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

Proceeding	92045274
Party	Plaintiff Deborah Stoller
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF
Trademark Registration No. 2,596,818, Issued July 23, 2002

DEBORAH STOLLER	:	
Petitioner,	:	
	:	
v.	:	**Cancellation No. 92045274**
	:	
SEW FAST/SEW EASY, INC.	:	
	:	
Respondent	:	

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION
TO PETITIONER'S MOTION FOR LEAVE TO AMEND THE PETITION TO CANCEL

Petitioner requests that the Board consider this reply to the *Respondent's Opposition to Petitioners Motion for Leave to Amend the Petition to Cancel*. Petitioner believes that this reply is necessary to address misrepresentations made by the Respondent and to clarify how the discovery responses submitted by Respondent have provided additional grounds for the relief requested by Petitioner.

Respondent's claim that the Amended Petition to Cancel has been filed for the purpose of harassing the Respondent is disingenuous. A key reason the cancellation action was filed was to respond to Respondent's June 21, 2005 letter demanding that Petitioner discontinue the use of STITCH 'N BITCH on her website. In view of the widespread and long standing use of this wording for decades by knitting and sewing groups, and numerous third party uses of STITCH AND BITCH to describe both real and virtual get togethers and discussion forums for knitters and sewers, Petitioner believes that the cease and desist was not warranted. Petitioner seeks to protect her right to use this wording both in its in its traditional descriptive sense and in whatever other

manners she may choose.

Respondent's lengthy "Statement of Facts," is biased and contains nothing relevant to the issues at hand. Respondent's attempt to paint a picture of a small business owner being "harassed" by this proceeding belies the fact that Respondent has used her registration, and legal resources, as a basis for shutting down many small Internet groups of knitters and sewers, and has stifled many more from making any written reference to their friendly non-commercial stitch and bitch gatherings. Suffice it to say, Petitioner has a different view of what has transpired between the parties to date.

In addition, Respondent's Argument does not show any real prejudice to Respondent other than to suggest that Respondent will have to defend. In this regard, the Respondent's suggestion that Petitioner somehow has more resources than Respondent in this proceeding, is both irrelevant and merely speculation on the part of Respondent. Unfortunately, the proceeding is expensive for both parties, one an individual, the other a small business.

Applicant stresses that the *Trek Bicycle* case cited by Respondent involved an amendment which was filed eight months after the initial Notice of Opposition. In this case the Motion to Amend the Petition to Cancel was filed only slightly more than three months after the Petition to Cancel, and only 20 days after Petitioner received Respondent's discovery responses. Petitioner notes that Respondent was afforded an extension of time to submit the responses. Thus, had the responses been provided earlier, so too would the Motion for leave to amend the pleadings.

At any rate, as the discovery period remains open with more than three months to go, the timing of Petitioner's Motion for Leave to Amend should not create any prejudice to Respondent.

Rule 15(a) of the Federal Rules of Civil Procedure requires that leave to amend a pleading

be freely granted when justice so requires. In this case, justice requires that the proceeding be resolved on the merits with a full and fair hearing of all issues relevant to the continued registration of Respondent's mark.

Further, Petitioner submits that the Amended Petition to Cancel should be accepted because the evidence on which Petitioner has based its new allegations came out of Respondent's discovery responses, and therefore was not available to Petitioner at the time the original Petition to Cancel was filed.

The new grounds for cancellation which were added to the Petition to Cancel essentially appear in Paragraphs 19 through 56 of the Amended Petition to Cancel. The additional grounds are based on Petitioner's belief that Respondent was not using the mark on the specific services enumerated in the application either on the dates claimed in the application or on the date on which the application was filed. Prior to filing the Amended Petition to Cancel, Petitioner was aware of some uses of STITCH & BITCH CAFÉ by Respondent, however, absent Respondent's discovery responses, Petitioner was not able to conclude whether or not Respondent had ever made any other uses of this wording, or to determine the particular dates of use. For example, although Petitioner located the use of the STITCH &BITCH CAFÉ as the title of a guest book, without discovery, Petitioner could not conclude that Respondent had never made broader use of this wording for a chat room on another web site, or that Respondent had never offered sewing instruction using STITCH & BITCH CAFÉ. Thus, the Way Back Machine alone was not a sufficient resource through which to affirmatively conclude that Respondent had not made the uses claimed in the application.

As Petitioner was not able to locate anything showing the use of STITCH & BITCH CAFÉ

in the manner alleged in Respondent's application, Petitioner requested the following documents in its discovery requests:

1. Documents sufficient to support Respondent's claimed dates of first use on its products and services; and

2. Samples showing how Respondent's Marks have been used in connection with each product or service with which use has been claimed.

The documents provided by Respondent are too numerous to attach, and have not been segregated by the request number to which they respond, however, after careful review of the documents, Petitioner has not located any documents which show use of STICH & BITCH CAFÉ in connection with chat rooms or sewing instructions services on the dates alleged by the Respondent. In this regard, although the documents appear to show that sewing instruction was offered by Respondent in 1998, they do not show that STITCH & BITCH CAFÉ was used as mark for these services. Moreover, Petitioner did not locate any uses of STITCH & BITCH CAFÉ on chat rooms, or promotional materials for chat rooms, anywhere in the documents provided.

WHEREFORE, Petitioner requests that the Board allow the Petitioner's Motion for Leave to Amend the Petition to Cancel.

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB
Attorneys for Petitioner

Date: May 1, 2006 **By:** Marie-Anne Mastrovito
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