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

Proceeding	92057061
Party	Plaintiff Giftboard, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	06/26/2013
Attachments	GIFTBOARD_Amended Petition for Cancellation.wp.pdf(164865 bytes)

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

GIFTBOARD, INC.

Petitioner,

v.

CANCELLATION NO. 92057061

MR. ANDREY A. AGAPOV

Registrant.

AMENDED PETITION FOR CANCELLATION

Petitioner, Giftboard, Inc., having its principal place of business at 5230 W Patrick Lane, Ste 220, Las Vegas, Nevada 89118 (Giftboard), believes it is being damaged and/or will be damaged by the registration of the mark IT'S ON ME (Mark) delineated in United States trademark registration number 4160773 (Registration), and hereby seeks cancellation of such Registration on the following grounds:

COUNT I - FRAUDULENT PROCUREMENT

1. On October 19, 2011 (Application Filing Date), Mr. Andrey A. Agapov, having an address of 55 Orchard St., Greenfield, Massachusetts 01301 (Registrant), filed an application for the Mark (Application) with the United States Patent and Trademark Office (PTO) with the following services in international class 035 on an in-use basis:

PROMOTIONAL SERVICES, NAMELY, PROMOTING THE GOODS OF OTHERS BY
ISSUING ELECTRONIC GIFT CARDS ISSUING ELECTRONIC GIFT CERTIFICATES
AND GIFT CARDS WHICH MAY THEN BE REDEEMED FOR GOODS OR SERVICES

(Services).

2. In the Application, Registrant represented to the PTO that Registrant began using the Mark as of August 15, 2011, and that Registrant's date of first use in United States commerce of the Mark was August 15, 2011 (Claims of Use Dates).
3. Along with the Application, Registrant submitted to the PTO a specimen of use comprised of an image depicting a partial document on a computer screen containing the word "itsonme.com", the text "What you need, when you need it", "RELATED SEARCHES", "Visa Credit Card", "Checking Accou", and "Auto Insurance Q", all of the forgoing described by Registrant as "Mark used in web site" (Specimen), representing that the Specimen demonstrated Registrant's use of the Mark in United States commerce.
4. In fact, Registrant had never offered, advertised, or sold the Services under the Mark as of:
(a) the Application Filing Date, and (b) The Claims of Use Dates.
5. Registrant knew Registrant had never offered, advertised, or sold the Services under the Mark as of: (a) the Application Filing Date and (b) the Claims of Use Dates.
6. Registrant knew that the Specimen did not demonstrate use of the Mark in United States commerce.
7. As of April 13, 2013, Registrant had never used the Mark in United States commerce in connection with the Services.
8. Registrant's representations to the PTO on the Application Filing Date, including without limitation the Claims of Use Dates and Specimen, were each false.
9. Registrant made such representations knowing that such representations were false, with the intent to induce authorized agents of the PTO to grant the Registration.
10. The PTO, reasonably relying on the truth of said false representations, did, in fact, grant the Registration to Registrant.

11. In fact, Registrant failed to make use the Mark in United States commerce with respect to the Services as of the Application Filing Date of the underlying use-based Application.
12. The Application would have been refused registration but for Registrant's false assertions.
13. Registrant is not entitled to the Registration of the Mark because Registrant committed fraud in the procurement of the Registration by making false, material representations to the PTO with the intent to the deceive the PTO.

COUNT II - NO USE AS A MARK

14. Giftboard incorporates by reference the allegations contained in paragraphs 1-13.
15. Registrant had not sold the Services under the Mark as of the Application Filing Date.
16. Registrant had not offered the Services under the Mark as of the Application Filing Date.
17. Registrant had not advertised the Services under the Mark as the Application Filing Date.
18. Registrant was not using the Mark in United States commerce in connection with the Services as of the Application Filing Date.
19. For an application under Section 1(a), a mark must be in use in United States commerce as of the application filing date to be entitled to registration.
20. For an application under Section 1(a), a mark must be in use in United States commerce as of the registration date to entitled to registration.
21. The Mark was not used by Registrant as a mark as of the Application Filing Date.
22. Registrant is not entitled to maintain a registration for the Mark because Registrant had not used the Mark as a mark as of the Application Filing Date.
23. The Registration should be cancelled because the Mark was not used by Registrant as a mark as of the Application Filing Date.

24. The Registration is causing injury to Giftboard's business plans, impairing Giftboard's rights in Giftboard's mark(s), and will continue to cause injury to Giftboard until the Registration is cancelled.

25. Giftboard is and will be further damaged by the Registration in that such Registration will continue to give Registrant a *prima facie* exclusive right to use the Mark despite the Registrant's fraudulent assertions in procurement of the Registration.

WHEREFORE, Giftboard respectfully requests that this Petition be sustained in favor of Giftboard and that the Registration be cancelled.

June 26, 2013

Respectfully submitted,



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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that a true and complete copy of the foregoing AMENDED PETITION FOR CANCELLATION is being electronically transmitted to the Trademark Trial and Appeal Board, United States Patent and Trademark Office on June 26, 2013.

By: 
Douglas Burda

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that a true and complete copy of the foregoing AMENDED PETITION FOR CANCELLATION is being served on Mr. Andrey Agapov by transmitting said copy on June 26, 2013, via electronic mail to:

Mr. Matthew Swyers, Esq.
mswyers@thetrademarkcompany.com

By: 
Douglas Burda