

ESTTA Tracking number: **ESTTA351275**

Filing date: **06/05/2010**

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

Proceeding	92050965
Party	Plaintiff Dallas C. Brown Jr.
Correspondence Address	David H.E. Bursik 401 Hamburg Turnpike, Suite 210 Wayne, NJ 07470 UNITED STATES dheb@bursik.com
Submission	Opposition/Response to Motion
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Date	06/05/2010
Attachments	Brief Of Petitioner In Opposition To Registrant's Motion For Summary Judgment.pdf ( 32 pages )(896976 bytes )

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

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DALLAS C. BROWN, JR.,	:	Cancellation No. 92050965
Petitioner,	:	Registration No. 2791896
v.	:	Registration No. 2701247
	:	Marks: MAJOR TAYLOR
	:	
COURTNEY L. BISHOP,	:	
Registrant.	:	

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**BRIEF OF PETITIONER  
IN OPPOSITION TO  
REGISTRANT'S MOTION FOR SUMMARY JUDGMENT**

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**PRELIMINARY STATEMENT**

Registrant Courtney L. Bishop ("Registrant") filed a motion for summary judgment in this cancellation proceeding No. 92050965 seeking to dismiss the Petitioner's claims on the basis of *res judicata* and collateral estoppel based upon the TTAB dismissal of Cancellation Proceeding No. 92047757. Based upon the facts and authorities noted below, the doctrine of *res judicata* is not applicable because the prior cancellation proceeding never reached the merits of the case. Additionally, based upon the facts and legal authorities noted below, the doctrine of collateral estoppels does not apply because the Petitioners are different individuals and the only issue addressed by the TTAB in the prior cancellation proceeding, the standing of Karen B. Donovan, is not an issue under consideration by the TTAB in the present cancellation proceeding. Accordingly, the Registrant's motion for summary judgment should be denied.

**DESIGNATION OF MATERIALS IN OPPOSITION TO MOTION**

Petitioner hereby designates and relies upon the following materials in opposition to Registrant's motion for summary judgment: (items 2, 3, 4 and 5 are appended hereto)

1. Facts admitted by Registrant in his brief as referenced herein;
2. TTAB January 6, 2009 Decision on Cancellation Proceeding No. 92047757 ;
3. Petition for Cancellation filed in Proceeding No. 92047757 on 7-04-2007 by Karen B. Donovan;
4. Petition for Cancellation filed in Proceeding No. 92050965 on 5-14-2009 by Dallas C. Brown, Jr.
5. Transcript of Dallas C. Brown, Jr. Deposition of November 6, 2009 at Page 9, Lines 15-18; and
6. Brief in opposition to Registrant's motion for summary judgment.

### ***FACTUAL BACKGROUND***

Registrant admits in his Statement of Material Facts Paragraph 1 that the Cancellation No. 92047757 was filed by Karen B. Donovan. See also Cancellation Petition No. 92047757 as part of the official Trademark Office record and file relating to the Major Taylor Trademark Registrations 2791896 and 27011247. The cancellation proceeding No. 92050965 which is the subject of this motion was filed by Dallas C. Brown, Jr. See Cancellation Petition No. 92050965 as part of the official Trademark Office record and file relating to the Major Taylor Trademark Registrations 2791896 and 27011247.

Registrant admits in his Statement of Material Facts Paragraph 1 that Donovan represented the estate of the deceased individual Marshall W. ("Major") Taylor in connection with Cancellation Proceeding No. 92047757. The Petition for Proceeding No. 92047757 at Paragraph 1 specifically states that Donovan was representing the estate of Major Taylor.

Registrant further admits in his Statement of Material Facts Paragraph 2 that the TTAB dismissed the 92047757 cancellation proceeding on the grounds that Donovan lacked standing. Accordingly, the TTAB did not reach the merits of the underlying claims.

***ARGUMENT***

***POINT ONE***

***RES JUDICATA IS NOT APPLICABLE***

In order for the doctrine of *res judicata* to be applicable, the parties in both proceedings must be identical or in privity. See Test Masters Educational Services, Inc. v. Singh, 428 F.3rd 559, 571(5th Cir. 2005). Registrant Bishop admits, as noted above, that the prior cancellation proceeding was brought by Karen Donovan and she represented the estate of Major Taylor. The present cancellation proceeding is brought by Dallas C. Brown, Jr.

