

ESTTA Tracking number: **ESTTA36038**

Filing date: **06/17/2005**

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

<b>Proceeding</b>	92043516
<b>Party</b>	Defendant Stich, Willi Lorenz Stich, Willi Lorenz 950 Jennings Street Bethlehem, PA 18017
<b>Correspondence Address</b>	SEAN D. JOHNSON QUARLES & BRADY STREICH LANG LLP TWO NORTH CENTRAL AVENUE, RENAISSANCE ONE PHOENIX, AZ 85004-2391 UNITED STATES becky@billlawrence.com
<b>Submission</b>	Motion for Summary Judgment
<b>Filer's Name</b>	Gregory Richardson
<b>Filer's e-mail</b>	gregory@gregoryrichardsonesq.com,becky@billlawrence.com
<b>Signature</b>	/gregoryrichardson/
<b>Date</b>	06/17/2005
<b>Attachments</b>	motionsjfinal.pdf ( 25 pages )



1           2. Registrant also requests that pursuant to Rule 2.127(d)<sup>1</sup>, 37 C.F.R. Section 2.127(d), the  
2 Board suspend this proceeding pending determination of this Motion for Summary Judgment as  
3 of the date of submission of this motion. In the event that the Board denies Applicant's Motion  
4 for Summary Judgment, Applicant hereby requests that the remaining testimony and discovery  
5 periods be reset.

6           3. The Facts and Grounds for Applicant's Motion for Summary Judgment, set forth more  
7 fully in the attached Memorandum of Law in Support of Applicant's Motion for Summary  
8 Judgment submitted herewith, are as follows:

9           4. The Petitioner did not continuously use the Mark in the United States because he fails to  
10 allege facts to show that the Mark was used by dba BILL LAWRENCE PRODUCTS and dba  
11 BILL LAWRENCE GUITAR PICKUPS continuously since the alleged acquisition of the Mark  
12 in 1985.

13           5. The Petitioner abandoned the Mark because he failed to use it for at least 13 years and  
14 fails to allege any facts to show that he intended to revive it.

15           6. The Petitioner fails to allege facts to show that Willi Stich aka Bill Lawrence [Registrant]  
16 is not entitled to the Registration No. 2,303,676 of the Mark BILL LAWRENCE because the  
17 Registrant had a good faith belief in the validity of his ownership and legal use of the Mark as  
18 published.

19           7. The Petitioner fails to allege with particularity any facts to show that the Registrant  
20 committed fraud in obtaining Registration No. 2,303,676.

---

21  
22 <sup>1</sup> 37 CFR 2.127(d), *Motions*. Provides:

23       When any party files a motion to dismiss, or a motion for judgment on the  
24       pleadings, or a motion for summary judgment, or any other motion which is  
25       potentially dispositive of a proceeding, the case will be suspended by  
      the Trademark Trial and Appeal Board with respect to all matters not  
      germane to the motion and no party should file any paper which is not  
      germane to the motion. If the case is not disposed of as a result of the  
      motion, proceedings will be resumed pursuant to an order of the Board  
      when the motion is decided.

1 Dated: June 15, 2005

2  
3 

---

Gregory Richardson  
Attorney for Bill Lawrence



1           3. The Registrant is known in the music industry as Bill Lawrence. (Declaration of Bill  
2 Lawrence).

3           4. The Registrant uses “Bill Lawrence” legally as his name in his everyday business and  
4 personal affairs. (Decl. of Bill Lawrence).

5           5. Starting in 1994, the Registrant used “Bill Lawrence” in extensive advertising and  
6 tradeshows, and has spent over \$400,000.00 in support of his business use of “Bill Lawrence.”  
7 (Decl. of Bill Lawrence).

8           6. On May 26, 1998 the Registrant Willi Stich aka Bill Lawrence filed an application Serial  
9 Number 75490657 for the mark “BILL LAWRENCE”.

10          7. On October 28, 1998 the Petitioner filed for dba BILL LAWRENCE GUITAR PICKUPS  
11 for the County of San Diego, California on October 28, 1998. (FBN 1998027533, Exhibit 1).  
12 However, the Recorder for the County of San Diego, California has no record of this becoming a  
13 valid dba. (Exhibit 5 supplied in separate file).

