be provided whether I had it or not at the time. Petitioner then used that unsubstantiated, unverified, and incomplete information as their entire basis for "Fraud" claims against Respondents/Applicants signature mark (Reg. num. 3,206,498). As stated in previous communication with the board, applicant feels as if the Petitioner/Lemans Corp has no claim and is overreaching the scope of its marks rights, and attempting to twist and contort incomplete, and unverified information to prove and argue its seemingly baseless claims.
3. The petitioner has had 10yrs to bring opposition against LeMar Xavier Lewis and has not. Petitioner/LeMans Corp has made a "business" out of "Bullying" competing products mark no matter how frivolous the claims are, and this proceeding is another example of that. Applicant feels that Petitioner is "Throwing as much as possible and seeing what sticks". The Petitioner/Lemans Corp has been attempting to dictate and essentially undermine U.S.P.T.O board throughout this entire process. If Respondent/Applicant's Mark application passed all the board's criteria, provided specimens (which by board standards qualify as use), marketing was done, and sales were made. All these elements and actions are directly compliant with U.S.P.T.O rules and regulations and constitute use. Once Respondent/Applicant/ LeMar Xavier Lewis is allowed to submit proper discovery for this specific cancellation proceeding num. 92063552 (which the U.S.P.T.O board has already agreed to allow). Applicant is

optimistic and hopeful that he will provide a sound defense against Petitioners frivolous and meritless claims of “Fraud” and” Likelihood of confusion.”

4. LeMar Xavier Lewis Applicant/Respondent for All ‘THORO’ marks where in exceptionally Good faith, and there was NO benefit or reasoning for “Respondent/Applicant attempting to commit fraud in any manner. “Petitioner” has not proven that with any ligament or tangible evidence BECAUSE WE HAVEN’T Submitted Discovery yet in this cancellation proceeding. Acceptable specimens were provided, product was sold and rules were followed by Applicant/Respondent. As previously stated given the extent of time that has passed since original filing, and the over burdensome amount of discovery requested by petitioner, it is reasonable to understand that certain discovery questions (from THORO standard mark) would not be available. Petitioner/Applicant has not proved beyond a reasonable doubt that “Respondent” intentionally and with “ill intent deceived the bored into registration of All 3 “THORO” marks in question. Once again, if Petitioner/Lemans Corp felt this way they had more than a decade to prove and challenge and LeMar Xavier Lewis and Thoro (stylized mark) and chose not to. Ten years later now it’s a problem or concern of theirs?

Conclusion

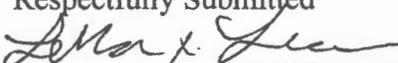
LeMar Xavier Lewis/Respondent filed and has been actively using and operating his Thoro brand non-stop since inception to the best of his ability. The ‘Thoro’ website www.Thorowear.com/www.thorosportswear.com was up until the summer of 2016 and have offered products for sale and utilized as a marketing tool. Currently the products can be found at www.storeenvy.com/thorosportswear and can be found under the “Facebook account” www.Facebook.com/Thorosportswear. Petitioner/Lemans Corp. has gone through exceptional lengths to misdirect and mislead not only applicant, but the U.S.P.T.O Trial and Appeal board itself. Applicant/LeMar Xavier Lewis feels that petitioner/Lemans Corp ‘badgering’ of Applicant/Respondent and the board for “a Motion for Summary Judgement” is rooted in the Petitioners/Lemans Corp being fully aware that Applicant/LeMar Xavier Lewis’s forthcoming discovery in cancellation proceeding No.92063552 will defend against all “Petitioners/Lemans Corp” accusations/complaints. (please separate future discovery from previous “unverified discovery” that was served prior to consolidation).

The claim of “2 yrs and no discovery” Applicant/Respondent feels is absurd and misleading. I respectfully ask the board to take note that **three “THORO” marks have been on trial in the 1 ½ year duration**, and there were significant financial constraints for respondent/Applicant LeMar Xavier Lewis during this period as the board is well aware of. This also the reason had issues maintaining working addresses, applicant has to relocate multiple times because of this strain. Paying for attorney's/representation didn't make that any less challenging. These are not meant to be ‘excuses’ but the reality of “Applicants/LeMar Xavier Lewis’s circumstances. ‘Respondent/Applicant finds irony in Petition/Lemans Corp acting as if this proceeding is more of a burden on them, then the Applicant/Respondent when they are the ones perpetuating in my opinion the meritless and baseless claims. All I/Respondent/Applicant expects is the ability to prove my

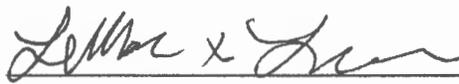
“Thoro” marks position in a fair, reasonable and complete manner. I do respect and appreciate the board's willingness to be understanding and reasonable. We are talking about deciding on the merits of someone's life work here, about job creation, and free enterprise. Respondent/Applicants feels deeply that important decisions such as these shouldn't be made preemptively, and rushed despite Petitioners/Leman Corps. questionable motives and maneuvers. Respondent/Applicant is fully prepared to present his evidence and discovery to support his defense against Petitioners/Lemans Corp unfounded claims of “Fraud” and “Likelihood” of confusion, which Petitioner/LeMans Corp has provided no evidence to support.” Respondent/Applicants “states that more complaints are being made by Petitioner/Lemans Corp regarding how I “Respondent/Applicant” is responding to rules and procedures rather than about the validity and merits of their claims. This leads me to believe this is not about the merits of Petitioner's argument, but about how good at procedure and filing paperwork I am.

Any “unfairness” or “Fraud” Applicant/Respondent feels is being perpetuated by the “Opposer” LeMans Corp/Petitioner and Not The “Applicant/Respondent LeMar Xavier Lewis. In conclusion and as previously stated. I feel this proceeding in all its detail, is not about “Likelihood of confusion”, or “First in use date” or even possible “Fraud”. Respondent/Applicant feels this is about a larger corporation overstating its size, “bullying”, misleading, and convoluting this proceeding while exaggerating the scope and range of marks rights. **Not wanting to compete with a newer smaller company in commerce, but in the courtroom**. The unreasonable request for “Summary Judgement” by petitioner we feel is tied to the fact that **ALL of Petitioner's claims** are baseless, and applicants forthcoming discovery will support Respondent/Applicant's position. I respectfully ask to allow proceedings to continue, and relevant discovery to be provided.

September 2 2016
2nd,

Respectfully Submitted

LeMar Xavier Lewis
878 Summit Greens Blvd
34711, FL 34711

I hereby certify that a true and correct copy of the foregoing **MOTION TO DENY SUMMARY JUDGEMENT** was served via email on this 2nd day of September, 2016 to “Petitioner” to the following address:
Tvold@vwiplaw.com, Pwilliamson@vwiplaw.com



LeMar Xavier Lewis