

ESTTA Tracking number: **ESTTA364791**

Filing date: **08/24/2010**

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	Mr. Joseph E. Newgarden III		
Entity	Individual	Citizenship	UNITED STATES
Address	129 Blue Ridge Hendersonville, TN 37075 UNITED STATES		

Attorney information	Thomas J. Motzny KING & BALLOW 315 Union Street Nashville, TN 37201 UNITED STATES trademark@kingballow.com Phone:615/726-5471		
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Registration Subject to Cancellation

Registration No	3731690	Registration date	12/29/2009
Registrant	ANDERSON, KENT G FUTUTRE FUTURE VISIONARIES 925 N. GRIFFIN BISMARCK, ND 58501 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 035. First Use: 2003/05/17 First Use In Commerce: 2003/05/17 All goods and services in the class are cancelled, namely: Franchising services, namely, consultation and assistance in business management, organization and promotion; dealerships in the field of automobiles, water craft, land craft, space craft, air craft, recreational vehicles; wholesale distributorships in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; business management services, namely, supply chain services; advertising and marketing services; promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; retail variety stores; discount stores in the field of consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; department stores; automobile parts and accessory stores; technology stores; toy stores; appliance stores; clothing stores; electronic stores; beauty supply and cosmetic stores; furniture stores; food and beverage stores; retail stores featuring a wide variety of goods and services of others; gas station services in the nature of an automobile service station; on-line retail store services featuring any types of goods; online trading services in which seller post products to be auctioned in bidding done via the Internet; operation of businesses for others, namely, consumer electronic stores, automotive parts, accessories, and repair stores, restaurants, toy stores, general merchandise retail stores, gift shops, online retail stores; operation of telephone switchboards for others; operation of telephone communication centers for others; opinion polling for business or advertising purposes; order fulfillment services; organizing and conducting job fairs; organizing exhibitions for commercial and advertising purposes for the promotion of electronic products, home</p>
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robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; packaging articles to the order and specification of others; payroll preparation; personal management services for musical performers and entertainers; personnel management consultation; personnel management; personnel placement and recruitment; personnel relocation; photocopying services; physician referrals; placing advertisements for others; preparation of custom advertisements for others; preparing and placing advertisements for others; preparing and placing outdoor advertisements for others; preparing audio and visual displays in the field of consumer electronic products, automobiles, new consumer products, financial services, transportation services; preparing audiovisual presentations for use in advertising; preparing business reports; preparing computer slide transparencies for use by business; preparing mailing lists; preparing promotional and merchandising material for others; processing manufacturers rebates; processing manufacturers coupons; procurement services, namely, purchasing goods in the nature of office furniture for others; producing audio or video infomercials; product demonstration; licensing of concept goods, namely, electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; licensing of computer software; literary agencies; location of freight cars by computer; logistics management in the field of construction and manufacturing production; mail order book clubs; mail order catalog services featuring goods in the nature of clothing, shoes and cosmetics; mail order services featuring magazines clothing and jewelry; mail sorting, handling and receiving; mailing list preparation; maintaining a registry of breeds in the field of dogs and horses; managed-care services namely, utilization review and pre certification services; managed care services namely, electronic processing of health care information; management assistance; management of health care clinics for others; management of performing artists; management of professional athletics; management of telephone call centers for others; managing the operations of insurance agencies and brokers on a sourcing basis; manufacturers' representatives in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; market analysis; market research; medical cost management; medical referrals; medical transcription services; merchandise packaging; merchandising services for inducing the purchasing public to buy the goods of others through promotional gift redemption program; message transcription; modeling agencies; multilevel marketing business services; offering technical assistance and establishment and or operation of restaurants; online posting of rewards for information; on-line business directories featuring restaurants; online ordering services featuring consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; swimming pool management; talent agencies; tax assessment; tax consultation; tax preparation; telemarketing; telephone auctions; telephone answering services; telephone directory information; telephone order taking services for others; television advertising agencies; theatrical agencies; theatrical management; theatrical ticket agencies; tracking and monitoring insurance compliance; tracking, locating and monitoring of vehicles, maritime vessels and aircraft for commercial purposes; trade information; trademark monitoring; travel management; typing; utility bill management services, namely, tracking, reporting, analyzing and delivering energy information in the form of utility bills and metered date rate schedules; utilization and review of intellectual property holding sand assets; vending machines services; video stores; wage holdings and wholesale ordering services in the field of consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; window display arrangement services; window dressing in display arrangements services; word processing services; work analysis to determine working skills sets and other worker requirements; xerography services; public opinion polling for businesses or advertising purposes; public-relations; publication of publicity text; publicity agents; radio and television clearing house; records management services, namely, document indexing for others; referrals for general building contractors; referrals in the field of consumer products and services incorporating promotional information concerning products, services, events, activities, attractions and facilities in particular geographic locations for the benefit of retail and wholesale businesses; rental of advertising space; rental of data processing equipment; rental office machinery and equipment; rental of vending

