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

Proceeding	92057242
Party	Plaintiff Elite Motorcycle Tours
Correspondence Address	DANA P JOZEFczyk MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402-9944 UNITED STATES djozefczyk@merchantgould.com, jsaadeh@merchantgould.com
Submission	Motion to Amend Pleading/Amended Pleading
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Elite Motorcycle Tours)	
)	Cancellation No. <u>92057242</u>
Petitioner,)	
)	Mark: ELITE MOTORCYCLE TOURS
v.)	
)	Reg. No.: 4,278,733
Bruce Odiorne II,)	
d/b/a Elite Motorcycle Tours)	Reg. Date: January 22, 2013
)	
)	
Registrant)	
_____)	

AMENDED PETITION FOR CANCELLATION

Elite Motorcycle Tours, located at 2501 Bear Lake Dr. Montrose , CO 81401 and 1310 Murphy Lane Moab, UT 84532 (hereinafter referred to as “Petitioner”) believes it has and will continue to be damaged by the mark shown in Registration No. 4,278,733 for ELITE MOTORCYCLE TOURS, (hereinafter referred to as the “ELITE MOTORCYCLE TOURS mark”) registered January 22, 2013, by Bruce Odiorne II (hereinafter referred to as “Registrant”), d/b/a Elite Motorcycle Tours, and hereby petitions to cancel said registration. The grounds for cancellation are as follows:

1. Petitioner operates Elite Motorcycle Tours, a motorcycle tour company that provides guided motorcycle tours and training throughout the southwestern United States, including Colorado, Utah and Texas. Petitioner currently operates over twenty (20) motorcycle tours in a calendar year, each tour including five (5) participants on average.

2. Petitioner, and its predecessors in interest, has been operating Elite Motorcycle Tours continuously since, at least, 1997. Petitioner has extensively advertised and promoted its

Elite Motorcycle Tours business. As a result of such use and promotion, Petitioner's Elite Motorcycle Tours business and ELITE MOTORCYCLE TOURS trademark have developed and represents valuable goodwill inuring to the benefit of Petitioner.

3. Registrant is a disgruntled, revenge oriented, former employee of Petitioner. Registrant's employment was terminated by Petitioner approximately fourteen months ago. Registrant worked for Petitioner for approximately 18 months from June 2010 to November 2011

4. Since Registrant's termination, Registrant has:

- a) Been convicted by the Montrose Colorado County Court of breaking and entering against Darren Peterson, an owner of Elite Motorcycle Tours., and Elite Motorcycle Tours, in December 2011;
- b) Called GoDaddy.com thirty six (36) times in one day stating that he is Darren Peterson and demanding cancellation of the Elite Motorcycle Tours web site. GoDaddy.com took down the website mistakenly believing that Registrant was Darren Peterson and that cancellation was authorized. The site was down for eighteen (18) hours before GoDaddy.com was able to re-launch it;
- c) Called in false allegations to the Bureau of Land Management ("BLM") to open a two-state wide investigation. Special Agent Robert Shilaikis handled the allegations and concluded that the allegations were indeed false;
- d) Falsified information to old Closed Bankruptcy Trust after the above BLM case was closed to have them re-open case. The Closed Bankruptcy Trust found that Registrant misled them into reopening investigation, costing the courts more money and time;

- e) Harassed clients of Petitioner and ordered them to cease use of Petitioner's services, creating mistrust and ill-will;
- f) Registered Petitioner's Elite Motorcycle Tours as an L.L.C. with the Colorado Secretary of State;
- f) These actions have cost Petitioner at least three large corporate accounts and Petitioner has lost revenue well over 40,000 per year since Registrant's termination from Petitioner's employ;

5. Registrant never directed, controlled, or owned any interest in Petitioner's business. Registrant no longer maintains any relationship with Petitioner.

6. Registrant did not develop the Elite Motorcycle Tours name of Petitioner nor was Registrant involved in any branding efforts associated with Petitioner's business. At no time was Registrant authorized to file any trademark applications on behalf of Petitioner. At no time after his termination from Petitioner, was Registrant authorized to use the ELITE MOTORCYCLE TOURS trademark.

