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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	Elevee Custom Clothing, Inc.		
Entity	Corporation	Citizenship	California
Address	6930 Valjean Avenue Van Nuys, CA 91406 UNITED STATES		

Attorney information	Patrick Avakian BUCHALTER NEMER, A Professional Corporation 1000 Wilshire Blvd., Suite 1500 Los Angeles, CA 90017-2457 UNITED STATES trademark@buchalter.com, pavakian@buchalter.com, msolmon@buchalter.com Phone:213-891-0700
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Registration Subject to Cancellation

Registration No	2889540	Registration date	09/28/2004
Registrant	DAVIS-PARKER, ALEX 861 GLENWAY #7 INGLEWOOD, CA 90302 UNITED STATES		
Goods/Services Subject to Cancellation	Class 025. First Use: 2001/03/04 , First Use In Commerce: 2002/03/02 Goods/Services: ATHLETIC AND CASUAL CLOTHING FOR MEN, WOMEN AND CHILDREN, NAMELY, SHIRTS, PANTS, JACKETS, WARM-UP SUITS, SWIMWEAR, TENNIS WEAR, SKIRTS, SWEATERS, UNDERWEAR, SOCKS, WRISTBANDS, HATS, CAPS, VISORS, AND HEADBANDS		

Attachments	ELEVATED GAME - Petition for Cancellation.pdf (4 pages)(318939 bytes)
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Signature	/Matthew Solmon/
Name	Matthew Solmon
Date	07/12/2007

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

In the matter of Trademark Registration Number 2,889,540
For the Mark: **ELEVATED GAME**
Date Registered: September 28, 2004.

ELEVEE CUSTOM CLOTHING, INC.,)	
)	CANCELLATION NO. _____
Petitioner,)	
vs.)	
)	
ALEX DAVIS-PARKER,)	
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Petitioner Elevee Custom Clothing, Inc. (“Petitioner”), an California corporation, with a place of business at 6930 Valjean Avenue, Van Nuys, California, 91406, United States, believes that it will be damaged by Registration No. 2,889,540 on the Principal Register for the captioned mark ELEVATED GAME, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

**COUNT ONE
Abandonment**

1. Petitioner is a corporation organized and existing under the laws of the State of California, with a place of business at 6930 Valjean Avenue, Van Nuys, California, 91406, United States.

2. Upon information and belief, Alex Davis-Parker (“Registrant”) is an individual and a citizen of the United States, with an address at 861 Glenway #7, Inglewood, California, 90302, United States.

3. Upon information and belief, Registrant is the owner of United States Trademark Registration No. 2,889,540 (the “Registration”) for the mark ELEVATED GAME for use on or in connection with “athletic and casual clothing for men, women and children, namely, shirts, pants, jackets, warm-up suits, swimwear, tennis wear, skirts, sweaters, underwear, socks, wristbands, hats, caps, visors, and headbands” in International Class 25, for which goods Registrant claims a date of first use of such mark anywhere on March 4, 2001, and a date of first use of such mark in commerce on March 2, 2002 (the “Registered Mark”).

4. Petitioner is the owner of the United States trademark application Serial No. 77/048,186 (the “Application”) for the mark ELEVATE YOUR GAME for use on or in connection with clothing, namely, suits, jackets, slacks, shirts, sport coats, tuxedos, overcoats, ties, socks, hats and belts; evening gowns, wedding dresses, shoes, skirts and shawls in International Class 25 (the “Petitioner’s Mark”).

5. On January 12, 2007, an Office Action issued in respect of the Application refusing registration of Petitioner’s Mark based upon the Examining Attorney’s assertion that there is a likelihood of confusion between Petitioner’s Mark and the Registered Mark.

6. Although Registrant has obtained a registration for the mark ELEVATED GAME with the United States Patent and Trademark Office (“USPTO”), Petitioner has been unable to find any actual use anywhere and actual use in commerce of the Registered Mark by Registrant.

7. Upon information and belief, Registrant has not used the Registered Mark in commerce for more than the three consecutive years immediately preceding the date of this Petition.

8. Upon information and belief, Registrant intends not to use the Registered Mark in commerce.

9. Registrant has abandoned the Registered Mark and Registration No. 2,889,540.

10. Petitioner will be damaged by the continuance of Registration No. 2,889,540 because said registration is preventing Petitioner from obtaining registration for Petitioner's Mark.

COUNT TWO
Fraud

11. Petitioner re-alleges each and every allegation contained in paragraphs 1-10 as though set forth in full herein.

12. On information and belief, on or about July 21, 2002, Registrant signed and filed with the USPTO a Statement of Use, by which Registrant declared, under penalty of perjury, that Registrant's Mark was in use in commerce on all the goods identified in Registrant's application Serial No. 76/202,501 for the Registered Mark, or the Notice of Allowance for the same application, and that use anywhere commenced on March 4, 2001 and use in commerce commenced on March 2, 2002.

13. On information and belief, when Registrant signed and filed the Statement of Use, Registrant knew that it did not have bona fide use in commerce of Registrant's Mark on all of the goods covered by application Serial No. 76/202,501, or the Notice of Allowance for the same application, and, therefore, that the statements of fact were false.

14. On information and belief, Registrant's misrepresentations to the USPTO were made with the intent to deceive the USPTO to obtain the subject Registration.

15. Registrant's misrepresentations to the USPTO were material to the USPTO's decision to issue the subject Registration and the USPTO would not have issued the subject Registration but for Registrant's misrepresentations.

16. Registrant committed fraud on the USPTO by making the false, willful, and material statements to obtain the subject Registration.

17. Because of Registrant's fraud on the USPTO, the subject Registration is invalid and should be cancelled.

18. Petitioner will be damaged by the continuance of Registration No. 2,889,540 because said registration is preventing Petitioner from obtaining registration for Petitioner's Mark.

WHEREFORE, Petitioner prays that Registration No. 2,889,540 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

The official fee is submitted herewith. Please charge any additional fees necessary in this matter to Deposit Account No. 500977 and direct all correspondence in connection with this opposition to the undersigned.

Respectfully submitted,
BUCHALTER NEMER
A Professional Corporation

Date: July 12, 2007

By: 

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