machines; restaurant franchising; restaurant management for others; retail clothing, camera, and department stores; retail bakery shops; retail clothing boutiques; retail consignment stores in the field of clothing; retail convenience stores; retail delicatessen services; retail drugstore services; retail florist shops; retail fruit stands; retail furniture stores; retail fur stores; retail gasoline supply services; retail gift shops; retail grocery stores; retail grocery stores featuring phone in orders; retail jewelry stores; retail music and record stores; retail outlets featuring consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; retail pharmacy services; retail services by direct solicitation by sales agents in the field of consumer electronic products, patented inventions, intellectual property assets; retail shop at home party services in the field of consumer electronic products, seasonal-themed products, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, jewelry, gifts, clothing, computers; retail sporting goods stores; retail store services available through computer communications and interactive television featuring consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; retail store services featuring convenience store items and gasoline; retail stores services featured a wide variety of consumer goods of others; retail tire stores; retail variety stores; sales volume tracking for others; sample distribution; scrap dealerships; second hand dealerships featuring clothing and furniture; secretarial and clerical services; serving as a human resources department for others; shareholder record-keeping services; shop window display arrangement services; shopper's guide information; shopping by researchers who posed as customers to the evaluate the quality of services delivered; shop at home parties featuring consumer electronic products, seasonal- seasonal-themed products, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, jewelry, gifts, clothing, computers; shorthand secretarial services; state vehicular registration and title transfer; stenographic transcription; stenography; street vendor services featuring food; supermarkets; supplying prescription drugs to health plan participants for funding organizations; executives search and placement services; export and import agencies; facilitating the exchange of needed information for financial compensation via the Internet; flea markets; foreign trade information and consolidation; forest management consolidation; franchising namely offering technical assistance in the establishment minor operation of businesses namely restaurants, shoes stores, and car washes; general information clearing houses; gift registry services; grain market analysis; handbill distribution; health-care costs containment; health-care cost review; health-care utilization and review services; hospital management; hotel management for others; independent sales representatives in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; industrial asset management services, namely, auctioning, liquidating and remarketing industrial assets of others; industrial management assistance; insurance claims auditing services; inventory and shelf arrangement, namely, replenishing and resetting items for sale; inventory control; inventory management in the field of automobile production and sales, boat manufacturing and sales, aircraft production and sales, products marketed in retail department stores and discount warehouses; invoicing services; invoicing services in the field of financial services, automotive manufacturing, aerospace manufacturing, retail and wholesale services; issuing gift certificates which may then be redeemed for goods or services; job placement; key return registration; lawyer referrals; accounting services; accounts receivable services; addressing of envelopes; administering pharmacy reimbursement programs and services; administration of a discount program for enabling participants to obtain discounts on goods and services through the use of a discount membership card; administration of business payroll for others; administration of cultural and educational exchange programs; advertising agencies promoting the services of the automotive, aircraft, aerospace, watercraft industries; distribution of printed and audio promotional materials; advertising services, namely, providing advertising space in a periodical; advertising services, namely, creating corporate logos for others; advertising services, namely, creating corporate and brand identity for others; advertising slogan and cartoon character licensing; agencies for advertising time and space; agency representation for home renters obtaining needed dwelling repair and maintenance and other associated services; arranging and conducting business conferences; arranging and conducting trade show exhibits in the field of new product introductions featuring automotive, aircraft, watercraft, aerospace technology; arranging and conducting trade shows in the field of new product introductions featuring automotive, aircraft, watercraft, aerospace technology; arranging of subscriptions for the publications of others; art galleries; attorney referrals; auctioneering; auditing the