14          8. On December 28, 1999 the Mark “BILL LAWRENCE” was registered to Willi Stich aka  
15 Bill Lawrence on the Principal Register [Mark].

16          9. The Recorder for County of San Diego, California has no record of any valid dbas or  
17 fictitious business names for Jzchak Wajcman from 1/01/90 through 12/31/95 or from 1/01/95  
18 through 12/31/99. (Exhibit 5).

19          10. On June 11, 2003 the Petitioner filed dba for the business names BILL LAWRENCE  
20 GUITAR PICKUPS and BILL LAWRENCE PRODUCTS for the County of San Diego,  
21 California (FBN 2003019052 Details, Exhibit 2, 3).

22          11. On May 27, 2004 the Petitioner filed for the Mark “BILL LAWRENCE” under Serial  
23 Number 76594437. The four specimens provided have no dates indicated or dated material.

24          12. On June 24, 2004, the Petitioner filed the pending Petition for Cancellation.  
25

1 13. During 1996, the Registrant started using the web site <http://www.billlawrence.com>.  
2 Registrant also owns the domain name. (Exhibit 4).

3 14. The Petitioner filed the Petition for Cancellation using two dbas: (1) d/b/a BILL  
4 LAWRENCE PRODUCTS and d/b/a BILL LAWRENCE GUITAR PICKUPS. (Petition for  
5 Cancellation, cover page, p. 1).

## 6 7 **II.** 8 **APPLICABLE LAWS**

### 9 **A. The Standard For Granting Summary Judgment**

10 15. Mere allegations are insufficient to carry a petition for cancellation. The Petitioner must  
11 believe that he will be damaged by the registration<sup>2</sup> and set forth his reasons.<sup>3</sup>

12 16. The motion for summary judgment is used to dispose of cases in which "the pleadings,  
13 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
14 any, show that there is no genuine issue as to any material fact and that the moving party is  
15 entitled to judgment as a matter of law." *See Celotex v. Catrett*, 477 U.S. 317, 323, 106 S. Ct.  
16 2548, 2558, 91 L. Ed. 2d 265 (1986). **Fed. R. Civ. P. 56(c)**.

17 17. A party moving for summary judgment has the burden of demonstrating the absence of  
18 any genuine issue of material fact, and that it is entitled to judgment as a matter of law. But the  
19 burden of the moving party may be met by showing "that there is an absence of evidence to  
20 support the nonmoving party's case." The summary judgment may be based on the non-movant's  
21

---

22 <sup>2</sup> 37 **CFR** § 2.111(b) provides:

23 Any person who believes that he, she or it is or will be damaged by a  
24 registration may file a petition, addressed to the Trademark Trial and  
25 Appeal Board, for cancellation of the registration in whole or in part. ...

24 <sup>3</sup> 37 **CFR** § 2.112(a) requires:

25 The petition for cancellation must set forth a short and plain statement  
showing why the petitioner believes he, she or it is or will be damaged  
by the registration, state the grounds for cancellation, and indicate, to  
the best of petitioner's knowledge, the name and address of the current  
owner of the registration.

1 failure to make sufficient showing as to its own case on which it has burden of proof. *See*  
2 *Celotex Corp. v. Catrett, supra.*

3 18. The court must draw any justifiable inferences from the underlying facts as established  
4 in the record in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v.*  
5 *Zenith Radio Corp.*, 475 U.S. 574, 587-88, 106 S. Ct. 1348, 1356-57, 89 L. Ed. 2d 538 (1986).

6 But these inferences must "not be so tenuous as to amount to speculation or conjecture."  
7 *Thompson Everett, Inc. v. National Cable Adver.*, 57 F. 3d 1317, 1323 (4th Cir. 1995).

8  
9 19. When the moving party has carried its burden, the burden then shifts to the non-moving  
10 party to demonstrate that a genuine issue of material fact exists. The non-moving party must  
11 come forward with evidence which shows more than some "metaphysical doubt" that genuine  
12 and material factual issues exist. *Matsushita*, 475 U.S. at 586, 106 S. Ct. at 1356. An issue is  
13 genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving  
14 party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d  
15 202 (1986).

