

ESTTA Tracking number: **ESTTA360896**

Filing date: **07/30/2010**

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	Board of Trustees of the University of Arkansas		
Entity	State Instrumentality	Citizenship	Arkansas
Address	2404 North University Avenue Little Rock, AR 72207 UNITED STATES		

Attorney information	Harold J. Evans Williams & Anderson PLC 111 Center Street, 22nd Floor Little Rock, AR 72201 UNITED STATES hevans@williamsanderson.com Phone:501-396-8461		
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Registration Subject to Cancellation

Registration No	3810448	Registration date	06/29/2010
Registrant	Bourn, Tom and Judy 411 Cnty Rd BB Woodville, WI 54028 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2009/07/01 First Use In Commerce: 2009/10/15 All goods and services in the class are cancelled, namely: Dust masks; Dust protective goggles and masks; Protection masks; Protective face masks not for medical purposes; Respiratory masks for non-medical purposes
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Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1590197	Application Date	08/22/1988
Registration Date	04/03/1990	Foreign Priority Date	NONE
Word Mark	RAZORBACKS		

Design Mark	RAZORBACKS		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1909/12/02 First Use In Commerce: 1909/12/02 EDUCATIONAL SERVICES - NAMELY, PROVIDING COURSES OF INSTRUCTION AT THE COLLEGE LEVEL AND ENTERTAINMENT SERVICES - NAMELY, ORGANIZING AND PROMOTING SPORTS EVENTS AND PROVIDING MUSICAL PERFORMANCES AND CONCERTS		

U.S. Registration No.	2172443	Application Date	01/03/1997
Registration Date	07/14/1998	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 025. First use: First Use: 1967/01/00 First Use In Commerce: 1991/06/00 clothing, namely, T-shirts, sport shirts, sweatshirts, sweat pants, shorts, jackets, sweaters, jerseys, sun visors, caps, hats, neckties, scarves, shoes, socks, cloth baby bibs, wrist bands head bands, rain ponchos, non-leather belts, non-leather suspenders		
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U.S. Registration No.	2172444	Application Date	01/03/1997
Registration Date	07/14/1998	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 advertising directories, yearbooks, decals, bumper stickers, paper flags, pens, pencils, paper napkins, paper coasters, stationery, postcards, wrapping paper, playing cards, book covers, folders and notebooks

U.S. Registration No.	2172445	Application Date	01/03/1997
Registration Date	07/14/1998	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 billfolds, wallets, tote bags, duffel bags, umbrellas and travelling bags		

U.S. Registration No.	2172446	Application Date	01/03/1997
Registration Date	07/14/1998	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 006. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 metal license plates

Attachments	73747622#TMSN.gif (1 page)(bytes) 75221074#TMSN.gif (1 page)(bytes) 75221099#TMSN.gif (1 page)(bytes) 75221127#TMSN.gif (1 page)(bytes) 75221128#TMSN.gif (1 page)(bytes) Dust T. Hog_Petition To Cancel.pdf (12 pages)(249287 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	/harold j. evans/
Name	Harold J. Evans
Date	07/30/2010

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

In the Matter of Trademark Registration No. 3,810,448

Mark: Dust T. Hog and Hog Design

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

Petitioner,

Cancellation No. _____

v.

TOM AND JUDY BOURN

Registrant.

PETITION TO CANCEL

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, a public institution of higher education and an instrumentality of the State of Arkansas, having its principal place of business at 2404 North University Avenue, Little Rock, Arkansas 72207 (“Petitioner”), believes that it is and will be damaged by registration of the mark, as shown in Registration No. 3810448 for “Dust masks; Dust protective goggles and masks; Protection masks; Protective face masks not for medical purposes; Respiratory masks for non-medical purposes” registered to Tom and Judy Bourn dba Dust T. Hog Enterprises, 411 County Road BB, Woodville, Wisconsin 54028 (collectively “Registrant”) on June 29, 2010, based upon an application filed November 6, 2009. Pursuant to 15 U.S.C. §§ 1052, 1064, and 1125(c), Petitioner, by and through its attorneys, hereby requests cancellation of Registration No. 3,810,448.

