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Filing date: **04/30/2010**

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	Under Armour, Inc.		
Entity	Corporation	Citizenship	Maryland
Address	1020 Hull Street Baltimore, MD 21230 UNITED STATES		

Attorney information	Douglas A. Rettew Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P. 901 New York Ave., NW Washington, DC 20001 UNITED STATES doug.rettew@finnegan.com, docketing@finnegan.com, larry.white@finnegan.com, susannah.kolstad@finnegan.com Phone:(202) 408-4000
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Registration Subject to Cancellation

Registration No	3780641	Registration date	04/27/2010
Registrant	Williams, Emory L. 11261 Douglas Drive Miami, FL 33176 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2002/11/25 First Use In Commerce: 2002/11/25 All goods and services in the class are cancelled, namely: Athletic shoes; Baseball shoes; Football shoes; Golf shoes; Gymnastic shoes; Hockey shoes; Insoles; Leather shoes; Rugby shoes; Running shoes; Soccer shoes; Tennis shoes; Track and field shoes; Training shoes; Volleyball shoes

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	3780641 COMBINE Petition to Cancel.pdf (9 pages)(24359 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 First Class Mail on this date.

Signature	/Douglas A. Rettew/
Name	Douglas A. Rettew
Date	04/30/2010

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

<p>UNDER ARMOUR, INC.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>EMORY L. WILLIAMS,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No.:</p> <p>Mark: COMBINE</p> <p>Reg. No.: 3780641</p> <p>Reg. Date: April 27, 2010</p>
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PETITION TO CANCEL

Under Armour, Inc. (“Under Armour”) believes that it is being damaged by Emory L. Williams’ registration of the mark COMBINE and petitions to cancel Registration No. 3780641. As grounds for its petition, Under Armour alleges the following, upon actual knowledge with respect to itself and its own acts, and upon actual knowledge and/or information and belief as to other matters:

Under Armour, Its Products, and Its Use of “Combine”

1. Petitioner Under Armour is a Maryland corporation located at 1020 Hull Street, Baltimore, Maryland 21230.
2. Under Armour is one of the world’s most successful, popular, and well-known athletic companies. In 2009 alone, Under Armour’s net revenues exceeded \$856,400,000.
3. Under Armour designs, develops, markets, sells, and distributes a wide variety of performance apparel, footwear, sports equipment, and accessories. Through Under Armour’s innovative use of advanced engineering and technology, Under Armour has revolutionized the performance-product industry.

4. Under Armour has many high-profile sponsorships, including its official sponsorship of the “NFL Scouting Combine”—a week-long showcase where college football players perform physical and mental tests in front of NFL coaches, general managers, and scouts.

5. Under Armour also offers its own “Under Armour Combine” in various cities where junior athletes can get tested, scored, and receive instruction in a variety of sports, including football, softball, baseball, lacrosse, basketball, golf, tennis, and soccer.

6. As part of its activities, Under Armour has offered and sold a shoe under the names UA COMBINE II SHOE, UA PROTO COMBINE, UNDER ARMOUR PROTO COMBINE, and UA COMBINE II—developed specifically for the athletes at the NFL Combine, created with ultra-lightweight materials and a multi-directional traction system.

Williams and His Registration

7. Registrant Emory L. Williams is an individual with an address at 11261 Douglas Drive, Miami, Florida 33176.

8. On August 10, 2009, Williams wrote to Under Armour following up on an alleged prior request for a “meeting to discuss a proposed joint venture between Under Armour and [his company] the Combine Nation.” In that letter, Williams contended that he owned several registrations for the COMBINE mark and objected to Under Armour’s use of “Combine” in connection with a sports shoe. Williams also stated “we have our own ‘Combine’ shoe which we ***will be launching*** soon (please visit our site, the shoe is listed under Combine Runner @ www.thecnation.com)” (emphasis added).

9. On September 2, 2009, Williams filed Trademark Application Serial No. 77818521 for the mark COMBINE for “Athletic shoes; Baseball shoes; Football shoes; Golf shoes; Gymnastic shoes; Hockey shoes; Insoles; Leather shoes; Rugby shoes; Running shoes;

Soccer shoes; Tennis shoes; Track and field shoes; Training shoes; Volleyball shoes”

(capitalization in filing), alleging a first-use date of November 25, 2002.

10. Under Armour responded to Williams’ letter on September 4, 2009, explaining that it “is not interested in pursuing a joint venture with your company and does not believe that its footwear infringes upon any trademark rights that you or your company may have.”

11. Williams replied to Under Armour on September 16, 2009, representing that “I have no intent on taking this matter any further,” and that “just like you, I will consider this matter closed.” Williams explained further, that “[s]ince my initial communication with you, I have decided to stay in an area where we have background which is in the drink industry,” “I also own trademark rights to ‘Combine Sports Drink’,” and “[t]he product was supposed to have been launched last month, but with many distractions in other areas we fell behind.”

12. Despite Williams’ promise not to pursue the matter, Under Armour received a letter from his counsel six months later on March 29, 2010 threatening to file suit based on, among other things, Williams’ alleged ownership of pending Application Serial No. 77818521.