7. Registrant filed the application for the ELITE MOTORCYCLE TOURS mark after Registrant was terminated by Petitioner. After this termination, Registrant obtained a trademark registered on the Principal Register for ELITE MOTORCYCLE TOURS for "Entertainment services in the nature of organizing, arranging and conducting motorcycle riding excursions" in Class 41. Registrant's registration is based on an application filed on May 8, 2012, and asserts a first use date of June 1, 2011. Registrant's registration asserts that Registrant is "d/b/a Elite Motorcycle Tours" and that Registrant is the CEO thereof. Registrant used a screenshot from Petitioner's website as a specimen of use to secure trademark registration.

8. Registrant's representations that he is "d/b/a Elite Motorcycle Tours," that he has used the ELITE MOTORCYCLE TOURS mark since June 1, 2011, and that he is the CEO of Elite Motorcycle Tours are all fraudulent. Moreover, Registrant's appropriation of an image from Petitioner's website as a specimen of use is unlawful and a further act of fraud in procuring a trademark registration.

9. Since Registrant's ELITE MOTORCYCLE TOURS mark is not associated with any service provided by Registrant, and since the ELITE MOTORCYCLE TOURS mark impinges upon Petitioner's business name, website, and goodwill, Petitioner has been and is likely to continue to be damaged by registration of the ELITE MOTORCYCLE TOURS mark.

10. Additionally, Registrant's ELITE MOTORCYCLE TOURS mark would likely hinder and inhibit Petitioner's ability to obtain federal registration of its own trademark for ELITE MOTORCYCLE TOURS.

11. As Registrant has not ever conducted business as Elite Motorcycle Tours, Registrant's d/b/a/ as Elite Motorcycle Tours, did not exist at the time the ELITE MOTORCYCLE TOURS application was filed.

12. Registrant's registration is null and void from its beginning as having been filed by an entity that did not exist at the time the application was filed in violation of Sections 1(b) and 45 of the Trademark Act, 15 U.S.C. §§ 1051 and 1127; 37 C.F.R. § 2.71(d), and TMEP §§ 1201.2(a)-(c). This defect is fatal to the application and cannot be cured by amendment. See 37 C.F.R. § 2.71(d) and TMEP § 1201.2(a)-(c).

13. Registrant signed a trademark application asserting that he "being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may

jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered” and “to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true” when in fact Petitioner was the rightful owner of the mark when Registrant signed the oath, that Registrant knew or should have known that Petitioner was the rightful owner of the mark, that Petitioner not Registrant had been using the mark prior to Registrant, that the specimen submitted was used by Petitioner, not Registrant, and that Registrant knew that a likelihood of confusion would result from Registrant’s use of the mark or had no reasonable basis for believing otherwise. All of the foregoing fraudulent statements were intended to secure trademark rights in a mark to which Registrant knew he was not entitled.

14. Continued registration of the mark shown in Reg. No. 4,278,733 may result in damage to Petitioner under the provisions of Sections 1(b) and 2(d) of the U.S. Trademark Act, 15 U.S.C. §§ 1051(b) and 1052(d) and 37 C.F.R. § 2.71(d), and because it was obtained fraudulently pursuant to the allegations stated above.

WHEREFORE, Petitioner asks that its Petition for Cancellation be sustained and that registration of the term ELITE MOTORCYCLE TOURS for the goods set forth therein be cancelled.

Please direct all correspondence to:

Dana P. Jozefczyk
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

Petitioner herein appoints John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Andrew S. Ehard; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Christopher J. Schulte and William D. Schultz, and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Accompanying the duplicate signed copies of this Notice of Cancellation is the required fee of \$300.00. Please charge any excess fees for or credit any overpayment to the Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

ELITE MOTORCYCLE TOURS

By its Attorneys,

Date: September 23, 2013

/s/ Dana P. Jozefczyk

Dana P. Jozefczyk
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(303) 357-1645

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served upon Registrant and the following attorney of record for Registrant by First Class Mail, postage prepaid, this 23rd day of September, 2013:

Bruce Odiorne, II
2788 County Road 302
Durango, Colorado 81301
tau4969@yahoo.com
blodiorne@hotmail.com
United States

/s/ Dana P. Jozefczyk

Dana P. Jozefczyk