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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Gander Mountain Company		
Entity	Corporation	Citizenship	Minnesota
Address	180 East Fifth Street Suite 1300 St. Paul, MN 55101 UNITED STATES		

Attorney information	Paul Mussell Dorsey & Whitney LLP 50 South Sixth Street Suite 1500 Minneapolis, MN 55402 UNITED STATES ip.docket@dorsey.com Phone:(612) 492-6853		
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Registration Subject to Cancellation

Registration No	3086200	Registration date	04/25/2006
Registrant	ELM Development, LLC 15660 Ramsey Blvd., N.W. Ramsey, MN 55123 UNITED STATES		
Goods/Services Subject to Cancellation	Class 041. First Use: 2002/09/00 , First Use In Commerce: 2002/09/00 Goods/Services: Entertainment services, namely, production and distribution of a hunting show		

Attachments	7495CancellationPetition.pdf (5 pages)(202869 bytes)
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Signature	/paul mussell/
Name	Paul Mussell
Date	01/16/2007

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

Gander Mountain Company
Petitioner,
v.
ELM Development, LLC
Registrant.

Cancellation No.:
Reg. No.: 3,086,200
Mark: **THE GANDER GUNMEN**
Petitioner's File No.: 7495

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner Gander Mountain Company, a Minnesota corporation, with its principal place of business at 180 East Fifth Street, Suite 1300, St. Paul Minnesota 55101, believes that it is or will be damaged by Registration No. 3,086,200 issued on the Principal Register on April 25, 2006 to ELM Development, LLC ("Registrant") for the mark **THE GANDER GUNMEN** for "entertainment services, namely, production and distribution of a hunting show" in International Class 41 (the "Registration"), and hereby petitions to cancel such registration under the provisions of Title 15 of the U.S. Code. To the best of Petitioner's knowledge, Registrant is the current owner of the Registration and has a principal place of business at 15660 Ramsey Boulevard, N.W. Ramsey, Minnesota 55123.

As grounds for petition, it is alleged that:

1. Petitioner is now, and for many years prior to Registrant's claimed first use date of September 2002 has been, engaged in the marketing, sale, and promotion of retail store services in the field of hunting, fishing and camping equipment and clothing and apparel under the **GANDER MOUNTAIN** mark. Petitioner is one of the nation's largest retailers of firearms,

hunting products, and gunsmithing services. Its **GANDER MOUNTAIN** mark is particularly associated in the mind of consumers with these products and services.

2. Petitioner first began use of the **GANDER MOUNTAIN** mark to identify its retail store and retail mail order services at least as early as 1960, and the mark has been in such use continuously since then.

3. Petitioner is the owner of several U.S. Trademark Registrations for the marks **GANDER MOUNTAIN** and **GANDER MTN.**, including the following:

Reg. No. / Reg. Date	Mark	Goods/Services	First Use
1,335,489 May 14, 1985	GANDER MOUNTAIN	<u>Class 16</u> : Outdoor Sportman's Supplies Catalogues <u>Class 42</u> : Retail Mail Order Services in the Field of Outdoor Sportman's Supplies; Retail Store Services Specializing in Outdoor Sportsman's Supplies	Feb. 7, 1960
1,927,194 Oct. 17, 1995	GANDER MOUNTAIN	<u>Class 25</u> : Footwear and Clothing, Namely Shirts, Coats, Jackets, Vests, Sweaters, Pants, Socks, Caps and Hats	July 31, 1992
2,564,297 April 23, 2002	GANDER MOUNTAIN	<u>Class 9</u> : Rifle Scopes <u>Class 13</u> : Rifle Cases, Pistol Cases, and Gun Cases <u>Class 16</u> : Playing Cards <u>Class 21</u> : Mugs <u>Class 28</u> : Deer Hunting Decoys <u>Class 30</u> : Plastic Cigarette Lighters <u>Class 34</u> : Candy	Jan. 7, 2002
2,864,302 July 20, 2004	GANDER MTN.	<u>Class 35</u> : Retail Sporting Goods Store Featuring Outdoor Sportsman's Supplies, Hunting, Fishing and Camping Equipment, Clothing and Apparel, and Motorized and Non-Motorized Vehicles, Namely, Boats, All-Terrain Vehicles (ATVs) and Snowmobiles	Dec. 3, 2002
2,923,383 Feb. 1, 2005	GANDER MTN.	<u>Class 36</u> : Credit Card Services	Aug. 14, 2003

4. On January 2, 2007, Petitioner filed an application for U.S. trademark registration of its mark **GANDER MTN.** for “financial sponsorship of sporting events, television and radio programs, contests, promotions, charitable events, and educational seminars in the field of hunting and fishing” in International Class 36. This application bears the serial number 77/074,174.