As grounds for the Cancellation, Petitioner alleges:

1. Petitioner, a public institution of higher education and an instrumentality of the State of Arkansas, owns all legal rights, title and interest to the trademarks and service marks of the University of Arkansas (the “University”).

2. The University adopted and has used continuously the mark RAZORBACKS, Registration No. 1,590,197, since at least as early as 1909 and has been using the mark in interstate commerce since at least as early as 1909. The University uses the mark, *inter alia*, to promote and advertise the athletic events in which the University’s teams participate, the educational services the University offers, and the musical performances and concerts the University provides. The mark is valid, subsisting, and incontestable under Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065.

3. The University adopted and has used continuously a hog design as the pictorial equivalent of the RAZORBACKS mark since at least as early as 1911 and has been using the mark or derivatives or variations thereof in interstate commerce since at least as early as 1911 (“Razorback Design Marks”). The University uses the Razorback Design Marks, *inter alia*, to promote and advertise the athletic events in which the University’s teams participate and the educational services the University offers and on various products, including clothing and related items.

4. Petitioner also owns the following registrations on the Principal Register in the United States Patent and Trademark Office. All of the registrations identified in the chart below are valid, subsisting, and incontestable under Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065. The marks shown in these registrations, the mark shown in Registration No. 1,590,197 identified in paragraph 2 above, and those shown in the registrations identified in paragraph 4, including the Razorback Design Marks, shall be referred to collectively herein as

“the University’s RAZORBACK marks” and copies of such registrations are attached hereto as Exhibits 1 through 5.

TRADEMARK	REG. NO.	REG. DATE	GOODS/SERVICES
MISCELLANEOUS DESIGN (Helmet Hog)	2,172,446	7/14/98	Metal license plates
MISCELLANEOUS DESIGN (Helmet Hog)	2,172,445	7/14/98	Billfolds, wallets, tote bags, duffel bags, umbrellas and traveling bags
MISCELLANEOUS DESIGN (Helmet Hog)	2,172,444	7/14/98	Advertising directories, yearbooks, decals, bumper stickers, paper flags, pens, pencils, paper napkins, paper coasters, stationery, postcards, wrapping paper, playing cards, book covers, folders and notebooks
MISCELLANEOUS DESIGN (Helmet Hog)	2,172,443	7/14/98	Clothing, namely, T-shirts, sports shirts, sweatshirts, sweat pants, shorts, jackets, sweaters, jerseys, sun visors, caps, hats, neckties, scarves, shoes, socks, cloth baby bibs, wrist bands, head bands, rain ponchos, non-leather belts, non-leather suspenders

5. The University’s athletic teams, called “RAZORBACKS” and “ARKANSAS RAZORBACKS,” have competed in athletic events throughout the United States. “Calling the HOGS” has become a favorite pastime of attendees at such events. Nationwide television broadcasts of the events have been shown in states where the teams have not appeared or directly competed.

6. As a result of the extensive public exposure of the University's RAZORBACK teams, and the University's long and continuous use of its RAZORBACK marks in connection with a wide variety of other services and goods, the public has, since long before 2009, come to associate the Razorback hog designs uniquely with the University as the source of services and goods provided under the marks.

7. The University has used and continues to use its RAZORBACK marks in connection with various services and goods. Through the University's trademark licensing program, such goods include clothing and related items.

8. The University's RAZORBACK marks are symbolic of the extensive and valuable good will and customer recognition built up through substantial amounts of effort and advertising and promotional expenditures. By virtue of these efforts and expenditures and the excellence of its products and services, the RAZORBACK marks have become very strong and famous.