Additionally, in order for the doctrine of *res judicata* to be applicable, it is a requirement that the prior proceeding be concluded by a final judgment on the merits. See Test Masters Educational Services, Inc. v. Singh, 428 F.3rd 559, 571(5th Cir. 2005). Standing is a threshold question that must be resolved prior to proceeding to the merits of the case. See L.A. County Bar Ass'n v. Eu, 979 F.2d 697, 700 (9th Cir. 1992); Warth v. Seldin, 422 U.S. 490, 517-518 (1975). Registrant Bishop admits that the prior cancellation proceeding was terminated by a dismissal for lack of standing and the merits of the claims were never considered.

A dismissal based on a lack of standing does not support application of the doctrine of *res judicata* in a subsequent proceeding. As the U.S. Supreme Court noted in Whitmore v. Arkansas, 495 U.S. 149, 154 (1990), before a court can consider the merits of a legal claim the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue. The Federal Circuit Court noted in University of Pittsburgh v. Varian Med.Sys., Inc., 569 F.3d 1328, 1332 (Fed.Cir. 2009) that dismissal for lack of standing cannot bar a subsequent action on the merits by a proper party. In Media Techs Licensing, LLC v. Upper Deck Co., 334 F.3d 1366, 1370(Fed. Cir. 2003), the court noted that a dismissal for lack of standing was not an adjudication on the merits of the claim.

Accordingly, the TTAB's dismissal of the Cancellation Proceeding No. 92047757 filed by Karen B. Donovan on the basis of a lack of standing does not give rise to *res judicata* being applicable to the

Cancellation Proceeding No 92050965 filed subsequently by Dallas C. Brown, Jr. Registrant has failed to cite a single instance in his brief where *res judicata* was applied after a prior dismissal based upon a lack of standing. Registrant's motion for summary judgment should be denied.

**POINT TWO**

**COLLATERAL ESTOPPEL IS NOT APPLICABLE**

The Registrant's statement of the law of collateral estoppel confirms why this doctrine is not applicable to the cancellation proceeding presently before the Board. As noted by the Registrant in his brief at Page 6, collateral estoppel does not apply to an issue in the present proceeding unless the identical issue was previously litigated and adjudged in the prior proceeding. See Mother's Restaurant Inc. v. Mama's Pizza, Inc., 723 F.2d 1566, 221 U.S.P.Q. 394, 397(Fed.Cir. 1983); Larami Corp. v. Talk to Me Programs, Inc., 36 U.S.P.Q.2d 1840, 1843-1844(TTAB 1995). The issue of standing which is relevant to the present cancellation proceeding is the standing of Petitioner Dallas C. Brown, Jr. The issue of standing which was the basis of the prior TTAB dismissal was the standing of Karen B. Donovan. The issues are not identical and collateral estoppel is not applicable.

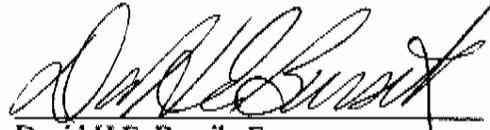
Registrant Bishop argues that Dallas C. Brown, Jr. authorized Karen B. Donovan to file the prior petition for cancellation in Proceeding No. 92047757. The fact that family members gave Karen B. Donovan authority to file a claim does not change the differences in the issues of standing. The issue of whether Karen B. Donovan had standing to file a petition for cancellation is a different issue from the issue of whether Dallas C. Brown, Jr. has standing to file a petition for cancellation. Moreover, the TTAB in its January 6, 2009 Decision at Page 9 (appended hereto and of record in connection with the challenged registrations) stated the "even if we accept that petitioner [Karen B. Donovan] is Major Taylor's great granddaughter, it is possible that there are other descendants with an equal or greater claim". Unlike Karen B. Donovan, Dallas C. Brown, Jr. is the closest living relative to Major Taylor. See Transcript of Dallas C. Brown, Jr. Deposition of November 6, 2009 at Page 9, Lines 15-18 (of record and appended hereto).

Registrant has failed to cite a single instance in his brief where collateral estoppel was applied after a prior dismissal based upon a lack of standing. Registrant's motion for summary judgment should be denied.