16 20. Substantive law determines which facts are material, i.e., those facts which might affect  
17 the outcome of the case under the governing law. A mere scintilla of evidence presented by the  
18 non-moving party is insufficient to circumvent summary judgment; rather, there must be  
19 evidence upon which a jury might rely. *Id.* at 252, 106 S. Ct. at 2512.

20  
21 21. Nonetheless, in determining whether or not a litigant before the Board has stated a claim  
22 upon which relief can be granted, "we must assume that the facts alleged in the petition are true."  
23 *Stanspec Co. v. American Chain & Cable Co.*, 531 F. 2d 563, 566, 189 USPQ 420, 422 (CCPA  
24 1976) (petition for cancellation of a registered mark).

1 **B. Burden On the Petitioner for Cancellation**

2 22. The Petitioner has filed a Petition for Cancellation<sup>4</sup> of a registered mark. (Petition for  
3 Cancellation, No. 92043516). The Petitioner has the burden of proof of demonstrating that the  
4 Registrant is not entitled to the Mark as a matter of law. The Petitioner may raise any available  
5 statutory ground for cancellation that negates the Registrant’s right to registration. *See Young v.*  
6 *AGB Corp.*, 152 F. 3d 1377, 47 USPQ2d 1752, 1754-55 (Fed. Cir. 1998); *Jewelers Vigilance*  
7 *Committee Inc. v. Ullenberg Corp.*, 823 F. 2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987);  
8 *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F. 2d 1024, 213 USPQ 185, 189 (CCPA 1982).  
9

10 23. In addition to standing, the Petitioner must also plead and later prove one or more  
11 statutory grounds for cancellation. Section 14 has been interpreted as requiring a cancellation  
12 petitioner "to show (1) that it possesses standing to challenge the continued presence on the  
13 register of the subject registration and (2) that there is a valid ground why the registrant is not  
14 entitled under law to maintain the registration." *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.  
15 2d 1024, 1026, 213 USPQ 185, 187 (CCPA 1982).

16 24. The standing requirement is based on the statutory requirement that a cancellation  
17 petitioner must believe that "he is or will be damaged by the registration". *Lipton*, at 1028-29,  
18 213 USPQ at 189; *cf. Jewelers Vigilance Comm.*, 823 F. 2d at 492, 2 USPQ2d at 2023 (noting  
19 that "an opposer's right-or standing-to bring an opposition proceeding flows from" Section 13's  
20 requirement that such a party believes that he would be damaged by the registration).  
21

22  
23 <sup>4</sup> Section 2.112(a) *Contents of petition for cancellation* provides:  
24 The petition to cancel must set forth a short and plain statement showing  
25 why the petitioner believes it is or will be damaged by the registration,  
state the grounds for cancellation, and indicate, to the best of  
petitioner's knowledge, the name and address of the current owner of the  
registration. A duplicate copy of the petition, including exhibits, shall  
be filed with the petition.

1 25. The "valid ground" that must be alleged and ultimately proved by the Petitioner must be  
2 a "statutory ground which negates the appellant's right to the subject registration." *Lipton*, 670 F.  
3 2d at 1030, 213 USPQ at 190 (emphasis added). Although cancellation is most often premised  
4 on the grounds listed in Section 2 of the Lanham Act, other grounds which negate entitlement to  
5 maintain a registration also exist in the Lanham Act. *Lipton*, 670 F.2d at 1031, 213 USPQ at 191  
6 (entertaining a cancellation petition premised on the registrant's abandonment of his mark under  
7 Section 14(3), **15 U.S.C. § 1064(3)** (1994); *Universal Overall Co. v. Stonecutter Mills Corp.*,  
8 379 F. 2d 983, 984-85, 154 USPQ 104, 105 (CCPA 1967) (entertaining an opposition on the  
9 ground that the application contained fraudulent information).