utility rates for others; automobiles salvage agents; billing services; boat dealerships; bookkeeping; bookkeeping for electronic funds transfer; bridal registry services; business acquisition and merger consolidation; business acquisitions consolidation; business appraisals; business auditing; business consolidation; business evaluation; business information; business information management; business investigations; business invoicing services; business management; business management and consolidation; business management consultation; business management of hotels for others; business management planning; business management supervision; business marketing and direct mail consulting services; business marketing consulting services; business merchandising displays services; business merger consolidation; business networking; business organizational consolidation; business planning; business relocation; business research and surveys; business services namely facilities management of technical operations; business succession planning; business supervision; butcher shops; buying clubs; career placement; cartoon character licensing; chamber of commerce services namely promoting businesses and tourism in the geographic allocation of the United States, its territories and possessions; clearinghouses for radio and television programs; commercial and industrial management assistance; commercial information agencies; commercial information directory agency; commercial information in the field of automotive, aircraft, watercraft, aerospace industries; commercial registered agent services; computer services namely, address notification services in the nature of posting modification of changes of addresses for businesses via the Internet; computer accounting services; computer database management; computerized online ordering services in the field of consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; computerized tracking and tracing of packages in transmittal; computerized word-processing services; concession stands featuring food and beverages, electronics, toys and gifts; conducting an on-line trade show exhibits in the field of automotive, aircraft, watercraft, aerospace technology, consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; conducting business in market research survey for automotive, aircraft, watercraft, aerospace industries; conducting employee incentive award programs to promote on the job safety quality and productivity; conducting marketing studies; conducting trade shows in the field of new product introductions featuring automotive, aircraft, watercraft, aerospace technology; consultation in the field of the business acquisitions; consumer research; contest incentive award programs to promote the sale of products and services of others; corporate advertising and marketing; copying the documents of others; copyright management consultation; copyright management; cost accounting; cost containment in the field of automotive, aircraft, watercraft, aerospace industries; cost management for health benefit plans of others; cost management for the help in care benefit plans of others; cost price analysis; creating trademarks for others; credit-card registration; customer services in the field of retail management, automotive dealerships, new product development; customer clearance services; data processing services; dealerships in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; demographic consultation; developing promotional campaigns for businesses; direct mail advertising; direct marketing advertising for others; discount stores in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; window display arrangement services for others; dissemination of advertising for others on the Internet; dissemination of advertising matter; doctor referrals; document reproduction; economic forecasting and analysis; efficiency experts; electronic billboard advertising; electronic catalog services featuring consumer electronic products, home robots, automotive parts, seasonal-themed products, office supplies, bedding and linens, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; electronic retailing services via computer featuring consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; employee leasing; employee relations information services; employment agencies; employment counseling and recruiting; employment hiring, recruiting, placement, staffing and career and networking services; employment outplacement services; employment verification; energy price comparison services; estimating contracting work; evaluation of standing timber; exchange services mainly bartering of goods for others; production and