**CONCLUSION**

In summary and conclusion, the failure of the Karen B. Donovan cancellation proceeding No. 92047757 to reach the merits of the claims when it was dismissed based on a lack of standing makes the doctrine of *res judicata* inapplicable to the present Dallas C. Brown, Jr. cancellation proceeding No. 92050965. The issue of the standing of Karen B. Donovan which was considered by the TTAB in the former Karen B. Donovan cancellation proceeding does not provide a basis for collateral estoppel in the present cancellation proceeding on the issue of the standing of Dallas C. Brown, Jr. The motion of Registrant Courtney L. Bishop for summary judgment should be denied.

Date: June 5, 2010



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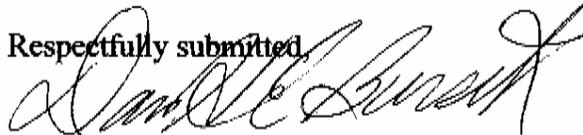
**CERTIFICATE OF SERVICE**

The undersigned counsel for Petitioner hereby certifies that a true copy of the Petitioner's Brief in opposition to the Registrant's motion for summary judgment was served on Registrant today by depositing same, postage fully prepaid, for first class regular U.S. mail delivery of same to counsel for Registrant, and by electronic transmission.

I declare and certify under penalty of perjury that the foregoing is true and correct.

Executed on  
June 5, 2010  
in Wayne, New Jersey

Respectfully submitted,



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**THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.**

Mailed:  
January 6, 2009

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

Karen B. Donovan  
v.  
Courtney L. Bishop

Cancellation No. 92047757

David H. E. Bursik, Esq. for Karen B. Donovan.

Clifford W. Browning of Krieg DeVault LLP for Courtney L. Bishop.

Before Zervas, Bergsman and Wellington, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Karen B. Donovan ("petitioner") has filed a petition to cancel the registered mark MAJOR TAYLOR and design, shown below, for the following services:



1. "Financial and insurance underwriting services pertaining to fund raising associations, foundations, charitable not for profit organizations covering activities

held within the normal scope of operations for these organizations, namely fundraisers," in Class 36;<sup>1</sup> and,

2. "Retail store and/or on-line computerized ordering services featuring bicycles, bicycle equipment, bicycle clothing, shoes and apparel; promoting bicycle sports, bicycle competitions and/or events of others," in Class 35.<sup>2</sup>

As grounds for cancellation, petitioner has alleged that Courtney L. Bishop ("respondent") committed fraud during the prosecution of his applications for registration by attesting that "no other person, firm, corporation, or association has the right to use the above identified mark in commerce," when at the time he signed the declarations, respondent knew that the statement was not true. In addition, petitioner has alleged that respondent's use of his mark is not in lawful commerce. Specifically, petitioner has asserted that the Indiana State Code relating to the right of publicity prohibits the commercial use of the name of a deceased individual without the written consent of the estate of the deceased person; that respondent is an Indiana resident; and that because respondent did not obtain the written consent of Major

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<sup>1</sup> Registration No. 2701247, issued March 25, 2003. Respondent stated that "'Major Taylor' does not represent a living individual."

<sup>2</sup> Registration No. 2791896, issued December 9, 2003. Respondent stated that "[t]he name of the mark does not identify a living individual."

Cancellation No. 92047757

Taylor's estate, respondent's use of his mark is in violation of the Indiana State Code, and therefore the mark is not used in lawful commerce.

Respondent denied the salient allegations in the petition for cancellation.

Evidentiary Issue

During her rebuttal testimony period, petitioner submitted the following evidence:

1. A notice of reliance on the declaration of Lynne Tolman, an employee of the Major Taylor Association, purportedly to authenticate an e-mail from respondent;
2. A notice of reliance on the declaration of Linda Fink, an employee of the Major Taylor Velodrome, regarding respondent's visits to the Major Taylor Velodrome; and,
3. A notice of reliance on the declarations of Dallas C. Brown, purportedly the grandson of Major Taylor, and petitioner, purportedly the great granddaughter of Major Taylor.

In his brief, respondent objected to the above-noted notices of reliance on the grounds that the declarations were improper rebuttal and because respondent did not stipulate to the introduction of testimony by affidavit or declaration.

Trademark Rule 2.123(b), 37 CFR §2.123(b), reads, in pertinent part, as follows:

By written agreement of the parties, the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate in writing what a particular witness would testify to if called, or the facts in the case of any party may be stipulated in writing.

Petitioner has failed to submit a written agreement between the parties establishing that her testimony may be submitted in the form of declarations. Accordingly, respondent's objection to declarations proffered by petitioner is sustained.