5. Petitioner first began use and use in interstate commerce of the **GANDER MOUNTAIN** mark to identify its sponsorship services at least as early as 1998, and the mark has been in such use continuously since then.

6. On January 2, 2007, Petitioner also filed an application for U.S. trademark registration of its mark **GANDER MTN.** for “entertainment in the nature of on-going television programs with outdoor themes” in International Class 41. This application bears the serial number 77/074,177.

7. Petitioner first began use and use in interstate commerce of the **GANDER MTN.** mark to identify its ongoing television programs at least as early as January 3, 2004, and the mark has been in such use continuously since then.

8. **THE GANDER GUNMEN** mark that is the subject of the Registration, when considered in its entirety, is confusingly similar in appearance, sound and commercial impression to Petitioner’s **GANDER MOUNTAIN** and **GANDER MTN.** marks.

9. The services covered by the Registration are so closely related to those goods and services covered in Petitioner’s **GANDER MOUNTAIN** and **GANDER MTN.** registrations that they fall within Petitioner’s zone of natural expansion, as evidenced by Petitioner’s pending applications for nearly identical services as described in Paragraphs 4 through 7. At the time Registrant first used and filed its application for the mark **THE GANDER GUNMEN** mark, it was foreseeable that Petitioner, a leading provider of hunting products and an avid sponsor of

hunting events, promotions, and television and radio programs, would offer its own television programs and that such use falls within the zone of natural expansion.

10. As stated, Petitioner filed its application for registration of the **GANDER MTN.** mark in connection with financial sponsorship of sporting events and radio and television programs based on Petitioner's first use of the mark at least as early as 1998.

11. Petitioner's date of first use of the **GANDER MTN.** mark in connection with its sponsorship activities clearly predates the date of first use claimed in the Registration for the mark **THE GANDERGUNMEN**, namely, September, 2002.

12. In view of the similarity in sound, meaning, and appearance of the respective marks, the prior use of Petitioner's **GANDER MOUNTAIN** and **GANDER MTN.** marks, and the goodwill associated with Petitioner's marks, it is alleged that Registrant's mark **THE GANDERGUNMEN**, when registered throughout the United States without limitation, in association with the production and distribution of a hunting show, so resembles Petitioner's marks as to be likely to cause confusion, to cause mistake, or to deceive a substantial number or persons to believe, mistakenly, that Registrant's services originate from, or are approved by, or are in some way associated with Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

13. On information and belief, Registrant is not entitled to Registration No. 3,086,200 because the term for which registration has been obtained fails to function as a service mark under Trademark Act Sections 23 and 45, 15 U.S.C. §§ 1091 and 1127.

14. Registrant's specimen consists of a screen shot from a DVD showing the mark **THE GANDERGUNMEN** as identifying the title of a single hunting episode, as opposed to identifying a series of episodes or Registrant's production and distribution services. A term that is used only to identify a product sold or used in the performance of a service rather than to identify the service itself does not function as a service mark. Because the term **THE**

GANDERGUNMEN is used to identify the title of a single creative work, it fails to function as a service mark.

15. By virtue of the foregoing, Petitioner believes that it is and will be damaged by the continued existence of the Registration because the Registration is likely to prevent Petitioner's applications for the marks **GANDER MOUNTAIN** and **GANDER MTN.** from achieving registration in the U.S. Patent and Trademark Office and enjoying all statutory benefits attendant thereto. Further, Petitioner is and will be damaged by the continued registration of Registrant's mark because Registrant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act, 15 U.S.C. §§ 1051, et seq.

WHEREFORE, Petitioner prays that said Registration No. 3,086,200 be canceled and that this petition be sustained in favor of Petitioner.

Respectfully submitted,

GANDER MOUNTAIN COMPANY

Date: January 16, 2007

By: /paul mussell/

Elizabeth C. Buckingham, Esq.
Paul W. Mussell, Esq.
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402-1498
Tel: (612) 343-2178
Fax: (612) 340-8856

ATTORNEYS FOR REGISTRANT