distribution of radio and television commercials; profit survey and analysis; promoting and conducting trade shows in the field of automobile parts; promoting sports competitions and/or events of others; promoting the concerts of others; promoting the economic development through the implementation of industrial and business relocation and retention strategies, business capacity development strategies, cluster development theory strategies, entrepreneurial development strategies in communities throughout the United States; promoting that goods and services of others by arranging for sponsors to affiliate their goods and services with track and field, baseball, football, ice hockey, field hockey, automotive and watercraft racing, soccer events, and air shows; promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; promoting the goods and services of the others through the distribution of discount cards; promoting the goods and services of others providing hypertext links to the web sites of others; promoting the goods and services of others through infomercials played on consumer point of purchase television monitors in retail stores; promoting the goods and services of others by providing a website at which users can link to information concerning consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers, and automotive, aircraft, watercraft, aerospace technology; promoting the goods and services of others by means of operating online shopping mall which links to retail web sites of others; promoting the sale of credit-card accounts through the administration of incentive award programs; promoting the sale of goods and services of others by awarding purchase points for credit-card users; promoting the sale of goods and services of others to the distribution of printed material and promotional contests; providing academic course administration services for other academic institutions, namely, online course registration; providing online computer data bases trade information and field of automotive, aircraft, watercraft, aerospace industries; providing business marketing information; providing career information by global computer network; providing consumer product information in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers, and automotive, aircraft, watercraft, aerospace technology via the Internet; providing door-to-door shopping services in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers; providing facilities for business meetings; providing facilities for the use of office equipment and machinery; providing home shopping services in the field of consumer electronic products, industrial and home robots, prefabricated buildings, automobiles, automotive parts, aircraft, communications equipment, food, beverages, toys, sporting goods, cosmetics, small appliances, boats, furniture, jewelry, gifts, clothing, computers by means of television; providing information about the trading of aircraft, cars and boats; providing information about the goods and services of others via the global computer network; providing information about automobiles for sale by means of the Internet; providing on-line directory information services also featuring hyperlinks to other websites; providing statistical information for business or commercial purposes; providing television advertising for others; providing trade information

Class 041. First Use: 2003/05/17 First Use In Commerce: 2003/05/17

All goods and services in the class are cancelled, namely: Educational services in the nature of fine arts business correspondence schools; educational services in the nature of correspondence schools; educational services namely conducting programs in the field of different subject matters, namely, mathematics, science, history, social sciences, physical sciences, enrichment, legal studies, creative writing, foreign languages, food preparation, law enforcement, commercial art, product design research and development, automotive repair, business subjects; educational testing; educational services, namely colleges, universities, and trade schools, all in the fields of design, research, manufacturing, automobiles, land craft, water craft, economics, world economies, and product design; electronic publishing services namely publication of the text and graphic works of others on CD-Roms featuring different subject matters; entertainment in the nature of air shows; entertainment services in the nature of theme parks, amusement parks, amusement centers, futuristic cities and future related towns; entertainment in nature of automobile races; entertainment in nature of ballet performances; entertainment in nature of baseball games; entertainment in nature of beauty pageants; entertainment in nature of boxing contests; entertainment in nature of circus performances; entertainment in nature of competitions in the field of athletic competitions;