Moreover, we agree with respondent that the testimony in the declarations constitutes improper rebuttal. Introducing facts supporting petitioner's standing and respondent's knowledge regarding prior use of the name MAJOR TAYLOR were elements of petitioner's case-in-chief. The only evidence that respondent introduced was selected parts of his discovery deposition which respondent proffered to clarify his use of the name MAJOR TAYLOR, his knowledge of the use of the name by others, and his search for someone to authorize his use of the name "so as to make not misleading what was offered by" petitioner. Trademark Rule 2.120(j)(4), 37 CFR §2.120(j)(4). Simply put, respondent did not submit any evidence that petitioner's declarations rebutted.

In view of the foregoing, respondent's objection to the declarations submitted by notice of reliance during petitioner's rebuttal testimony period is sustained and the declarations have not been considered.

The Record

By operation of Trademark Rule 2.122, 37 CFR §2.122, the record includes the pleadings and the registration files for respondent's mark.<sup>3</sup> The record also includes the following testimony and evidence:

A. Petitioner's Evidence.

1. A notice of reliance on respondent's discovery deposition, with attached exhibits;<sup>4</sup>
2. A notice of reliance on excerpts from a book entitled Major Taylor: The Extraordinary Career of a Champion Bicycle Rider; and,
3. A notice of reliance on respondent's answers to petitioner's interrogatory No. 1.

B. Respondent's Evidence.

As noted above, respondent submitted a notice of reliance on portions of his discovery deposition which he contends should be considered so as to make those portions filed by petitioner complete and not misleading.

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<sup>3</sup> Accordingly, it was unnecessary for petitioner to file a notice of reliance on portions of the registration files and respondent's answer to the petition for cancellation.

<sup>4</sup> In addition to the notice of reliance, petitioner submitted a complete copy of the deposition transcript.

Standing

A threshold question in every *inter partes* case is whether the plaintiff has established her standing. See TBMP § 309.03(b) (2d ed. rev. 2004). In a Board proceeding, the plaintiff is required to show that it has a "real interest," that is, a "direct and personal stake," in the outcome of the proceeding. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). In this regard, petitioner has made the following allegation:

Petitioner is an individual and a resident of the State of Hawaii with a residential address of 51 Betio Place, Honolulu, Hawaii 96818. Petitioner is a great-granddaughter of Marshall W. ("Major") Taylor and is authorized with complete authority and responsibility to act on behalf of the estate of the deceased individual Marshall W. ("Major") Taylor (hereinafter referred to as "Major Taylor"), and to handle all affairs concerning the legacy, persona, memorabilia, records, images, likenesses, endorsements, trademarks, copyrights, and all manner of things relating to the deceased individual Major Taylor.<sup>5</sup>

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<sup>5</sup> Petition for Cancellation, ¶1. As indicated above, respondent has denied the salient allegations of the petition for cancellation. Specifically, respondent stated that he was "without knowledge or information sufficient to form a belief as to the truth of the averments," and therefore he denied the allegations in paragraph No. 1.

This allegation alone does not conclusively establish petitioner's standing because standing is an element of petitioner's case which must be affirmatively proved. *Ritchie v. Simpson*, 50 USPQ2d at 1029; and *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ at 189. Even though respondent had effectively denied the allegation corresponding to petitioner's standing, petitioner did not proffer any direct testimony to establish her standing.<sup>6</sup> Instead, petitioner relied on respondent's discovery deposition. Although, the following excerpts identified in petitioner's notice of reliance are the most relevant to the issue of standing, they make no reference to petitioner:

A6. At the time when Registrant Bishop decided to start using the name Major Taylor, he was aware that Major Taylor had a living descendant. Page 19, Lines 11 to 20.

A7. Registrant Bishop has never had any contact with Major Taylor's descendant Sydney Brown. Page 19, Lines 21 to Page 20, Line 2.

\* \* \*

A12. Prior to submitting an application for registration to the Trademark Office, Registrant Bishop knew that Major Taylor had a daughter named Sydney Brown. Page 33, Lines 1 to 5.

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<sup>6</sup> When the defendant denies an averment in the complaint, the plaintiff is required to submit evidence to prove that fact. See *The Telex Corp. v. The Western Union Telegraph Co.*, 140 USPQ 498 (TTAB 1964) (where applicant's answer denied opposer's claim of title to the pleaded registration and opposer failed to offer evidence, the opposition was dismissed because opposer failed to sustain its burden of proof).

