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

Proceeding	92057220
Party	Defendant Jonathan Jarashow
Correspondence Address	JONATHAN JARASHOW 5 SOUTH MYRTLE AVENUE SPRING VALLEY, NY 10977 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	B. David Jarashow
Filer's e-mail	djarashow@aol.com
Signature	/s/B. David Jarashow
Date	06/26/2013
Attachments	MOTIONFITNESS062613MOTION.pdf(220548 bytes )

B. DAVID JARASHOW, ESQ. (BDJ-7636)  
LAW OFFICES OF B. DAVID JARASHOW, P.A.  
31 W. Main Street, 2<sup>nd</sup> Floor  
Freehold, NJ 07728  
732-303-6330  
*Attorney for REGISTRANT*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,875,390

For the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!

WWW.EXERGAMEZONE.COM (and Design)

Registered on the Principal Register on November 16, 2010

MOTION FITNESS,

*PETITIONER,*

v.

JONATHAN JARASHOW,

*REGISTRANT.*

CANCELLATION NO. 92057220

**NOTICE OF MOTION**

COUNSEL:

**PLEASE TAKE NOTICE** that on \_\_\_\_\_ 2013, at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel may be heard, Registrant Jonathan Jarashow shall move before The Honorable Judge \_\_\_\_\_ of the Trademark Trial and Appeal Board, for an Order in the form annexed hereto granting Plaintiff's MOTION TO DISMISS IN LIEU OF AN ANSWER, and for such other and further relief as the Court may award.

**PLEASE TAKE FURTHER NOTICE** that Registrant requests oral argument.

By: s/B. David Jarashow

DATED: June 26, 2013

B. DAVID JARASHOW, ESQ. (BDJ-7636)  
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**ORDER**

This matter, having been brought before the Court upon the application of Registrant for an Order dismissing the Petition for Cancellation, and the Court having considered the motion papers filed herein, and good cause having been shown,

It is hereby, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013

**ORDERED**, that Plaintiff's Motion to Dismiss the Petition for Cancellation in this matter is hereby GRANTED with prejudice; and

**ORDERED**, that a copy of this Order shall be served on all parties within  
           days.

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**Administrative Trademark Judge**

B. DAVID JARASHOW, ESQ. (BDJ-7636)  
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**CERTIFICATION**

Jonathan Jarashow, of full age, hereby certified as follows:

1. I am the REGISTRANT in this matter and make this certification in support of a Motion to Dismiss against Motion Fitness in lieu of an Answer.
2. I have been using "ExergameZone" and "exergamezone.com" since at least 2007 in connection with the concept of creating an environment for children that incorporates video and electronic games with fitness and exercise.
3. I successfully registered a federal trademark "EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM" that includes "Exergame" "Exergame Zone" and "exergamezone.com" on or about November 16, 2010.

4. I have used the Exergame Zone name in establishing an actual "kids fitness arcade" in Spring Valley, New York.
5. I also maintain an exergamezone.com Web site and own the exergamezone.com domain name.
6. I have devoted substantial time, effort, and resources to the development and promotion of the "Exergame Zone" mark and the "exergamezone.com" Web site.
7. Upon information and belief, PETITIONER MOTION FITNESS owns the domain names for the following Web sites which were registered **after** exergamezone.com: exergame.com and exergamefitness.com.
8. PETITIONER MOTION FITNESS promotes and sells "Exergame" products on its websites as well as "Exergame Training & Education Programs" and other "Exergame" related goods and services.
9. PETITIONER MOTION FITNESS, began using the term "Exergame" in commerce and applied for trademark registration related to same **after** "EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!WWW.EXERGAMEZONE.COM"
10. Despite infringing on my trademark, on or about May 17, 2013 PETITIONER MOTION FITNESS brought the instant petition for cancellation.
11. The Exergame Zone "kids fitness arcade" was active as of May 8, 2012 and remains active.
12. I have not stopped using the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!WWW.EXERGAMEZONE.COM (and Design) in interstate commerce.
13. The EXERGAME ZONE sign is still prominently located on the exterior of the EXERGAME ZONE "kids fitness arcade" location.
14. I intend to continue to use of the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!WWW.EXERGAMEZONE.COM (and Design) in the future.
15. For the above reasons, REGISTRANT's Motion to Dismiss against Motion Fitness in lieu of an Answer should be granted.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Jonathan Jarashow, Registrant

Dated: June 26, 2013

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing document has been served by email (with consent) and by Regular Mail on June 26, 2013, to the following:

Matthew H. Swyers, Esq.  
The Trademark Company  
344 Maple Avenue West  
Vienna, VA 22180  
mswyers@thetrademarkcompany.com

  
B. DAVID JARASHOW, ESQ.