entertainment in the nature of dance performances; entertainment in the nature of live performances by a musical group; entertainment services, namely, television comedy series and ethnic festivals; entertainment's in nature of sports games, namely, track and field, baseball, football, ice hockey, field hockey, soccer, horseshoes, quoits; entertainment in nature of amusement park rides; entertainment in nature of pre-recorded comedic, joke and public service messages by telephone; entertainment in nature of fashion shows; entertainment in the nature of football games; entertainment in the nature of hockey, football, and baseball games; entertainment in the nature of golf tournaments; entertainment in nature of gymnastic performances; entertainment in the nature of light shows; entertainment in the nature of magic shows; entertainment in nature of symphony orchestral performances; entertainment in the nature of ongoing television programs in the field of news, comedy, and variety; entertainment in the nature of automobile shows, dog shows, horse and yacht races; yacht clubs; ski resorts; song writing services; rental of video games; educational and entertainment services, namely, providing motivational and educational speakers; entertainment services namely personal appearances by individuals, namely, movie stars, and sports celebrities; entertainment services namely providing online computer games; entertainment services namely, providing television programming; entertainment services namely production and distribution of game shows; entertainment services in the nature of a wrestling club; entertainment services, namely, fireworks displays; entertainment services, namely, conducting contests; entertainment services, namely, conducting parties on cruise ships; entertainment services in the nature of sports events, namely, sports car races; entertainment services, namely, providing a web site featuring musical performances, musical videos and related film clips and photographs and other multimedia materials; multimedia entertainment software production services; radio programs featuring performances by fictional characters and radio personalities; providing theme park services; radio entertainment production; recording studios; recreational camps; recreational park services; rental of cinema projection apparatuses and accessories; rental of cinema films; rental of film projection equipment; rental of motion picture films; rental of motion pictures; providing tennis court facilities; providing facilities for game shows; entertainment in the nature of roller derbies; entertainment in the nature of soccer games; entertainment in the nature of television news shows; entertainment in the nature of ongoing television programs in the field of news, comedy, and variety; entertainment in nature of tennis tournaments; entertainment in nature of theater productions; entertainment in the nature of track and field competitions; entertainment in the nature of golf and tennis tournaments; entertainment in the nature of the weight lifting competitions; entertainment in the nature of wrestling contests; entertainment in nature of yacht races; entertainment and the nature of visual audio performances, namely musical band, rock group, gymnastic, dance and ballet performances; entertainment namely, lighting production; entertainment, namely, live performances by musical band; entertainment services namely, preparation of special effects; entertainment services namely, the production of operas and television shows; entertainment services providing an on-line computer game; entertainment services namely, conducting fairs; entertainment services namely participation in sporting events in the nature of sports car races; entertainment services in the nature of an amusement park show; entertainment namely, live music concerts; entertainment namely a continuing variety and news shows, all distributed over television, satellite, audio and video; entertainment in the nature of automobile races by automobile racing team; entertainment services in the nature of ongoing television and radio programs in the field of basketball; entertainment in the nature of gymnastic exhibitions; production and distribution of radio and television broadcast of basketball games; conducting and arranging basketball clinics and coaches clinics in the field of basketball; providing an events web site featuring entertainment and educational services in nature of radio and television highlights and reprogram in the field of basketball; education and entertainment services in nature of professional football games; Providing sports and entertainment information via local computer network or commercial on-line web sites; fan clubs services; entertainment services, namely, musical and dance performances provided during intervals at sports events; educational services, namely, physical educational programming and courses of instruction the game of football; production of television and cable programs in the field of drama, comedy, documentaries, news, magazine style news programs and sports; entertainment services in nature of professional baseball exhibitions; entertainment services in nature of ongoing children's entertainment cartoon television series and live performances by costumed characters for the entertainment of children; entertainment services namely, providing online computer games; entertainment services in the nature of racing car events; entertainment services in nature of exhibiting wrestling teams and boxing teams; presentation of musical and dramatic performances; music publishing services; recording studio services

Class 043. First Use: 2003/05/17 First Use In Commerce: 2003/05/17

All goods and services in the class are cancelled, namely: Providing food and drink for patients and guests; providing temporary accommodations; hotels; resort hotels, motels, inns, lodges, tourist hotels, tourist homes, self service restaurants; restaurants; fast food restaurants; retirement homes, retirement home providing assisted living facilities, community centers for social gatherings and meetings, bar services, catering, health resorts namely providing food and lodging that specialize in promoting of patrons general health and being,congregate living facilities, delicatessens; cafes; carry out restaurant; arena services namely providing facilities for sports concerts, conventions, and exhibitions; providing banquet and social function facilities for special occasions; providing congregate living facilities; providing convention facilities for general purpose use; providing facilities for exhibitions, car races, athletic games and entertainment events; snack bars

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
Other	the Registration was obtained contrary to §§ 1 and 2 of the Lanham Act.

Attachments	Petition to Cancel.pdf (8 pages)(632123 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	/Thomas J. Motzny/
Name	Thomas J. Motzny
Date	08/24/2010

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

JOSEPH E. NEWGARDEN III,)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	Mark: TOMORROW
)	Registration No. 3,731,690
KENT G. ANDERSON,)	
Respondent)	
)	

PETITION FOR CANCELLATION

Joseph E. Newgarden III, petitions to cancel Registration Number 3,731,690, and states as follows:

1. Petitioner Joseph E. Newgarden III (“Petitioner”) is the applicant-of-record on U.S. trademark applications RACER OF TOMORROW (77/038,274) filed on November 7, 2006 and RACER OF TOMORROW and design (77/310,161) filed on October 22, 2007.

2. Respondent Kent G. Anderson (“Respondent”) is the owner of record of U.S. trademark registration number 3,731,690 for TOMORROW (the “‘690 Registration”) filed on March 17, 2003 and registered on December 29, 2009.