A13. When Registrant Bishop submitted an application for registration of a Major Taylor trademark, he knew that Major Taylor had been a living person and that he had a living descendant. Page 33, Lines 12 to Line 24.<sup>7</sup>

Accordingly, respondent contends that petitioner failed to prove that she has standing to prosecute this cancellation proceeding.<sup>8</sup> Petitioner, relying on respondent's testimony set forth below, argues that respondent admitted that petitioner is the granddaughter of Sydney Brown, the daughter of Major Taylor.<sup>9</sup>

Q. What contact with any other Major Taylor relatives other than Sydney Brown [did you have]?

A. I did not initiate contacts with anyone. However, I did receive an email - - I take that back, I take that back. During the course of my - - during the course of establishing Team Major Taylor [a bicycle racing team], I wanted to do something to kind of give back, and I had sent out a couple of emails to, I want to say - - what was his name? I want to say it's Dallas Brown.

Q. Sydney's son, Karen's father?

A. Right, was, I believe, a general in the United States Army. Trying to get some responses so that, you know, - - I had a few ideas.<sup>10</sup>

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<sup>7</sup> Notice of Reliance By Petitioner Upon Deposition Testimony of Registrant Courtney L. Bishop.

<sup>8</sup> Respondent's Brief, pp. 6 and 9.

<sup>9</sup> Petitioner's Reply Brief, pp. 4-6.

<sup>10</sup> Bishop Dep., p. 38. As indicated above, although petitioner only relied on portions of the Bishop deposition, she filed the entire deposition.

Setting aside the issue of whether petitioner may rely on an excerpt from respondent's discovery deposition that was not identified through a notice of reliance by either party, we do not find that respondent admitted that petitioner has standing to prosecute this proceeding.<sup>11</sup> First, petitioner has not laid the proper foundation that respondent is competent to testify regarding petitioner's relationship with Major Taylor. The Federal Rules of Evidence provide that "[a] witness may not testify to matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. Evid. 602. Nowhere in the record does respondent testify regarding the basis of his knowledge of the Taylor family tree. In other words, we have no basis on which to infer that respondent has any knowledge regarding the descendants of Major Taylor.

Moreover, even if we accept that petitioner is Major Taylor's great granddaughter, it is possible that there are other descendants with an equal or greater claim to control the right of publicity in connection with Major Taylor's

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<sup>11</sup> Because petitioner filed respondent's entire discovery deposition transcript and because respondent did not object to our consideration of those portions of the transcript that were not identified in petitioner's notice of reliance, we will consider the entire transcript as having been properly introduced into the record.

Cancellation No. 92047757

name which petitioner has alleged as her standing in her petition to cancel.

Finally, we do not find that respondent's testimony regarding the identity of petitioner is clear and specific. The testimony at issue is more of an aside or footnote than a direct admission or statement that petitioner is Major Taylor's great granddaughter and that she is authorized to control the right of publicity in connection with Major Taylor's name. Respondent was trying to recall who had sent him an email - - "I want to say it's Dallas Brown" - - and then identify that person, when petitioner's counsel interjected - - "Sydney's son, Karen's father?" To which respondent replied "Right," and continued with the thought he had started before counsel's interjection. The interjection and response appears to have been made in the midst of respondent's thought, and not in direct response to the question.

In view of the foregoing, we find that petitioner has failed to show that she has a direct personal interest in the outcome of this proceeding, and therefore she has not sustained her burden of proving that she has standing to prosecute this cancellation proceeding.

Decision: The petition for cancellation is dismissed with prejudice.

ESTTA Tracking number: **ESTTA149337**

Filing date: **07/04/2007**

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	KarenB.Donovan		
Entity	Individual	Citizenship	UNITED STATES
Address	51 Betio Place Honolulu, HI 96818 UNITED STATES		

Attorney information	David H.E. Bursik, Esq. 401 Hamburg Turnpike Suite 210 Wayne, NJ 07470 UNITED STATES dheb@bursik.com Phone:9739041040		
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**Registrations Subject to Cancellation**