10  
11 **III.**  
12 **THE PETITIONER HAS FAILED TO ALLEGE SUFFICIENT FACTS**  
13 **THAT DEMONSTRATE THAT THE PETITIONER HAS**  
14 **CONTINUOUSLY USED THE MARK "BILL LAWRENCE" IN THE**  
15 **UNITED STATES SINCE ALLEGEDLY ACQUIRING IT IN 1985.**

16 26. The Petitioner alleges, and must now prove, that the "Petitioner has continuously used  
17 the mark BILL LAWRENCE in connection with musical instruments and accessories, namely,  
18 guitar and electronic sound pickup for guitars in the United States since acquiring it from  
19 Degalim, Inc. and Third National Bank." (Petition, para. 4). For example, the Petitioner may  
20 and does allege prior use analogous to trademark or service mark use, e.g. use as a tradename.  
21 *See T.A.B. Systems v. PacTel Teletrac*, 77 F.3d 1372, 37 USPQ2d 1879, 1881 (Fed. Cir. 1996)  
22 (must show that the activities claimed to constitute analogous use have had "substantial impact"  
23 on the purchasing public); *Martahus v. Video Duplication Services Inc.*, 3 F.3d 417, 27 USPQ2d  
24 1846, 1850 (Fed. Cir. 1993) (trade name use); *National Cable Television Association Inc. v.*  
25 *American Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1428 (Fed. Cir. 1991) (trade  
name use).

1 27. The purpose of filing a dba is to allow people to do business under fictitious business  
2 names. California law requires that people doing business under a name different than their own  
3 surname file a fictitious business name in the county where they conduct business.<sup>5</sup> If the  
4 Petitioner has no dba filed for some year, then it is reasonable to infer that he was not doing  
5 business under that name during the period for which there was no dba registration.

6 28. The Petitioner filed the DBAs BILL LAWRENCE PRODUCTS only in 2003 and BILL  
7 LAWRENCE GUITAR PICKUPS only in 1998. (Exhibits 1, 2, and 3). But the lack of valid  
8 DBAs in the name of Jzchak Wajcman from 1/01/90 through 12/31/99 indicates that the  
9 Petitioner actually has no valid DBAs during that time. (Exhibit 5).

10 29. Since the Petitioner alleges DBAs that were registered only starting in 1998, it is  
11 reasonable to infer that the Petitioner did not use the Mark before 1998. Furthermore, the  
12 County Recorder for San Diego County confirms that Jzchak Wajcman had no valid DBA from  
13 1/01/90 through 12/31/99. Hence, it is reasonable to infer that the Petitioner did not use the  
14 Mark in business, let alone do business, until after Registrant's registration of the Mark on  
15 December 28, 1999.

16 30. Assuming that Petitioners allegations are true, even if the Petitioner acquired the mark  
17 BILL LAWRENCE in 1985 (Petition for Cancellation, para. 3), there is a thirteen (13) or fifteen  
18 (15) year gap for which duration the Petitioner has failed to allege any facts that he used the  
19 Mark BILL LAWRENCE in the United States since allegedly acquiring it from Degalim, Inc.  
20 and Third National Bank.

---

21  
22  
23 <sup>5</sup> California **Business and Professions Code**, Section 17910 provides:  
17910. Every person who regularly transacts business in this state  
24 for profit under a fictitious business name shall:  
(a) File a fictitious business name statement in accordance with  
25 this chapter not later than 40 days from the time he commences to  
transact such business; and  
(b) File a new statement in accordance with this chapter on or  
before the date of expiration of the statement on file.

1 31. The Registrant has the burden of showing by a preponderance of the evidence that the  
2 Registrant abandoned the Mark. Under the law in effect during 1985-87, the Registrant  
3 establishes a *prima facie* case of abandonment with proof of nonuse of the Mark for two  
4 consecutive years.<sup>6</sup> Such a *prima facie* case eliminates the Registrant's burden of establishing  
5 the intent element of abandonment as part of the case and creates a rebuttable presumption that  
6 the Petitioner abandoned the mark without intent to resume its use. See *Rivard v. Linville*, 133 F.  
7 3d 1446, 45 USPQ2d 1374, 1376 (Fed Cir. 1998).

8  
9 32. Since the Registrant has demonstrated that the Petitioner has not used the Mark  
10 continuously in the United States for a period of 13 or 15 years after his alleged acquisition, and  
11 because the Petitioner puts forth no facts to overcome the presumption of abandonment, the  
12 Registrant is entitled to dismissal of the Petition for Cancellation as a matter of law through  
13 summary judgment.

