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

Proceeding	92054488
Party	Plaintiff Dan Patrick Enterprises, Inc.
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Submission	Other Motions/Papers
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Date	09/19/2011
Attachments	petition for cancellation2.pdf (7 pages)(70054 bytes)

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

Registration Number 3,868,745

Dan Patrick Enterprises, Inc.,
Petitioner,

v.

Trex Samson, LLC
Registrant.

Cancellation No.

PETITION FOR CANCELLATION

Petitioner Dan Patrick Enterprises, Inc., an Ohio corporation, with its principal place of business at 8564 Zane Trail Road, Circleville, OH 43113 ("Petitioner"), believes that it is being damaged by the continued registration of a trademark owned by Trex Samson, LLC, a limited liability company of Nevada with its last listed principal place of business at 1000 East William Street Ste 204, Carson City, NV 89701 ("Registrant"). As grounds for cancellation, Petitioner alleges the following:

FACTS COMMON TO ALL COUNTS

1. Registrant is the owner of the following trademark registration:

Registration Number 3868745

Registration Date October 26, 2010

For the mark: SAMSON.

The goods identified in the registration are:

IC 009: Decorative magnets shaped featuring images of a Tyrannosaurus Rex; computer mouse pads printed with the image of a Tyrannosaurus Rex; photographic cameras printed with an image of a Tyrannosaurus Rex. FIRST USE: 20091125. FIRST USE IN COMMERCE: 20091125

IC 018: Backpacks; book bags; cloth duffel bags; travel bags; tote bags; and all purpose sports bags; all of the foregoing listed goods featuring an image of a Tyrannosaurus Rex; all the foregoing listed goods being sold in museum channels of trade or otherwise in close association with a dinosaur, science, art or educational exhibit. FIRST USE: 20091125. FIRST USE IN COMMERCE: 20091125

IC 025: Clothing associated with characters or themes derived from a Tyrannosaurus Rex fossil, namely, shorts, pullovers, jackets, swimsuits, headwear, hats, caps, baseball caps, baby bibs, underwear. FIRST USE: 20091125. FIRST USE IN COMMERCE: 20091125

IC 028: Stuffed toys. FIRST USE: 20091125. FIRST USE IN COMMERCE: 20091125

2. Petitioner is the owner of the mark SAMSON and the following registration, which has acquired incontestable status, and of the following application:

Registration Number: 1566083

Registration Date: November 14, 1989

Word Mark: SAMSON

IC 025: Clothing, namely shirts. FIRST USE: 19830000. FIRST USE IN COMMERCE: 19830000

IC 041: Entertainment services, namely performing monster truck exhibitions. FIRST USE: 19830000. FIRST USE IN COMMERCE: 19830000

The current TESS page from USPTO for this registration is appended hereto. An assignment to petitioner has been recorded but apparently has not yet made its way into the USPTO data base.

Application Serial Number 77187182

IC 009: Prerecorded video tapes and DVDs featuring monster truck performances and competitions; Video games, namely, interactive video game programs

IC 016: Printed materials, namely, Pictures, trading cards, coloring books, picture books, books in the field of monster trucks

IC 025: Apparel, namely, hats, jackets, sweatshirts, short sleeve t-shirts, long sleeve t-shirts, ladies tank tops

IC 028: Toy vehicles; toy trucks; remote control toy trucks; die cast toy trucks; plastic toy trucks. FIRST USE: 20000000. FIRST USE IN COMMERCE: 20000000

COUNT I

ABANDONMENT

3. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 and 2 as if fully set forth herein.

4. Upon information and belief, Registrant is not using the mark SAMSON on or in connection with the goods and services recited above and in its registration.

5. Upon information and belief, Registrant does not intend to resume use of the mark SAMSON for the goods and services recited in its registration.

6. Upon information and belief, Registrant has abandoned use of the mark SAMSON in connection with the goods and services recited in the registration.

7. Based on the foregoing, Registration No. 3868745 is causing and will continue to cause damage to Petitioner, and should, therefore, be cancelled.

COUNT II

PRIORITY AND LIKELIHOOD OF CONFUSION

8. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 and 2 as if fully set forth herein.

9. In petitioner's above application the examining attorney has refused registration on the basis of likelihood of confusion with the mark in registrant's registration and therefore petitioner alleges the same.

10. Petitioner, directly and through related entities, has continuously used the mark SAMSON in commerce since prior to registrant's date of first use, since prior to registrant's date of application and since the following dates for the following goods and services:

IC 025: Clothing, namely shirts since 1983;

IC 041: Entertainment services, namely performing monster truck exhibitions since 1983;

IC 028: Toy vehicles; toy trucks; remote control toy trucks; die cast toy trucks; plastic toy trucks since 2000.

11. Petitioner's mark is inherently distinctive as used in connection with the goods and services enumerated above.

12. The continued existence of registrant's registration casts a cloud upon petitioner's rights in and to petitioner's registered mark as well as upon petitioner's ongoing ability to continue and expand its use of its SAMSON mark and additionally is a registration that is the basis for the examining attorney in petitioner's application to refuse registration to petitioner.

COUNT III

DESCRIPTIVENESS OR MISDESCRIPTIVENESS

13. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 and 2 as if fully set forth herein.

14. Registrant's goods, as described in its registration, are directed to goods which have and feature an image of a Tyrannosaurus Rex, and characters or themes derived from a Tyrannosaurus Rex fossil as shown by the identification of goods in petitioner's registration and, on information and belief, registrant's stuffed toys are a likeness of a Tyrannosaurus Rex.

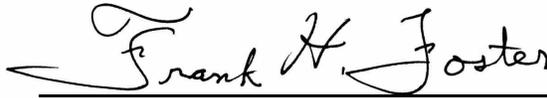
15. SAMSON is the name by which a particular 40 foot fossil of a Tyrannosaurus Rex is popularly known and it has been exhibited to the public at museums, including the Oregon Museum of Science and Industry in Portland Oregon, and articles have been published about it all referring to the particular 40 foot fossil of a Tyrannosaurus Rex as SAMSON.

16. An important characteristic or feature of applicant's goods is their likeness to that 40 foot fossil of a Tyrannosaurus Rex and therefore the term SAMSON is merely descriptive or deceptively misdescriptive of the characteristics and features of applicant's goods when used in association with registrant's goods.

WHEREFORE, petitioner believes that is has been and will continue to be damaged by U.S. Trademark Registration 3868745 of the mark SAMSON and therefore it is respectfully requested that the Trademark Trial and Appeal Board cancel Registration No. 3868745 on the ground of abandonment, on the ground of petitioner's priority of use and upon the descriptiveness or misdescriptiveness of registrant's mark when used in association with registrant's goods.

A fee in the amount of \$1200 is submitted herewith. Please charge any deficiency or credit any overpayment to Deposit Account No. 13-3393.

Respectfully submitted,

A handwritten signature in black ink that reads "Frank H. Foster". The signature is written in a cursive style with a horizontal line underneath it.

8 September 2011
Date of Signature

Frank H. Foster, Attorney for Petitioner
Reg. No. 24,560
An attorney of the State of Ohio
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing PETITION FOR CANCELLATION to be sent by first class mail, postage prepaid, to registrant, TREX SAMSON, LLC at 1000 EAST WILLIAM STREET, SUITE 204, CARSON CITY, NV 89701 on 19 September 2011.



Frank H. Foster

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