TTAB

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

78301667

Mailed: March 22, 2008

Cancellation No. 92049061
Registration No. 2905004

Striker 4-2-4 LLC
Suite 4F, 33 Newark Street
Hoboken, NJ 07030

Danner, Inc.

v.

Striker 4-2-4 LLC

James L. Vana
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Veronica P. White, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to registrant. However, the proof of service indicates that petitioner sent that service copy to an attorney for registrant, rather than to registrant. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the registrant's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. **While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record.** In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for registrant, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than registrant. An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system: **http://ttabvue.uspto.gov/ttabvue/**.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the

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USPTO's trademarks page: **http://www.uspto.gov/main/trademarks.htm**. The Board's main webpage (**http://www.uspto.gov/web/offices/dcom/ttab/**) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. *See* Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (*See* Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address:** **http://ttabvue.uspto.gov/ttabvue/**.

Defendant's answer and any other filing made by any party must include proof of service. *See* Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** *See* Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	5/1/08
Deadline for Discovery Conference	5/31/08
Discovery Opens	5/31/08
Initial Disclosures Due	6/30/08
Expert Disclosures Due	10/28/08
Discovery Closes	11/27/08
Plaintiff's Pretrial Disclosures	1/11/09
Plaintiff's 30-day Trial Period Ends	2/25/09
Defendant's Pretrial Disclosures	3/12/09
Defendant's 30-day Trial Period Ends	4/26/09
Plaintiff's Rebuttal Disclosures	5/11/09
Plaintiff's 15-day Rebuttal Period Ends	6/10/09

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. *See* Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. *See* Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at **http://ttabvue.uspto.gov/ttabvue/**. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the

absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. *See* Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. *See* TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. *See* TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. *See* Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing

through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at **http://estta.uspto.gov**.

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA200048**

Filing date: **03/21/2008**

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	Danner, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	17634 NE Airport Way Portland, OR 97230 UNITED STATES		

Attorney information	James L. Vana and Sarah J. Taylor Perkins Coie LLP 1201 Third Avenue Suite 4800 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com Phone:206-359-8000

Registration Subject to Cancellation

Registration No	2905004	Registration date	11/23/2004
Registrant	Striker 4-2-4 LLC Suite 4F 33 Newark Street Hoboken, NJ 07030 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2003/07/00 First Use In Commerce: 2003/07/00 All goods and services in the class are cancelled, namely: t-shirts, tank tops, sweatshirts, sweatpants, shorts and caps

Grounds for Cancellation

Abandonment	Trademark Act section 14

Attachments	FINAL Petition for Cancellation (STRIKER).pdf (4 pages)(188004 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sarah J. Taylor/
Name	Sarah J. Taylor
Date	03/21/2008

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

DANNER, INC., Petitioner, v. STRIKER 4-2-4 LLC Registrant.	Cancellation No.: PETITION FOR CANCELLATION Registration No.: 2905004 Registration Date: November 23, 2004 STRIKER 4-2-4

Danner, Inc. ("Petitioner") believes that it will be damaged by the continued registration of Striker 4-2-4 LLC. ("Registrant") for the mark STRIKER 4-2-4 ("Registrant's Mark") in International Class 25, for use in connection with those goods ("Registrant's Goods") listed in Registration No. 2905004 (the "Registration"), and hereby petitions to cancel the Registration. As grounds for its petition, Petitioner alleges as follows:

I. PARTIES

1. Petitioner is a Wisconsin corporation, having a place of business in Portland, Oregon.
2. On information and belief, Registrant is a New Jersey limited liability company, having a place of business in Newark, New Jersey.

II. PETITIONER'S MARK

3. Petitioner is engaged in the manufacture, sale and distribution of a variety of products in the footwear and apparel field ("Petitioner's Goods") as set forth in Application Serial No. 78800432 ("Petitioner's Application"), under the mark STRIKER ("Petitioner's Mark").

4. Petitioner has a bona fide intent to use Petitioner's Mark in commerce which may be regulated by the U.S. Congress.

5. Petitioner has filed Petitioner's Application to register Petitioner's Mark with Petitioner's Goods. An excerpt from the U.S. Trademark Office's on-line TESS records showing Petitioner's Application is attached.

6. The Trademark Office has refused registration of Petitioner's Mark based on a likelihood of confusion with Registrant's Mark as contained in Registrant's Registration.

III. REGISTRANT'S REGISTRATION

7. The Registration resulted from an application filed on September 17, 2003 (the "Filing Date"). Registrant claims first use of Registrant's Mark with Registrant's Goods in July of 2003.

IV. CLAIMS

ABANDONMENT

8. On information and belief, Registrant has ceased using Registrant's Mark with Registrant's Goods, with no intent to resume use of the Mark.

9. The continued registration of Registrant's Mark would prevent Petitioner from exercising exclusive control over the goodwill and reputation associated with Petitioner's Mark. Therefore, the continued registration of Registrant's Mark would damage and injure Petitioner.

10. Because Registrant's Mark has been abandoned, the Registration should be canceled.

V. REQUEST FOR RELIEF

WHEREFORE, Petitioner requests that Registration No. 2905004 be canceled.

VI. FEES

Please charge Petitioner's deposit account No. 0502278, for the $300.00 fee for this cancellation petition.

DATED: March 21, 2008.

CERTIFICATE OF MAILING

I hereby certify that the attached Petition for Cancellation is being deposited with the United States Postal Service as first class mail on March 21, 2008, in an envelope addressed to: Marc A. Lieberstein, Ostrolenk, Faber, Gerb & Soffen, LLP, 7th Floor, 1180 Avenue of the Americas, New York, NY 10036.

Signature: _____
Printed Name: Linda L. Martin

Respectfully submitted,

PERKINS COIE LLP

By: _____
James L. Vana
Attorney for Opposer
1201 Third Avenue, 48th Floor
Seattle, Washington 98101-3099
TEL: (206) 359-8000

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

STRIKER

Word Mark	STRIKER
Goods and Services	IC 025. US 022 039. G & S: (Based on Use in Commerce) Footwear; (Based on Intent to Use) clothing, namely, jackets, coats, overcoats, rainwear, vests, pants, shorts, jeans, shirts, t-shirts, polo shirts, sweat shirts, fleece tops, underwear, hats, caps, headwear, socks, hosiery, fishing waders, hip boots, and belts; handwear, namely, gloves and mittens; bibs, namely, cloth bibs, and bibs not of cloth or paper. FIRST USE: 20010731. FIRST USE IN COMMERCE: 20010731
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78800432
Filing Date	January 26, 2006
Current Filing Basis	1A;1B
Original Filing Basis	1A;1B
Owner	(APPLICANT) Danner, Inc. CORPORATION WISCONSIN 17634 NE Airport Way Portland OREGON 97230
Attorney of Record	James L. Vana
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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STRIKER 4-2-4 LLC
SUITE 4F
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☐ INSUFFICIENT ADDRESS
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☒ NOT DELIVERABLE AS ADDRESSED
- UNABLE TO FORWARD

☐ OTHER

RTS
RETURN TO SENDER

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