14  
15 **IV.**  
16 **THE PETITIONER HAS FAILED TO ALLEGE SUFFICIENT FACTS**  
17 **THAT DEMONSTRATE THAT THE PETITIONER HAS NOT**  
18 **ABANDONED THE MARK "BILL LAWRENCE" SINCE ALLEGEDLY**  
19 **ACQUIRING IT IN 1985.**

20 33. The Petitioner filed the DBAs BILL LAWRENCE PRODUCTS only in 2003 and BILL  
21 LAWRENCE GUITAR PICKUPS only in 1998. (Exhibits 1, 2, and 3). However, the lack of a  
22 valid DBA under the name Jzchak Wajcman further indicates that the Petitioner never legally did  
23 business or used the Mark or had a valid dba. (Exhibit 5).

24 34. Even assuming that the Petitioner acquired the Mark BILL LAWRENCE in 1985, there  
25 is at least a thirteen-fifteen (13-15) year gap during which duration the Petitioner has failed to  
allege any facts that he used the Mark BILL LAWRENCE in the "United States since [allegedly]

---

<sup>6</sup> By amendment effective January 1, 1996 the minimum period of nonuse was extended to three (3) consecutive years to establish a *prima facie* case of abandonment. 108 Stat. 4809, 4981-82 (1994).

1 acquiring it". From this unexplained gap, a reasonable inference can be made that the Petitioner  
2 abandoned the Mark BILL LAWRENCE without any intention of reviving it. A presumption of  
3 abandonment is established and the Registrant has made a *prima facie case* for abandonment.<sup>7</sup>

4 35. This presumption shifts the burden to Petitioner to produce evidence that it either used  
5 the mark during the statutory period or intended to resume use. See *Cerveceria*  
6 *Centroamericana S.A. v. Cerveceria India, Inc.*, 892 F. 2d 1021, 13 USPQ 1307, 312 (Fed. Cir.  
7 1998). The Petitioner has stated no facts to demonstrate that he ever intended to revive the  
8 Mark.

9 36. Furthermore, the Petitioner did not object to the Registrant's application for the mark  
10 that was filed in 1999, i.e. he filed no opposition. (Decl. of Bill Lawrence). The Registrant  
11 performed a diligent search for businesses using the name "Bill Lawrence" before filing his  
12 application, but found none. And the Registrant has been using the domain name  
13 www.billlawrence.com since 1996 without any objections from the Petitioner. (Decl. of Bill  
14 Lawrence).

15 37. It is reasonable to infer from the lack of objections by the Petitioner to any of the above-  
16 listed activities that the Petitioner had no intention of reviving the Mark after his abandonment.  
17 Accordingly, the Registrant is entitled to judgment as a matter of law that the Petitioner has  
18 abandoned the mark BILL LAWRENCE and this Petition for Cancellation must be dismissed  
19 through summary judgment.

---

21  
22 <sup>7</sup> 15 USC Section 1127(1) provides:

23 A mark shall be deemed to be "abandoned" if either of the following  
occurs:

24 (1) When its use has been discontinued with intent not to resume such  
25 use. Intent not to resume may be inferred from circumstances. Nonuse for  
3 consecutive years shall be *prima facie* evidence of abandonment. "Use"  
of a mark means the *bona fide* use of such mark made in the ordinary  
course of trade, and not made merely to reserve a right in a mark.

1 38. Since the Petitioner has failed to set forth any facts to rebut the presumption that he  
2 abandoned the mark BILL LAWRENCE for thirteen (13) years from 1985 until 1998, or for  
3 fifteen years (15) from 1985 until 2000, the Registrant is entitled to judgment as a matter of law  
4 that the Petitioner has not “continuously used the mark BILL LAWRENCE ”. Hence, this  
5 Petition for Cancellation must be dismissed and summary judgment granted.

