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

Reg. No. 3,059,276 - é

GERARD L.J.P.A. VROOMEN :

Petitioner, :

v :

Cancellation No. _____

ELEVEE CUSTOM CLOTHING, INC. :

Respondent. :



09-07-2006

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

PETITION TO CANCEL

Petitioner Gerard L.J.P.A. Vroomen, a citizen of the Netherlands, having an address of 171 East Liberty Street, Unit 222, Toronto, Ontario M6K 3P6 Canada ("Petitioner"), believes that he is or will be damaged by the continued registration of Reg. No. 3,059,276— é for "Custom clothing namely; custom suits, slacks, sport coats, tuxedos, overcoats, evening gowns, wedding dresses, and other clothing namely; shirts, shoes, ties, socks, skirts, camisoles, vests, leather and suede jackets, hats, underwear, and belts," registered February 14, 2006 by Elevee Custom Clothing, Inc., a California corporation having a business address at 6930 Valjean Avenue, Van Nuys, California 91406 ("Respondent"), and hereby petitions to cancel the same pursuant to Section 14 of the Trademark Act of 1946 (15 U.S.C. § 1064).

As grounds for this Petition, Petitioner states that:

1. Since at least as early as March 3, 1999, Petitioner has continuously used the é mark in connection with athletic clothing sold throughout the United States.
2. On February 6, 2003, Petitioner filed App. Ser. No. 78/211,751 - é for "assembled bicycles; bicycle frames, bicycle kits, parts and fittings for bicycles" in Class 12, claiming use since

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at least as early as January 31, 1999, and “athletic clothing” in Class 25, claiming use since at least as early as March 3, 1999.

3. The application maturing to Respondent’s Reg. No. 3,059,276 — é was filed on an intent-to-use basis on December 24, 2002.

4. Respondent’s Reg. No. 3,059,276 — é issued on February 14, 2006 for “Custom clothing namely; custom suits, slacks, sport coats, tuxedos, overcoats, evening gowns, wedding dresses, and other clothing namely; shirts, shoes, ties, socks, skirts, camisoles, vests, leather and suede jackets, hats, underwear, and belts,” as well as other goods in classes 3, 14 and 18.

5. The Examining Attorney in charge of Petitioner’s App. Ser. No. 78/211,751 - é has cited Respondent’s Reg. No. 3,059,276 — é as a bar to the registration of Petitioner’s mark in connection with its goods in Class 25.

6. Hypothetically, if the Examining Attorney is correct in holding that there is a likelihood of confusion between Petitioner’s é mark for its athletic clothing and Respondent’s é mark for “Custom clothing namely; custom suits, slacks, sport coats, tuxedos, overcoats, evening gowns, wedding dresses, and other clothing namely; shirts, shoes, ties, socks, skirts, camisoles, vests, leather and suede jackets, hats, underwear, and belts,” Petitioner is damaged by the continued registration of Respondent’s mark.

7. On information and belief, prior to the December 24, 2002 filing date of Respondent’s application, Respondent did not use the mark é in the ordinary course of trade in connection with any of the Class 25 goods listed in Reg. No. 3,059,276.

8. On information and belief, prior to the December 24, 2002 filing date of Respondent’s application, Respondent did not use the mark é in the ordinary course of trade in connection with all of the Class 25 goods listed in Reg. No. 3,059,276.

9. On information and belief, prior to March 3, 1999, Respondent did not use the mark é in the ordinary course of trade in connection with any of the Class 25 goods listed in Reg. No. 3,059,276.

10. On information and belief, prior to March 3, 1999, Respondent did not use the mark é in the ordinary course of trade in connection with all of the Class 25 goods listed in Reg. No. 3,059,276.

11. The earliest priority date on which Respondent can rely in connection with the Class 25 goods covered by Reg. No. 3,059,276 is December 24, 2002.

12. On November 3, 2005, Respondent filed a Statement of Use in connection with the application that later matured to Reg. No. 3,059,276.

13. On information and belief, the Statement of Use filed by Respondent on November 3, 2005 did not meet the requirements of 37 C.F.R. § 2.86.

14. On information and belief, Respondent made false statements of fact when it executed and filed a Statement of Use in connection with the application that later matured to Reg. No. 3,059,276.

15. On information and belief, Respondent knows that it made false statements of fact when it executed and filed a Statement of Use in connection with the application that later matured to Reg. No. 3,059,276.

16. The Statement of Use and the accompanying specimens filed in connection with the application that later matured to Reg. No. 3,059,276 were material to the registration of the é mark.

For the reasons set forth in the foregoing paragraphs, Petitioner believes that it will be damaged by Reg. No. 3,059,276 — é, and, therefore, files this petition to cancel it.

WHEREFORE, Petitioner requests that this cancellation petition be sustained and that Reg. No. 3,059,276 be cancelled.

A check to cover the \$300.00 government filing fee is enclosed. Should additional fees be required, please charge them to the deposit account of the undersigned counsel, No. 50-0573.

Respectfully submitted,

GERARD L.J.P.A. VROOMEN

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