Registration No	2791896	Registration date	12/09/2003
Registrant	Bishop, Courtney L. 30 E. Georgia St., Ste. #208 Indianapolis, IN 46204 UNITED STATES		
Goods/Services Subject to Cancellation	Class 035. First Use: 1991/09/01 , First Use In Commerce: 1992/05/15 Goods/Services: Retail store and/or on-line computerized ordering services featuring bicycles, bicycle equipment, bicycle clothing, shoes, and apparel; Promoting bicycle sports, bicycle competitions and/or events of other		
Registration No	2701247	Registration date	03/25/2003
Registrant	Bishop, Courtney L. 30 East Georgia St., Ste. #208 Indianapolis, IN 46204 UNITED STATES		
Goods/Services Subject to Cancellation	Class 036. First Use: 2000/06/01 , First Use In Commerce: 2002/06/01 Goods/Services: Financial and insurance underwriting services pertaining to Fund Raising Associations, Foundations, Charitable not for profit organizations Covering activities held within the normal scope of operations for these organizations, namely, fundraisers		

Attachments	PETITION FOR CANCELLATION-MAJOR TAYLOR.pdf ( 4 pages )(86639 bytes )
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Signature	/David H.E. Bursik, Esq./
Name	David H.E. Bursik, Esq.
Date	07/04/2007

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

_____	:	Cancellation No.
KAREN B. DONOVAN,	:	Registration No. 2791896
Petitioner,	:	Registration No. 2701247
v.	:	Marks: MAJOR TAYLOR
_____	:	
COURTNEY L. BISHOP,	:	
Registrant.	:	
_____	:	

TO:

ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

***PETITION FOR CANCELLATION***

Karen B. Donovan (hereinafter referred to as "Petitioner") by and through her attorney, alleges that she will be damaged by the continued registration of Registration No. 2791896 for the mark MAJOR TAYLOR and Registration No. 2701247 for the mark MAJOR TAYLOR, both registered to Courtney L. Bishop, an individual, (herein referred to as "Registrant") and petitions to cancel these two identified registrations.

***THE PARTIES***

1. Petitioner is an individual and a resident of the State of Hawaii with a residential address of 51 Bettlo Place, Honolulu, Hawaii 96818. Petitioner is a great-granddaughter of Marshall W. ("Major") Taylor and is authorized with complete authority and responsibility to act on behalf of the estate of the deceased individual Marshall W. ("Major") Taylor (hereinafter referred to as "Major Taylor"), and to handle all affairs concerning the legacy, persona, memorabilia, records, images, likenesses, endorsements, trademarks, copyrights, and all manner of things relating to the deceased individual Major Taylor. Petitioner has filed an application to

register the MAJOR TAYLOR trademark with the United States Trademark Office which is pending as Serial Number 77211088.

2. Registrant is, upon information and belief, an individual resident of the State of Indiana with a residential or business address of 30 E. Georgia Street, Suite 208, Indianapolis, Indiana 46204.

***COUNT 1 FOR CANCELLATION-FRAUD ON THE TRADEMARK OFFICE***

3. Petitioner incorporates the prior allegations herein as if set forth at length.

4. Major Taylor is the well known alternative name by which the deceased individual Marshall W. Taylor was known. Major Taylor was born on November 26, 1878 and he died on June 21, 1932. Major Taylor has living descendants to the present day.

5. In the application filed by Registrant for registration of the MAJOR TAYLOR trademark which resulted in the issuance of Trademark Registration No. 2791896 and in the application filed by Registrant for registration of the MAJOR TAYLOR trademark which resulted in the issuance of Trademark Registration No. 2701247, Registrant filed a Declaration that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive". Upon information and belief, at the time that Registrant made this declaration and filed same with the U.S. Trademark Office, Registrant knew or believed such statement to be false.

6. Accordingly, the Trademark Registrations sought to be cancelled herein were obtained by reason of this fraud upon the Trademark Office.

WHEREFORE, Petitioner Karen B. Donovan, acting on behalf of the estate of MAJOR TAYLOR, will be damaged by the continuing registration of Registration No. 2791896 for MAJOR TAYLOR and Registration No. 2701247 for MAJOR TAYLOR, and requests that the registrations be cancelled.

***COUNT 2 FOR CANCELLATION-ILLEGALITY OF ADOPTION OF TRADEMARK***

7. Petitioner incorporates the prior allegations herein as if set forth at length.

8. Upon information and belief, at all times relevant hereto, the Registrant has been a resident of the State of Indiana.