3. The ‘690 Registration has been cited as a bar under § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), to both of Petitioner’s RACER OF TOMORROW applications. As such, Petitioner will be damaged by the continued registration of the ‘690 Registration and, thus, Petitioner has standing to bring this Petition under 15 U.S.C. § 1064.

**First Basis for Cancellation:
The ‘690 Registration was obtained contrary to Sections 1 and 2 of the Lanham Act**

4. On March 17, 2003, Respondent filed with the United States Patent and Trademark Office (USPTO), under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b),

Application Serial No. 76/497,832 (the “‘832 Application”) to register TOMORROW in, as relevant to this Petition, classes 35, 41 and 43 for hundreds of unrelated services.

5. As required by Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), the ‘832 Application incorporated a sworn declaration that the Respondent had, at the time the application was filed, a bona fide intention to use TOMORROW in commerce on or in connection with the services that were identified in the application.

6. On information and belief, as of the filing date of the ‘832 Application, Respondent did not have a bona fide intention to use TOMORROW with all of the services that were identified in the ‘832 Application in classes 35, 41 and 43.

7. During the pendency of the ‘832 Application, on May 11, 2007, Respondent filed under Section 1(d) of the Lanham Act, 15 U.S.C. § 4051(d), a First Request for Extension of Time to File a Statement of Use of the Mark. The request stated, “Applicant has not used the mark in commerce on all good/services specified in the Notice of Allowance, however, Applicant has made the following ongoing efforts to use the mark in commerce on or in connection with each of the goods/services specified above: Applicant is and has been and is still establishing legal rights.”

8. On July 5, 2007, Respondent filed a Second Request for Extension of Time to File a Statement of Use of the Mark. As with the First Request, the Second Request stated, “Applicant has not used the mark in commerce on all good/services specified in the Notice of Allowance, however, Applicant has made the following ongoing efforts to use the mark in commerce on or in connection with each of the goods/services specified above: Applicant is and has been and is still establishing legal rights.”

9. As required by Section 1(d) of the Lanham Act, 15 U.S.C. § 1051(d), the First and Second Requests for an Extension of Time to File a Statement of Use incorporated a sworn declaration that the Respondent had, at the time each Request for an Extension of Time was filed, a continued, bona fide intention to use the mark in commerce in connection with all the services identified in the Notice of Allowance.

10. On information and belief, as of the filing date of each Request for an Extension of Time to File a Statement of Use, Respondent lacked a continued, bona fide intention to use the Mark in commerce in connection with all the services that were identified in the '832 Application.

11. On April 7, 2008, Respondent filed with the U.S. Patent and Trademark Office a Statement of Use in support of the '832 Application. As required by Sections 1(a) and 1(d) of the Lanham Act, Respondent's Statement of Use included a sworn declaration, signed by Respondent under penalty of perjury, that TOMORROW was first used in interstate commerce for all goods and services listed in the Notice of Allowance on May 17, 2003, two months after the filing of the '832 Application.

12. The statement made by Respondent in his Requests for Extensions of Time conflicts with the statement Respondent made in his Statement of Use, namely that as of the date of each Request he had not used the mark in connection with all of the services listed in the Notice of Allowance.

13. On information and belief, Respondent was not using TOMORROW in commerce in connection with all the services identified in the Notice of Allowance as of May 17, 2003.

14. On information and belief, Respondent was not using TOMORROW in commerce in connection with all the services identified in the Notice of Allowance when Respondent filed the Statement of Use on April 7, 2008.

15. The USPTO rejected the specimens filed by Respondent with the Statement of Use on April 7, 2008.

16. On January 5, 2009, Respondent filed substitute specimens which he represented were in use prior to the expiration of the time allowed applicant for filing a statement of use.

17. On information and belief, the substitute specimens filed by Respondent were not in use in commerce prior to the expiration of the time allowed applicant for filing a statement of use, nor were said specimens in use in commerce when Respondent filed them with the USPTO.

18. In reliance on the truth of Respondent's materially false statements, the '832 Application was registered on December 29, 2009.

Second Basis for Cancellation:

Fraud

19. Petitioner realleges paragraphs 1 and 18 as though fully set forth herein.

20. As required by Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), the '832 Application incorporated a sworn declaration, signed by Respondent under penalty of perjury, "that all statements made of [Respondent's] own knowledge are true and that all statements made on information and belief are believed to be true."