13. On April 27, 2010, Williams’ Application Serial No. 77818521 registered under Registration No. 3780641.

14. Williams hosts a website, located at www.thecnation.com, which explains his company’s history, vision, and product offerings. Specifically the site contains, among other things, a company overview (www.combineathletics.citymax.com/overview1.html), a discussion of licensing “opportunities” (www.combineathletics.citymax.com/comb3.html), a link to relevant “media” (www.combineathletics.citymax.com/press.html), and the products offered under the alleged “Combine” mark.

15. The “Combine” products identified on Williams’ website consist of the following: a sports drink (www.combineathletics.citymax.com/page/page/4578574.htm), a running shoe (www.combineathletics.citymax.com/shoegear.html), skull caps (www.combineathletics.citymax.com/combine6.html), sports caps (www.combineathletics.citymax.com/combine6.html), compression shirts (www.combineathletics.citymax.com/combine6.html), and a few sports balls (www.combineathletics.citymax.com/balls.html).

16. Williams’ website does not offer or depict the following products under the alleged “Combine” mark: baseball shoes, football shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

17. Williams mentions golf shoes on his site, but does not offer or depict that product under the alleged “Combine” mark. (See www.combineathletics.citymax.com/combine4.html.)

COUNT I: FRAUD ON THE PTO

18. Under Armour repeats and realleges each and every allegation set forth in Paragraphs 1 through 17.

19. When Williams filed his use-based application Serial No. 77818521 on September 2, 2009, he represented that he (or a related company or licensee) was using the alleged “Combine” mark in commerce on or in connection with the following goods: “Athletic shoes; Baseball shoes; Football shoes; Golf shoes; Gymnastic shoes; Hockey shoes; Insoles; Leather shoes; Rugby shoes; Running shoes; Soccer shoes; Tennis shoes; Track and field shoes; Training shoes; Volleyball shoes” (the “Application”).

20. When Williams filed the Application on September 2, 2009, he represented that the alleged “Combine” mark was first used in Class 25 since at least as early as November 25, 2002.

21. When Williams filed the Application on September 2, 2009, he signed a declaration in support of the Application stating:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the 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; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

22. At the time Williams signed and filed the Application and supporting declaration before the PTO, he did not use the alleged “Combine” mark in commerce in connection with the following goods: baseball shoes, football shoes, golf shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

23. Williams has never used the alleged “Combine” mark in commerce in connection with the following goods: baseball shoes, football shoes, golf shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

24. Williams did not use the alleged “Combine” mark in commerce in connection with the following goods as of the stated November 25, 2002 first-use date: athletic shoes, baseball shoes, football shoes, golf shoes, gymnastic shoes, hockey shoes, insoles, leather shoes, rugby shoes, running shoes, soccer shoes, tennis shoes, track and field shoes, training shoes, or volleyball shoes.

25. At the time Williams signed and filed the Application and supporting declaration before the PTO, he knew that he was not using the alleged “Combine” mark in commerce in connection with the following goods: baseball shoes, football shoes, golf shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

26. At the time Williams signed and filed the Application and supporting declaration before the PTO, he knew that he had not used the alleged “Combine” mark in commerce in connection with the following goods since at least as early as November 25, 2002: athletic shoes, baseball shoes, football shoes, golf shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, running shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

27. The PTO accepted and relied on the statements in the Application and supporting declaration in approving the Application for publication and issuing Registration No. 3780641 on April 27, 2010. But for Williams’ material, false statements concerning use of his alleged mark in connection with the goods identified in the Application, the PTO would not have issued the registration.

28. On information and belief, Williams, in failing to disclose the foregoing facts to the PTO, acted in a reckless disregard of the truth with an intent to procure a registration to which he was not entitled, and thus committed fraud on the PTO.

COUNT II: ABANDONMENT

29. Under Armour repeats and realleges each and every allegation set forth in Paragraphs 1 through 28.

30. Williams does not now and has never used the alleged “Combine” mark in commerce in connection with the following goods: baseball shoes, football shoes, gymnastics shoes, hockey shoes, insoles, leather shoes, rugby shoes, soccer shoes, tennis shoes, track and field shoes, or volleyball shoes.

31. Accordingly, Williams has abandoned the mark for one or more of the goods set forth above based upon non-use of the mark for three consecutive years with an intent not to resume such use.

WHEREFORE, Under Armour believes that it is being and will be damaged by the continued registration of the COMBINE mark, and respectfully requests that the Petition to Cancel be sustained and that Registration No. 3780641 be cancelled.

A filing fee has been submitted herewith. If the filing fee is found to be insufficient for any reason, please charge such deficiency to our Deposit Account No. 06-0916.

Dated: April 30, 2010

By: Douglas A. Rettew/
Douglas A. Rettew
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing PETITION TO CANCEL was served on April 30, 2010 by first-class mail, postage prepaid, to Emory L. Williams at the following addresses of record:

Emory L. Williams
11261 Douglas Drive
Miami, Florida 33176

/Susannah C. Kolstad/
Susannah C. Kolstad
Litigation Legal Assistant