9. Registrant filed Application Serial No. 77/867426 on November 6, 2009 for "Dust masks; Dust protective goggles and masks; Protection masks; Protective face masks not for medical purposes; Respiratory masks for non-medical purposes" as a use based application under Lanham Act Section 1(a), claiming a first use date of July 1, 2009 and a first use in commerce date of October 15, 2009.

10. The University's RAZORBACK marks listed in paragraphs 2 and 4 of this Petition registered on the United States Patent and Trademark Office's Principal Register prior to the November 6, 2009 filing date of Registrant's Application Serial No. 77/867426 and claimed first use date of July 1, 2009 and first use in commerce date of October 15, 2009.

11. The University's dates of first use and dates of first use in commerce for its RAZORBACK marks listed in paragraphs 2 and 4 of this Petition are long prior to November 6, 2009, Registrant's application filing date and claimed first use dates. The University's RAZORBACK marks and registrations listed in Paragraphs 2 and 4 are valid and subsisting, and those registrations are incontestable. The University's legal rights are, therefore, paramount and superior to Registrant's.

12. The Registrant's mark, shown in Registration No. 3,810,448, contains a near exact copy of the Razorback Design Marks listed in Paragraph 4 of this Petition.

13. A likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) exists between the University's RAZORBACK marks and Registrant's mark because Registrant's mark clearly incorporates one of the Razorback Design Marks.

14. A likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), exists between the University's RAZORBACK marks and Registrant's mark because the RAZORBACK marks are used on a broad range of goods such that a consumer would be likely to believe that the University is the source of Registrant's goods.

15. On information and belief, Registrant has marketed and sold t-shirts which display Registrant's mark as shown in Registration No. 3,810,448.

16. On information and belief, consumers who are likely to buy the University's goods and participate and be familiar with the University's services are substantially the same or overlap significantly with the consumers who are likely to buy Registrant's goods.

17. Persons familiar with the University's RAZORBACK marks would be likely to buy Registrant's goods believing them to originate with or be endorsed or sponsored by the University. Any defect, objection or fault found with the goods offered under Registrant's mark would necessarily reflect upon and seriously injure the reputation of the University's goods and services.

18. Registrant's commercial use of its mark causes a likelihood of confusion and a presumption or false suggestion that the University has endorsed or approves of the goods bearing Registrant's mark, or that the University and Registrant are affiliated or associated, all to the considerable detriment of the University.

19. Registrant's use of its mark points uniquely to the University of Arkansas, its athletic program, and the University's RAZORBACK marks and falsely suggests a connection with the University in the minds of the public in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

20. Registrant's use of its mark in connection with the goods identified in Registration No. 3,810,448 seriously impairs the uniqueness of the University's famous RAZORBACK marks and is diluting and will continue to dilute the distinctive quality of those marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

21. For all the foregoing reasons, registration of Registrant's mark will result in damage to Petitioner, and registration should be refused.

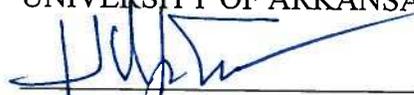
WHEREFORE, Petitioner requests respectfully that the Cancellation be granted and that Registration No. 3,810,448 be cancelled.

Respectfully submitted,

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

Dated: July 30, 2010

By:


Harold J. Evans

Williams & Anderson PLC
Twenty-second Floor
111 Center Street
Little Rock, Arkansas 72201
Tel: (501) 396-8461
Fax: (501) 396-8561
hevans@williamsanderson.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of this Notice of Cancellation was served by United States first-class mail, postage prepaid, this 30th day of July, 2010, on Registrant at the following address:

Tom and Judy Bourn
411 County Road BB
Woodville, WI 54028
United States

WILLIAMS & ANDERSON PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
(501) 396-8461

By:



Harold J. Evans (AR #78214)
Attorney for Petitioner

Int. Cl.: 41

Prior U.S. Cl.: 107

Reg. No. 1,590,197

Registered Apr. 3, 1990

United States Patent and Trademark Office

**SERVICE MARK
PRINCIPAL REGISTER**

RAZORBACKS

BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, THE (ARKANSAS PUBLIC
BODY CORPORATE)
1201 MCALMONT STREET
LITTLE ROCK, AR 72202

FOR: EDUCATIONAL SERVICES - NAMELY,
PROVIDING COURSES OF INSTRUCTION AT
THE COLLEGE LEVEL AND ENTERTAIN-
MENT SERVICES - NAMELY, ORGANIZING
AND PROMOTING SPORTS EVENTS AND

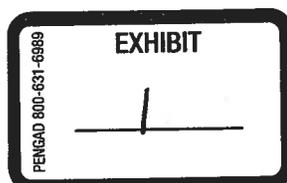
PROVIDING MUSICAL PERFORMANCES AND
CONCERTS, IN CLASS 41 (U.S. CL. 107).

FIRST USE 12-2-1909; IN COMMERCE
12-2-1909.

OWNER OF U.S. REG. NOS. 1,254,006 AND
1,323,910.

SER. NO. 73-747,622, FILED 8-22-1988.

TERRY ELLEN HOLTZMAN, EXAMINING AT-
TORNEY



Int. Cl.: 25

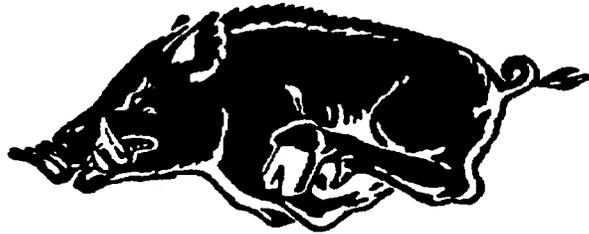
Prior U.S. Cls.: 22 and 39

Reg. No. 2,172,443

United States Patent and Trademark Office

Registered July 14, 1998

**TRADEMARK
PRINCIPAL REGISTER**



BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, THE (ARKANSAS PUBLIC
BODY CORPORATE)
1123 SOUTH UNIVERSITY AVENUE, SUITE 601
LITTLE ROCK, AZ 72204

FOR: CLOTHING, NAMELY, T-SHIRTS,
SPORT SHIRTS, SWEATSHIRTS, SWEAT
PANTS, SHORTS, JACKETS, SWEATERS, JER-
SEYS, SUN VISORS, CAPS, HATS, NECKTIES,
SCARVES, SHOES, SOCKS, CLOTH BABY BIBS,
WRIST BANDS HEAD BANDS, RAIN PON-

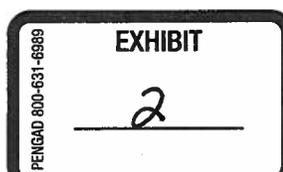
CHOS, NON-LEATHER BELTS, NON-LEATH-
ER SUSPENDERS, IN CLASS 25 (U.S. CLS. 22
AND 39).

FIRST USE 1-0-1967; IN COMMERCE
6-0-1991.

OWNER OF U.S. REG. NOS. 1,565,932, 1,607,711
AND OTHERS.

SER. NO. 75-221,074, FILED 1-3-1997.

BARBARA A. LOUGHRAN, EXAMINING AT-
TORNEY



Int. Cl.: 16

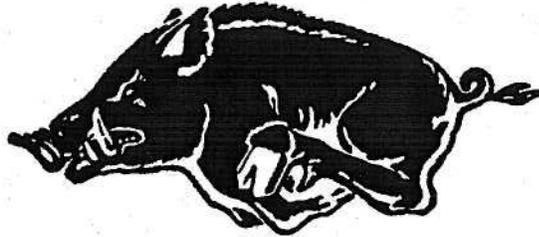
Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,172,444