6  
7 **V.**  
8 **THE PETITIONER HAS FAILED TO ALLEGE FACTS SUFFICIENT TO**  
9 **OVERCOME THE PRESUMPTION OF THE VALIDITY OF THE**  
10 **RIGHTFUL OWNERSHIP OF THE REGISTRANT BASED ON**  
11 **REGISTRATION NO. 2,303,676.**

12 39. The Petitioner alleges that the Registrant “is not and was not, at the time of the filing of  
13 his application for registration, the rightful owner of the registered mark.” (Petitioner for  
14 Cancellation, para. 13). However, even assuming all of the facts alleged by the Petitioner to be  
15 true, the Petitioner has failed to show that the Registrant had not by 1999 acquired rights to the  
16 mark by the time of the application for and registration of the Mark. (Registration No.  
17 2,303,676; Decl. of Bill Lawrence).

18 40. A registration “shifts the burden of proof from the” Registrant to the Petitioner, who  
19 must introduce sufficient evidence to rebut the presumption of the right of the Registrant to use  
20 the Mark. *Vuitton et Fils S.A. v. J. Yound Enters., Inc.*, 644 F. 2d 769, 775 (9<sup>th</sup> Cir. 1981).<sup>8</sup>  
21 Assuming that Petitioners allegations are true, he acquired the mark BILL LAWRENCE in 1985.  
22 (Petition for Cancellation, para. 3). Although the Petitioner filed the dba BILL LAWRENCE  
23 PRODUCTS only in 2003 and dba BILL LAWRENCE GUITAR PICKUPS only in 1998, there

---

24 <sup>8</sup> The Lanham Act Section 33(a), 15 **U.S.C.** Section 1115(a), provides:  
25 [a]ny registration . . . owned by a party to an action shall be  
admissible in evidence and shall be prima facie evidence of the validity  
of the registered mark . . .” Section 1115(a) applies to “contestable”  
registrations which have not yet been in continuous use for five years  
after the date of registration.

1 is no evidence of valid dbas from 1/01/90 through 12/31/99. (Exhibits 1, 2, 3, and 5). It is a  
2 reasonable inference from this gap that Petitioner did not use the Mark for over thirteen (13) or  
3 fifteen (15) years.

4 41. Even if the Petitioner owned the Mark in 1985 as alleged, he abandoned the mark for a  
5 period of thirteen (13) years or fifteen (15) years, after which all of his rights to the mark were  
6 extinguished. Hence, the Registrant was entitled to use the Mark and he lawfully obtained  
7 registration on the principal registry.

8 42. Furthermore, the Registrant used the Mark BILL LAWRENCE in business throughout  
9 the 1990s and new century. However, the Petitioner did not even object to the Registrant's  
10 application for the Mark after it was published for opposition in 1999. Since the Petitioner is  
11 charged with statutory knowledge of registrations, it is a reasonable inference from the  
12 Petitioner's failure to file an opposition that he did not object to Registrant's use and registration  
13 of the same mark BILL LAWRENCE.

14 43. The Registrant used the Mark BILL LAWRENCE in substantial advertising starting in  
15 1994. He used the domain name www.billlawrence.com since 1996. The music public knows  
16 that the Registrant is Bill Lawrence, and that Bill Lawrence refers to a living person. And the  
17 registrant uses "Bill Lawrence" in his everyday personal and business affairs, e.g. business cards,  
18 business name, and business license. (Decl. of Bill Lawrence).

19 44. In addition, the Petitioner's specimens provided in his own application for the Mark  
20 contain no dates of usage, since the specimens are not dated. (Application Serial No.  
21 76/594,437). Hence, the Petitioner has failed to demonstrate any facts could overcome the  
22 presumption of the validity of Registration No. 2,303,676.

23 45. The Registrant is presumed to be the rightful owners of the registered Mark, since the  
24 Registrant used the mark in commerce and successfully applied for registration on the principal  
25 registry. In addition, the Petitioner lost all rights he had, if any, in the Mark through

1 abandonment. Accordingly, the Registrant is entitled to judgment as a matter of law that  
2 Registration No. 2,303,676 is valid, and the Petition for Cancellation must be dismissed through  
3 summary judgment.

4  
5 **VI.**  
6 **THE PETITIONER HAS FAILED TO ALLEGE ANY FACTS TO SHOW**  
7 **THAT REGISTRANT FRAUDULENTLY OBTAINED REGISTRATION**  
8 **NO. 2,303,676 FOR BILL LAWRENCE.**

9 46. The Petitioner alleges, and must now prove, that the “Registrant has fraudulently  
10 obtained Registration No. 2,303,676 which Petitioner now seeks to cancel.” (Petition, para. 14).  
11 Allegations of fraud must be pled with particularity. A mere allegation of fraud will not survive  
12 a motion for judgment on the pleadings or a motion for summary judgment without supporting  
13 facts.