21. On information and belief, Respondent's allegation of a bona fide intention to use TOMORROW in commerce in connection with the services in the '832 Application was based on Respondent's "own knowledge" of the factual basis for the allegation.

22. As of the filing date of the '832 Application, Respondent knew or should have known he lacked a bona fide intention to use TOMORROW in commerce on or in connection with all the services that were identified in the '832 Application.

23. As required by Section 1 of the Lanham Act, 15 U.S.C. §1051, Respondent's Statement of Use incorporated a sworn declaration, signed by Respondent under penalty of perjury that "that all statements made of [Respondent's] own knowledge are true and that all statements made on information and belief are believed to be true."

24. On information and belief, the allegation in the Statement of Use that TOMORROW was first used in commerce on or in connection with all the services identified in the Notice of Allowance was based on Respondent's "own knowledge."

25. As of the filing date of Respondent's Statement of Use, Respondent knew or should have known he had not used TOMORROW in commerce with all the services identified in the Notice of Allowance as of May 17, 2003 or as of the filing date of the Statement of Use.

26. On January 5, 2009, Respondent filed additional specimens for the '832 Application. Respondent represented the specimens were "in use in commerce prior to the expiration of the time allowed applicant for filing a statement of use."

27. As required by Section 1 of the Lanham Act, 15 U.S.C. §1051, Respondent's filing of substitute specimens incorporated a sworn declaration, signed by Respondent under penalty of perjury that "that all statements made of [Respondent's] own knowledge are true and that all statements made on information and belief are believed to be true."

28. On information and belief, the allegation that the substitute specimens for classes 35. 41 and 43 for TOMORROW were first used in commerce prior to the expiration of the time allowed applicant for filing a statement of use was based on Respondent's "own knowledge."

29. As of the filing date of Respondent's Statement of Use, Respondent knew or should have known the substitute specimens had not been used in connection with TOMORROW in commerce with all the services identified in the Notice of Allowance prior to the expiration of the time allowed applicant for filing a statement of use.

30. On information and belief, the substitute specimens filed by the Respondent were never used in commerce in connection with the services identified in the '832 Application.

31. On information and belief, the false statements in the '832 Application, in the First and Second Requests for Extension of Time to File a Statement of Use, in the Statement of Use, and in filing of substitute specimens were made in bad faith and in attempt to perpetrate a fraud on the USPTO.

32. But for Respondent's false and fraudulent statements, the USPTO would have rejected the '832 Application.

**Third basis for Cancellation:
Abandonment**

33. Petitioner realleges paragraphs 1 through 32 as though fully set forth herein.

34. On information and belief, Respondent is not presently using TOMORROW as a trademark in connection with the services identified in the '690 Registration.

35. On information and belief, Respondent has not used TOMORROW as a trademark in connection with the services identified in the '690 Registration within the past three years.

36. On information and belief, Respondent does not intend to resume any bona fide use of TOMORROW as a trademark for the services identified in the '690 Registration.

37. Respondent has abandoned the mark as shown in the '690 Registration.

WHEREFORE, Petitioner demands this Petition be granted and Registration 3,731,690
be cancelled in its entirety.

Dated: August 24, 2010

JOSEPH E. NEWGARDEN III

A handwritten signature in black ink, appearing to read 'M. Stamelos', written over a horizontal line.

Mark E. Stamelos

Thomas J. Motzny

KING & BALLOW

315 Union Street, Suite 1100

Nashville, TN 37201

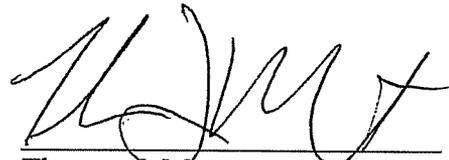
615/259-3456 (tel)

615/248-2860(fax)

CERTIFICATE OF SERVICE

I certify that on August 24, 2010 a true and correct copy of the foregoing Petition for Cancellation was served on Respondent by sending same via First Class Mail, postage prepaid, to:

Kent G. Anderson
925 N. Griffin
Bismark, ND 58501



Thomas J. Motzny