

ESTTA Tracking number: **ESTTA105796**

Filing date: **10/24/2006**

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

Proceeding	92045147
Party	Defendant Gay & Lesbian Yellow Pages, Inc. Gay & Lesbian Yellow Pages, Inc. Ste. 480 4200 Montrose Blvd. Houston, TX 77006
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Submission	Opposition/Response to Motion
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Date	10/24/2006
Attachments	2178-1 Opp to Mtn for Amended Petition.GAYYELLOWPAGES.pdf ( 4 pages ) (56774 bytes )

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

In the Matter of Trademark Registration No. 2,119,139  
Registered on: December 9, 1997

METRO Q,	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92045147
	§	
GAY & LESBIAN YELLOW PAGES, INC.,	§	
	§	
Registrant.	§	

**REGISTRANT'S RESPONSE AND OPPOSITION TO PETITIONER'S MOTION FOR  
LEAVE TO FILE FIRST AMENDED PETITION FOR CANCELLATION**

Registrant, GAY & LESBIAN YELLOW PAGES, INC. ("Registrant") hereby requests that  
Petitioner METRO Q's ("Petitioner") Motion for Leave to File First Amended Petition be denied.

In support of its Response and Opposition, Registrant states as follows:

A. Introduction

1. Petitioner filed its initial Petition for Cancellation on November 8, 2005 alleging that Registrant's GAY YELLOW PAGES mark is generic, fraudulently obtained, and abandoned due to a failure to adequately control the quality and nature of the goods.

2. Registrant filed its Answer to the Petition for Cancellation on December 30, 2005 denying each of the above-mentioned claims. Petitioner now seeks leave to file a First Amended Petition for Cancellation.

B. Argument

3. The TTAB may deny leave to amend pleadings if the amendment is futile, if the amendment is made with dilatory motive, or if the amendment will unduly prejudice the other party's

case. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Registrant contends that the proposed fourth claim propounded by the Petitioner is indeed futile and, if granted, would not withstand a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12 (b)(6). *See id.* Also, the proposed claim has and will prejudice Registrant by causing undue delay and expense. *See id.*

4. For Petitioner to prevail on a motion to dismiss for failure to state a claim, Petitioner must show for each claim 1) that it possesses standing to maintain the proceeding and 2) a valid ground exists for cancelling the subject registration. *See* TBMP § 309.03(a)(2). Each of these elements must be stated simply, concisely and directly, including enough detail to give the Registrant fair notice of the basis for each claim. *Id.*

5. Petitioner lacks standing to maintain the proceeding since Petitioner's proposed First Amended Petition fails to give a simple, concise and direct statement of how it would be damaged by the registration. *See id.* Instead, the proposed Petition simply makes a conclusory statement that "it is being damaged by Registration No. 2,119,139." *See* Petitioner's First Amended Petition for Cancellation.

6. The fourth ground of the proposed First Amended Petition for Cancellation is not a valid ground. *See id.* Registrant has no duty to monitor the marketplace, and in any case, Registrant would do so if it felt a business was directly competing against its telephone directories or related advertising services. Also, "fair notice" of the basis for the claim is lacking since supporting details for the ground are merely conclusory. *See McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 48 (TTAB 1985) (petitioner's Section 2(a) allegations were merely conclusory and unsupported by factual averments).

7. The fourth ground of the proposed First Amended Petition for Cancellation is cumulative since Petitioner made a similar abandonment claim in the third ground of the Original

Petition for Cancellation. Therefore, allowance for Petitioner to file its First Amended Petition for Cancellation would prejudice Registrant by delaying the resolution of this proceeding and increasing the time and expenses of defending this case. *See Foman*, 371 U.S. at 182.

C. Conclusion

8. Due to a lack of standing, a conclusory abandonment claim, and lack of a proper ground for abandonment, Petitioner's Motion for Leave to File First Amended Petition is futile. *See id.* Also, the "new" claim in the First Amended Petition for Cancellation is cumulative, and would prejudice Registrant if it is allowed with delay and expense. *See id.* Therefore, Registrant respectfully requests that Petitioner's Motion for Leave to File First Amended Petition for Cancellation be denied in its entirety.

Respectfully Submitted,

October 24, 2006  
Date

/s/2178-1/  
John S. Egbert  
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**CERTIFICATE OF SERVICE**

This is to certify that on this 24th day of October, 2006, a true and correct copy of the foregoing document is being sent by regular mail to the following attorney of record for the

Petitioner:

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