14 47. Fraud must be “proven to the hilt” by clear and convincing evidence. Fraud allegations  
15 will not lie if the allegedly fraudulent statement was made with a reasonable and honest belief  
16 that it was true. *See, e.g., Woodstock’s Enterprises Inc. (California) v. Woodstock’s Enterprises*  
17 *Inc. (Oregon)*, 43 USPQ2d 1440, 1443 (TTAB 1997). Hence, the Petitioner must show that the  
18 Registrant had no reasonable basis for believing that he was the rightful owner of the Mark  
19 registered.

20 48. The Registrant used the Mark BILL LAWRENCE in substantial advertising starting in  
21 1994. He used the domain name [www.billlawrence.com](http://www.billlawrence.com) since 1996. The music public knows  
22 that the Registrant is Bill Lawrence, and that Bill Lawrence refers to a living person. And the  
23 registrant uses “Bill Lawrence” in his everyday personal and business affairs, e.g. business card,  
24 business name, and business license. The Registrant had a good faith belief in the validity of his  
25 ownership of the Mark BILL LAWRENCE. (Decl. of Bill Lawrence).

1 49. Based on the absence of public or business use of the Mark BILL LAWRENCE by the  
2 Petitioner since 1985, the lack of a valid DBAs as alleged by the Petitioner, and the Registrant's  
3 own reputation as "Bill Lawrence", the Registrant had a good faith belief in his right to use the  
4 Mark. (Decl. of Bill Lawrence).

5 50. Accordingly, the Registrant is entitled to judgment as a matter of law that he did not  
6 fraudulently obtain "Registration No. 2,303,676 which Petitioner now seeks to cancel" and the  
7 Petition For Cancellation must be dismissed by summary judgment.

8  
9 **VII.**  
10 **CONCLUSION**

11 51. For all the foregoing reasons, Registrant respectfully requests that its motion for  
12 Summary Judgment be granted and that the Petition for Cancellation filed herein be dismissed  
13 with prejudice.

14 Dated: June 14, 2005

15 \_\_\_\_\_  
16 Gregory Richardson  
17 Attorney for Bill Lawrence  
18  
19  
20  
21  
22  
23  
24  
25





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The above is of my own personal knowledge, except for those things stated under information and belief, and as to those matters I believe them to be true. If called upon to testify as to the above, I could and would so testify. I declare under penalty of perjury under the laws of the State of California that foregoing is true and that this Declaration was executed on June 14, 2005 at Corona, California.

\_\_\_\_\_  
Willi Stich, aka Bill Lawrence

Dated: June 16, 2005

**EXHIBIT 1**

[Back to Previous Page](#)

<b>FBN #1998027533 Details</b>	
	<input type="button" value="Non-Certified"/> <input type="button" value="Add Selections to Cart"/>
<b>Primary Business Name</b>	BILL LAWRENCE GUITAR PICKUPS
<b>Number of Businesses</b>	001
<b>Business Name</b>	BILL LAWRENCE GUITAR PICKUPS
<b>Number of Owners</b>	001
<b>Owner</b>	WARDMAN IZCHAY
<b>Filing Date (CCyy/MM/DD)</b>	19981028
<b>Expiration Date(CCyy/MM/DD)</b>	20031028
<b>Business Conducted By</b>	Individual

18

19

20

21

22

23

24

25

**EXHIBIT 2**

[Back to Previous Page](#)

<b>FBN #2003019052 Details</b>	<input type="text"/>	Add <u>S</u> elections to Cart
<b>Primary Business Name</b>	BILL LAWRENCE GUITAR PICKUPS	
<b>Number of Businesses</b>	002	
<b>Business Name</b>	BILL LAWRENCE GUITAR PICKUPS	
<b>Business Name</b>	BILL LAWRENCE PRODUCTS	
<b>Number of Owners</b>	001	
<b>Owner</b>	WAJICMAN,IZCHAK	
<b>Filing Date (CCyy/MM/DD)</b>	20030611	
<b>Expiration Date(CCyy/MM/DD)</b>	20080611	
<b>Business Conducted By</b>	Individual	