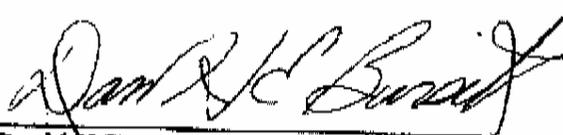
9. The State of Indiana Code of Statutes contains a chapter relating to the Rights of Publicity as set forth in Chapter IC 32-26.

10. This chapter prohibits a person from making commercial use of the name or assumed name of a deceased individual for one hundred(100) years following the death of such individual without getting the written consent from the estate of the deceased.

11. The adoption and commercial use by Registrant of the MAJOR TAYLOR trademarks was and is illegal and, for this additional reason, the above-identified registrations should be cancelled.

WHEREFORE, Petitioner Karen B. Donovan, acting on behalf of the estate of MAJOR TAYLOR, will be damaged by the continuing registration of Registration No. 2791896 for MAJOR TAYLOR and Registration No. 2701247 for MAJOR TAYLOR, and requests that the registrations be cancelled.

**Respectfully submitted,**



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Attorney for Petitioner**

**Of Counsel to Petitioner:  
Theodore E. Kyles, Jr., Esq.  
685 Van Houten Avenue  
Clifton, New Jersey 07013**

**Date: June 30, 2007**

ESTTA Tracking number:

**ESTTA283891**

Filing date:

**05/14/2009**

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	Dallas C. Brown Jr.		
Entity	Individual	Citizenship	UNITED STATES
Address	17 Devant Drive East Bluffton, SC 29909 UNITED STATES		

Attorney information	David H.E. Bursik, Esq. 401 Hamburg Turnpike Suite 210 Wayne, NJ 07470 UNITED STATES dheb@bursik.com Phone:973-904-1040
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**Registrations Subject to Cancellation**

Registration No	2791896	Registration date	12/09/2003
Registrant	Bishop, Courtney L. 30 E. Georgia St., Ste. #208 Indianapolis, IN 46204 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 1991/09/01 First Use In Commerce: 1992/05/15 All goods and services in the class are cancelled, namely: Retail store and/or on-line computerized ordering services featuring bicycles, bicycle equipment, bicycle clothing, shoes, and apparel; Promoting bicycle sports, bicycle competitions and/or events of other
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**Grounds for Cancellation**

False suggestion of a connection	Trademark Act section 2(a)		
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Registration No	2701247	Registration date	03/25/2003
Registrant	Bishop, Courtney L. 30 East Georgia St., Ste. #208 Indianapolis, IN 46204 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 036. First Use: 2000/06/01 First Use In Commerce: 2002/06/01 All goods and services in the class are cancelled, namely: Financial and insurance underwriting services pertaining to Fund Raising Associations, Foundations, Charitable not for profit organizations Covering activities held within the normal scope of operations for these organizations, namely, fundraisers
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## Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Attachments	PETITION FOR CANCELLATION 5-14-09.pdf ( 4 pages )(24419 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/David H.E. Bursik, Esq./
Name	David H.E. Bursik, Esq.
Date	05/14/2009



Indianapolis, Indiana 46204. Upon information and belief, the Registrant has a home address of 10377 Alice Court, Fishers, Indiana 46038.

**COUNT 1 FOR CANCELLATION-FRAUD ON THE TRADEMARK OFFICE**

3. Petitioner incorporates the prior allegations herein as if set forth at length.

4. Major Taylor is the well known alternative name by which the deceased individual Marshall W. Taylor was known. Major Taylor was born on November 26, 1878 and he died on June 21, 1932. Major Taylor has living descendants to the present day.

5. In the application filed by Registrant for registration of the MAJOR TAYLOR trademark which resulted in the issuance of Trademark Registration No. 2791896 and in the application filed by Registrant for registration of the MAJOR TAYLOR trademark which resulted in the issuance of Trademark Registration No. 2701247, Registrant filed a Declaration that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive". Upon information and belief, at the time that Registrant made this declaration and filed same with the U.S. Trademark Office, Registrant knew or believed such statement to be false. Registrant knew at the time that he filed this Declaration that others were using the name MAJOR TAYLOR in commerce and that family members of MAJOR TAYLOR were alive .

6. Accordingly, the Trademark Registrations sought to be cancelled herein were obtained by reason of this fraud upon the Trademark Office.

WHEREFORE, Petitioner will be damaged by the continuing registration of Registration No. 2791896 for MAJOR TAYLOR and Registration No. 2701247 for MAJOR TAYLOR, and requests that the registrations be cancelled.