United States Patent and Trademark Office

Registered July 14, 1998

**TRADEMARK
PRINCIPAL REGISTER**



BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, THE (ARKANSAS PUBLIC
BODY CORPORATE)
1123 SOUTH UNIVERSITY AVENUE, SUITE 601
LITTLE ROCK, AR 72204

FOR: ADVERTISING DIRECTORIES, YEAR-
BOOKS, DECALS, BUMPER STICKERS, PAPER
FLAGS, PENS, PENCILS, PAPER NAPKINS,
PAPER COASTERS, STATIONERY, POST-
CARDS, WRAPPING PAPER, PLAYING
CARDS, BOOK COVERS, FOLDERS AND

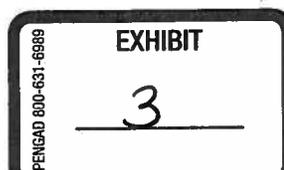
NOTEBOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22,
23, 29, 37, 38 AND 50).

FIRST USE 0-0-1992; IN COMMERCE
0-0-1992.

OWNER OF U.S. REG. NOS. 1,565,860, 1,607,711
AND OTHERS.

SER. NO. 75-221,099, FILED 1-3-1997.

BARBARA A. LOUGHRAN, EXAMINING AT-
TORNEY



Int. Cl.: 18

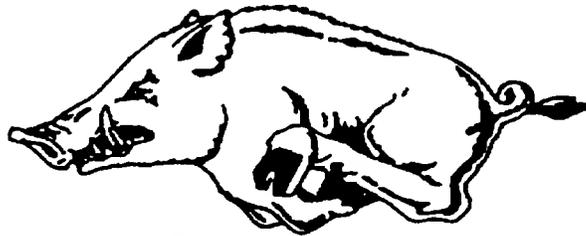
Prior U.S. Cls.: 1, 2, 3, 22 and 41

Reg. No. 2,172,445

Registered July 14, 1998

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**



BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, THE (ARKANSAS PUBLIC
BODY CORPORATE)
1123 SOUTH UNIVERSITY AVENUE, SUITE 601
LITTLE ROCK, AR 72204

FOR: BILLFOLDS, WALLETS, TOTE BAGS,
DUFFEL BAGS, UMBRELLAS AND TRAVEL-
LING BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22
AND 41).

FIRST USE 0-0-1992; IN COMMERCE
0-0-1992.

OWNER OF U.S. REG. NOS. 1,565,932, 1,607,711
AND OTHERS.

SER. NO. 75-221,127, FILED 1-3-1997.

BARBARA A. LOUGHRAN, EXAMINING AT-
TORNEY



Int. Cl.: 6

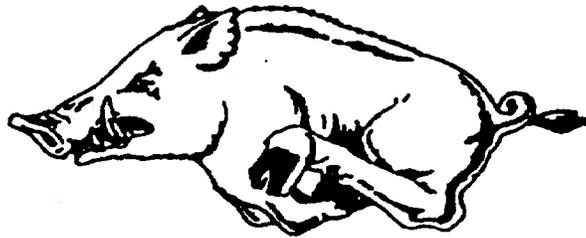
Prior U.S. Cls.: 2, 12, 13, 14, 23, 25 and 50

Reg. No. 2,172,446

United States Patent and Trademark Office

Registered July 14, 1998

**TRADEMARK
PRINCIPAL REGISTER**



BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, THE (ARKANSAS PUBLIC
BODY CORPORATE)
1123 SOUTH UNIVERSITY AVENUE, SUITE 601
LITTLE ROCK, AR 72204

FIRST USE 0-0-1992; IN COMMERCE
0-0-1992.

OWNER OF U.S. REG. NOS. 1,564,152, 1,607,711
AND OTHERS.

SER. NO. 75-221,128, FILED 1-3-1997.

FOR: METAL LICENSE PLATES, IN CLASS 6
(U.S. CLS. 2, 12, 13, 14, 23, 25 AND 50).

BARBARA A. LOUGHRAN, EXAMINING AT-
TORNEY

