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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF REGISTRATION NUMBER : 2 105 217

CANCELLATION NUMBER 92041630

FOR THE MARK "420"

REGISTERED ON OCTOBER 14, 1997

JOHN MARVIN ROWLAND

V.

420 GEAR, INC

MOTION FOR SUMMARY JUDGEMENT

John Marvin Rowland d.b.a. 420 eyewear, d.b.a. 420 clothing, d.b.a. 420 skateboards, and d.b.a. 420 snowboards based out of California with a mailing address of 23811 Washington ave. #110 Murrieta CA 92562.

The above identified mark owner is seeking Summary Judgement in the above mentioned cancellation proceedings.

Grounds for motion for Summary Judgement

1. 534.02 Motion for summary Judgement under trademark rule 2.132 (a)

The Plantiff has failed to prosecute his case and offered no Testimony or evidence necessary to justify the Cancellation of the above mentioned Mark.

2. Motion for summar judgement under Trademark rule 2.132 (b)

As a preliminary matter the petition to cancel has no Statutory basis for

07-06-2004

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Cancellation. In so far as the petition to cancel refers to the refusal of petitioner's Trademark application as a basis for cancellation, and in so far as the refusal of registration was based on the likelihood of confusion, for the purpose of this motion is based only on the likelihood of confusion as the only basis for pleading for the cancellation of Registration number 2, 105, 217.

3. John Marvin Rowland is the Federal Registration holder of the Mark 420, for class 09 (U.S. Reg. No. 2,102,893), and for Class 25 (U.S. Reg. No. 2,105,217) for words, letters, and/or Numbers. Mr. John Marvin Rowland has been using the Marks in Commerce since 1993 for his Branded merchandise.

4. The respondent has also served on by counsel for the Opposer a cease and desist letter regarding it's unauthorized use of the mark 420 for class 25 .

By John Marvin Rowland Date 6-25-04

John Marvin Rowland

d.b.a. 420