### **COUNT 2 FOR CANCELLATION**

#### **ILLEGALITY OF ADOPTION OF TRADEMARK UNDER INDIANA LAW**

7. Petitioner incorporates the prior allegations herein as if set forth at length.
8. Upon information and belief, at all times relevant hereto, the Registrant has been a resident of the State of Indiana.
9. The State of Indiana Code of Statutes contains a chapter relating to the Rights of Publicity as set forth in Chapter IC 32-26.
10. This chapter prohibits a person from making commercial use of the name or assumed name of a deceased individual for one hundred(100) years following the death of such individual without getting the written consent from the estate of the deceased. Registrant never obtained permission or consent from the estate or family of the deceased Major Taylor prior to making commercial use of the MAJOR TAYLOR name and trademark.
11. The adoption and commercial use by Registrant of the MAJOR TAYLOR name and trademarks was and is illegal and, for this additional reason, the above-identified registrations should be cancelled.

WHEREFORE, Petitioner will be damaged by the continuing registration of Registration No. 2791896 for MAJOR TAYLOR and Registration No. 2701247 for MAJOR TAYLOR, and requests that the registrations be cancelled.

### **COUNT 3 FOR CANCELLATION**

#### **ILLEGALITY OF ADOPTION OF TRADEMARK UNDER FEDERAL LAW**

12. Petitioner incorporates the prior allegations herein as if set forth at length.

13. Registrant's use and registration of MAJOR TAYLOR trademarks falsely suggests a connection with Major Taylor. Accordingly, the use and registration of the MAJOR TAYLOR trademarks by Registrant is illegal pursuant to 15 U.S.C. §1052(a), and this registration should be cancelled for this additional reason.

WHEREFORE, Petitioner will be damaged by the continuing registration of Registration No. 2791896 for MAJOR TAYLOR and Registration No. 2701247 for MAJOR TAYLOR, and requests that the registrations be cancelled.

Respectfully submitted,

/David H.E. Bursik, Esq./

*David H.E. Bursik*

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Attorney for Petitioner

Of Counsel to Petitioner:  
Theodore E. Kyles, Jr., Esq.  
685 Van Houten Avenue  
Clifton, New Jersey 07013

Date: May 14, 2009

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

DALLAS C. BROWN, JR., )  
Petitioner, )  
v. )  
COURTNEY L. BISHOP, )  
Registrant. )  
Cancellation No. 92050965  
Registration No. 2791896  
Registration No. 2701247  
Marks: Major Taylor

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

KAREN B. DONOVAN, )  
Plaintiff, )  
v. )  
COURTNEY L. BISHOP, )  
Defendant. )  
Case No. 1:09-CV-0275-WTL-TAB

The deposition upon oral examination of  
DALLAS BROWN, JR., a witness produced and sworn  
before me, Sherri L. Segó, Notary Public in and for  
the County of Johnson, State of Indiana, taken on  
the 6th day of November, 2009 at 1:00 p.m. at  
HAMPTON INN, 9020 Hatfield Drive, Indianapolis,  
Indiana, pursuant to the Indiana Rules of Trial  
Procedure. This deposition was taken on behalf of  
Mr. Brown and Ms. Donovan in the above-captioned  
matter.

ASSOCIATED REPORTING, INC.  
Two Market Square Center, Suite 940  
251 East Ohio Street  
Indianapolis, Indiana 46204  
(317) 631-0940

- 1 A No, I'm an only child.
- 2 Q To the best of your knowledge, does your mother,  
3 Sidney Taylor, have any brothers or sisters?
- 4 A No, she was an only child.
- 5 Q Do you have any military experience?
- 6 A Military experience?
- 7 Q Yes.
- 8 A I'm a retired Army Brigadier General. I have 30  
9 years military experience, peace and war.
- 10 Q And when did your retire?
- 11 A When?
- 12 Q When.
- 13 A May 30th, 1984.
- 14 Q Congratulations and thank you for your service.
- 15 To the best of your knowledge, are you the  
16 closest living blood relative to Major Taylor?
- 17 A I'm certain that I'm the closest living relative.  
18 I'm the only one in my generation.
- 19 Q I'll show you a document that our court reporter  
20 has identified as Exhibit C and ask you if that  
21 represents a copy of your birth --
- 22 A My birth certificate.
- 23 Q And that is what that is?
- 24 A Yes.
- 25 Q Thanks.