1 **EXHIBIT 3**

2 [Back to Previous Page](#)

3 **FBN #2003019052 Details**  Add Selections to Cart

4 <b>Primary Business Name</b>	BILL LAWRENCE GUITAR PICKUPS
5 <b>Number of Businesses</b>	002
6 <b>Business Name</b>	BILL LAWRENCE GUITAR PICKUPS
7 <b>Business Name</b>	BILL LAWRENCE PRODUCTS
8 <b>Number of Owners</b>	001
9 <b>Owner</b>	WAJCMAN,IZCHAK
10 <b>Filing Date (CCyy/MM/DD)</b>	20030611
11 <b>Expiration Date(CCyy/MM/DD)</b>	20080611
12 <b>Business Conducted By</b>	Individual
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

**EXHIBIT 4**

Billlawrence.com	
<a href="#">Certified Offer Service</a> - Make an offer on this domain <a href="#">Backorder</a> - Try to get this name when it becomes available <a href="#">Private Registration</a> - Make personal information for this domain private <a href="#">SSL Certificates</a> - Make this site secure <a href="#">Site Confirm Seals</a> - Become a trusted Web Site	
<b>Registrant:</b>	<a href="#">Make this info private</a>
William Lawrence Design Corporation	
1785 Pomona Road	
Corona, CA 92880-7600	
US	
Phone: 909-371-1494	
Fax: 909-371-9191	
<b>Domain Name:</b> BILLLAWRENCE.COM	
<b>Administrative Contact , Technical Contact :</b>	
Hostmaster, DNS	
Host@UEC.NET	
PO Box 126	
Ringoos, NJ 08551	
US	
Phone: 609-466-8101	
Fax: 609-466-8160	
<b>Record expires on</b> 26-Jul-2006	
<b>Record created on</b> 27-Jul-1996	
<b>Database last updated on</b> 07-Jul-2004	
<b>Domain servers in listed order:</b>	<a href="#">Manage DNS</a>
NS1.UECOM.COM	65.246.136.2
AUTH51.NS.UU.NET	198.6.1.162
NS2.UECOM.COM	65.246.136.22
AUTH101.NS.UU.NET	198.6.1.210
<a href="#">Show underlying registry data for this record</a>	
<b>Current Registrar:</b>	NETWORK SOLUTIONS, LLC.
<b>IP Address:</b>	65.246.136.215 (ARIN & RIPE IP search)
<b>IP Location:</b>	US(UNITED STATES)-NEW JERSEY-RINGOOS
<b>Record Type:</b>	Domain Name
<b>Server Type:</b>	Apache 1
<b>Lock Status:</b>	REGISTRAR-LOCK
<b>Web Site Status:</b>	Active
<b>DMOZ</b>	1 listings
<b>Y! Directory:</b>	<a href="#">See listings</a>
<b>Secure:</b>	No
<b>E-commerce:</b>	Yes
<b>Traffic Ranking:</b>	3
<b>Data as of:</b>	25-May-2004

By: Patricia Hernandez  
Deputy

*Branch Offices Available To Serve You*

**CHULA VISTA**  
314 "F" Street, Suite 200  
Chula Vista, CA 91910-2646

**EL CAJON**  
198 West Main Street, Suite 101  
El Cajon, CA 92020-3316

**KEARNY MESA**  
5473 Kearny Villa Road, 3rd Floor  
San Diego, CA 92123-1142

**SAN MARCOS**  
334 Via Vera Cruz, Suite 150  
San Marcos, CA 92069-2638

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of REGISTRANT'S MOTION FOR SUMMARY  
3 JUDGMENT ON THE PETITION FOR CANCELLATION on the following attorney of record  
4 for Petitioner, by depositing same with the United States Postal Service on  
5 this 17th Day of June, 2005, addressed as follows:

6 Jay S. Kopelowitz  
7 Kopelowitz & Associates  
8 12702 Via Cortina, Suite 700  
9 Del Mar, California 92014  
10 Attorney for Petitioner

11 \_\_\_\_\_  
12 Gregory Richardson  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25